

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0940**

Randall Ferrell Decker, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed March 20, 2023
Affirmed
Johnson, Judge**

Faribault County District Court
File No. 22-CR-12-508

Thomas K. Hagen, Kate R. Cartier, Kohlmeyer Hagen Law Office, Chtd., Mankato,
Minnesota (for appellant)

Keith Ellison, Attorney General, Peter Magnuson, Assistant Attorney General, St. Paul,
Minnesota; and

Cameron Davis, Faribault County Attorney, Blue Earth, Minnesota (for respondent)

Considered and decided by Johnson, Presiding Judge; Bratvold, Judge; and Florey,
Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant
to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

In 2014, a Faribault County jury found Randall Ferrell Decker guilty of six counts of criminal sexual conduct. In 2021, Decker petitioned for post-conviction relief and asserted a claim of ineffective assistance of counsel. Decker alleged that his trial attorney did not inform him of a plea offer that the prosecutor had made and further alleged that he would have accepted the plea offer if he had been informed of it. The post-conviction court denied the petition for multiple reasons after conducting an evidentiary hearing at which Decker testified. We conclude that the post-conviction court did not clearly err in its findings of fact and did not err by denying the petition. Therefore, we affirm.

FACTS

In August 2012, Decker's minor daughter stated to a police officer that her father had sexually abused her repeatedly for approximately two years. The state charged Decker in an amended complaint with seven counts of first-degree criminal sexual conduct, in violation of Minn. Stat. § 609.342, subd. 2(a) (2010), and three counts of second-degree criminal sexual conduct, in violation of Minn. Stat. § 609.343, subd. 2(a) (2010).

After a four-day trial in June 2014, a jury found Decker guilty of three counts of first-degree criminal sexual conduct and three counts of second-degree criminal sexual conduct. In September 2014, the district court imposed concurrent prison sentences for five of the convictions, the longest of which is 360 months, and a probationary sentence of 25 years for the sixth conviction. This court affirmed the convictions on direct appeal. *State v. Decker*, No. A14-2070, 2015 WL 4611981 (Minn. App. Aug. 3, 2015).

In July 2019, Decker filed a *pro se* motion for an order compelling his trial attorney to produce the attorney's case file to him. In August 2019, Decker's trial attorney responded to the motion by stating that he recently had given Decker all the documents in his file and by filing a three-page affidavit. In the affidavit, the trial attorney described the evidentiary phase of the trial and included the following statements: "Before the case went to the jury, the prosecutor offered the defendant a plea in which the defendant would plead guilty to two charges, serve 6 years and register. The defendant rejected this plea offer." Decker later withdrew his motion because he had received the trial attorney's file.

Two years later, in August 2021, Decker petitioned for post-conviction relief, with the assistance of new counsel. Decker alleged that, until he read his trial attorney's affidavit in August 2019, he was unaware that the state had made a plea offer to his trial attorney. He further alleged that he would have accepted the plea offer if he had been aware of it. In an accompanying memorandum of law, Decker argued that he was denied his constitutional right to the effective assistance of counsel. He requested an evidentiary hearing.

The post-conviction court held an evidentiary hearing in March 2022. Decker was the only witness. Consistent with his petition, he testified that he was unaware until August 2019 that the state had made a plea offer to his trial attorney and that he would have accepted the plea offer if he had been aware of it. On cross-examination, Decker testified that, since receiving his trial attorney's affidavit in August 2019, he had not sought or received any additional information from the trial attorney about the state's plea offer.

On direct examination, Decker also testified that his then-girlfriend and his son attended “every one of” his meetings with his trial attorney, both before and during the trial. Decker introduced affidavits executed by his former girlfriend and his son, which are consistent with his testimony about their attendance at meetings with his trial attorney. On cross-examination, Decker admitted that he spoke with his trial attorney on a few occasions while he was detained in jail and that his then-girlfriend and his son were not present for those conversations. He also admitted that they were not at counsel table during trial and, thus, were not part of conversations between Decker and his trial attorney at counsel table.

In May 2022, the post-conviction court filed a five-page order in which it denied Decker’s petition based on a series of four alternative findings of fact. First, the post-conviction court found that Decker did not prove by a preponderance of the evidence that the state made a plea offer to his trial attorney. Second, the post-conviction court found that Decker did not prove that, if the state made a plea offer, his trial attorney did not communicate the plea offer to him. Third, the post-conviction court found that Decker did not prove that, if a plea offer was made and was communicated to him, he would have accepted the plea offer. And fourth, the post-conviction court found that Decker did not prove that, if a plea offer was made and was communicated to him and would have been accepted by him, the district court would have accepted the plea agreement. Decker appeals.

DECISION

Decker argues that the post-conviction court erred by denying his petition for post-conviction relief.

“In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence.” U.S. Const. amend. VI; *see also* Minn. Const. art. I, § 6. The Sixth Amendment right to counsel guarantees “the right to the *effective* assistance of counsel.” *McMann v. Richardson*, 397 U.S. 759, 771 n.14 (1970) (emphasis added). In general, to prevail on a claim of ineffective assistance of counsel, a defendant must satisfy two requirements:

First, the defendant must show that counsel’s performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the “counsel” guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel’s errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.

Strickland v. Washington, 466 U.S. 668, 687 (1984); *see also State v. Cram*, 718 N.W.2d 898, 906-07 (Minn. 2006).

The two-part *Strickland* test applies to a claim that trial counsel was ineffective in connection with the plea-bargaining process. *Hill v. Lockhart*, 474 U.S. 52, 57 (1985). In that context, trial counsel has “the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused.” *Missouri v. Frye*, 566 U.S. 134, 145 (2012). Accordingly, a post-conviction petitioner may establish the first requirement of the *Strickland* test by proving that trial counsel failed to comply with that duty. *See id.*

To establish the second requirement of the *Strickland* test based on trial counsel’s failure to communicate a plea offer, a petitioner must establish “a reasonable probability

they would have accepted the earlier plea offer had they been afforded effective assistance of counsel” and “a reasonable probability the plea would have been entered without the prosecution canceling it or the trial court refusing to accept it, if they had the authority to exercise that discretion under state law.” *Id.* at 147. Furthermore, a petitioner must “show a reasonable probability that the end result of the criminal process would have been more favorable by reason of a plea to a lesser charge or a sentence of less prison time.” *Id.*; see also *Peltier v. State*, 946 N.W.2d 369, 372 (Minn. 2020); *Pearson v. State*, 891 N.W.2d 590, 598 (Minn. 2017).

As stated above, the post-conviction court denied Decker’s petition based on a series of four alternative findings of fact. On appeal, Decker challenges each of the four findings. The first and second findings relate to the first requirement of the *Strickland* test; the third and fourth findings relate to the second requirement of the *Strickland* test. See *Frye*, 566 U.S. at 145-47. To prevail on appeal, Decker must show that the post-conviction court erred with respect to each of the four findings. See *State v. Mosley*, 895 N.W.2d 585, 591 (Minn. 2017).

In considering Decker’s arguments, we assume without deciding that the state made a plea offer to Decker’s trial attorney. Accordingly, we focus on Decker’s arguments concerning the post-conviction court’s second, third, and fourth findings. We apply a clear-error standard of review to a post-conviction court’s findings of fact. *Sanchez v. State*, 890 N.W.2d 716, 720 (Minn. 2017).

A. Whether Trial Attorney Communicated Plea Offer to Decker

Decker argues that the post-conviction court erred by finding that he did not prove that, if the state made a plea offer, his trial attorney did not communicate the plea offer to him.

The post-conviction court made this finding after noting the statement in the trial attorney's affidavit that he informed Decker of the state's plea offer. The post-conviction court also noted Decker's testimony that he never was informed of the plea offer, but the post-conviction court discounted that testimony as "self-serving." The post-conviction court further reasoned that the affidavits of Decker's former girlfriend and son are "not persuasive" on the ground that they could not have been present for every conversation between Decker and his trial attorney. The post-conviction court relied on Decker's cross-examination testimony that his former girlfriend and son were not present when he spoke with his trial attorney from jail and were not seated at counsel table during trial.

Decker contends that the post-conviction court erred by requiring him to prove a negative. In reality, the post-conviction court simply found Decker's testimony to be not credible. We generally defer to a fact-finder's credibility determination. *See Griffin v. State*, 941 N.W.2d 404, 408-09 (Minn. 2020). In addition, the post-conviction court had a valid basis for disbelieving Decker's testimony: the trial attorney's affidavit, which stated that Decker rejected the state's plea offer, which implies that the trial attorney informed Decker of the plea offer. In that way, this case is like *State v. Powell*, 578 N.W.2d 727 (Minn. 1998), in which the appellant's trial attorney executed an affidavit stating that he had communicated two plea offers to the appellant. *Id.* at 730. The post-conviction court

relied on the affidavit in finding that the trial attorney had communicated the plea offers to the defendant, and that finding was upheld by the supreme court. *Id.* at 732.

Decker also contends that the post-conviction court erred by not crediting the affidavits of his former girlfriend and his son, both of which state that Decker's trial attorney never told Decker about the state's plea offer. The post-conviction court did not place great weight on those two affidavits because Decker admitted that his former girlfriend and son were not present for every conversation between him and his trial attorney. The post-conviction court had a valid basis for so believing because Decker testified on cross-examination that his former girlfriend and his son did not participate in conversations with Decker's trial attorney while Decker was in jail or at counsel table.

Thus, the post-conviction court did not clearly err by finding that Decker did not prove that, if the state made a plea offer, his trial attorney did not communicate the plea offer to him.

B. Whether Decker Would Have Accepted Plea Offer

Decker also argues that the post-conviction court erred by finding that he did not prove that, if a plea offer was made and was communicated to him, he would have accepted it. The post-conviction court made this finding for two primary reasons: the lack of evidence about which two charges were referenced in the state's plea offer and Decker's persistent claims of innocence.

On appeal, Decker emphasizes his own testimony that he certainly would have accepted the plea offer. He also notes the evidence that he previously had pleaded guilty to charges of criminal sexual conduct after maintaining his innocence. But Decker does

not address the post-conviction court's statement that there is no evidence about the two counts on which he would have needed to admit guilt. At the evidentiary hearing, Decker testified that he does not know which two charges were referenced in the plea offer.

Decker also does not respond to the post-conviction court's statement that he had consistently maintained his innocence, both before and after trial. The post-conviction court noted that, during the pre-sentence investigation, Decker maintained his innocence without qualification, and that statement is supported by the record. The post-conviction court also stated that, at the post-conviction evidentiary hearing, Decker maintained his innocence on three counts, and that statement is consistent with his testimony. In addition, the trial attorney's affidavit flatly states that Decker actually "rejected th[e] plea offer." The state contends that the trial attorney's statement is "sufficient support for the post-conviction court's finding." We agree.

Thus, the post-conviction court did not clearly err by finding that Decker did not prove that, if a plea offer was made and was communicated to him, he would have accepted it.

C. Whether District Court Would Have Accepted Plea Agreement

Decker argues further that the post-conviction court erred by finding that he did not prove that, if a plea offer was made and was communicated to him and would have been accepted by him, the district court would have accepted the plea agreement.

In challenging this finding, Decker focuses on his testimony that he would have accepted the plea offer if it had been communicated to him. But that issue is separate from

the issue of whether the district court would have accepted a plea agreement that conformed to the plea offer. *See Frye*, 566 U.S. at 147.

The state contends that Decker introduced no evidence that the district court would have accepted the plea agreement. Our review of the record indicates that the state is correct: Decker did not introduce any evidence or make any argument as to whether the district court would have accepted the plea agreement. As a matter of law, a district court “may accept a plea agreement of the parties when the interest of justice would be served,” after considering, among other factors, whether the “defendant has acknowledged guilt and shown a willingness to assume responsibility for the criminal conduct.” Minn. R. Crim. P. 15.04, subd. 3(3), 3(3)(b). But a district court “may, in its discretion, refuse to accept a plea agreement and is not bound by a plea agreement as to any sentence to be imposed.” *Johnson v. State*, 641 N.W.2d 912, 918 (Minn. 2002). Because Decker had the burden of proof, the lack of any evidence as to whether the district court would have accepted the plea agreement is a sufficient basis for affirming the post-conviction court’s finding. *See Powell*, 578 N.W.2d at 732.

Thus, the post-conviction court did not clearly err by finding that Decker did not prove that, if a plea offer was made and was communicated to him and would have been accepted by him, the district court would have accepted the plea agreement.

In sum, the post-conviction court did not err by denying Decker’s petition for post-conviction relief.

Affirmed.