STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1510

In the Matter of the Civil Commitment of:
Dana John Thompson.

Filed May 30, 2023
Affirmed
Segal, Chief Judge

Wabasha County District Court
File No. 79-PR-22-607

Dana John Thompson, Elgin, Minnesota (pro se appellant)

Matthew Stinson, Wabasha County Attorney, Jacob Barnes, Senior Assistant County Attorney, Emily Adel, Assistant County Attorney, Wabasha, Minnesota (for respondent Wabasha County Social Services)

Considered and decided by Wheelock, Presiding Judge; Segal, Chief Judge; and Ross, Judge.

NONPRECEDENTIAL OPINION

SEGAL, Chief Judge

Appellant was civilly committed on the grounds that he is a mentally ill and chemically dependent person under the Minnesota Commitment and Treatment Act, Minn. Stat. §§ 253B.001-.24 (2022). Appellant argues that the order of civil commitment must be reversed because (1) he was not advised by the district court that he had the right to an independent examiner, (2) he was under the influence of medication at the time of the evidentiary hearing, and (3) his court-appointed counsel was ineffective. We affirm.

FACTS

Respondent Wabasha County Social Services petitioned, in August 2022, for the civil commitment of appellant Dana John Thompson on the grounds of mental illness and chemical dependency. The county filed the petition after Thompson was found not competent to proceed in a criminal case. The state had charged Thompson in the criminal case with assaulting detention deputies at the Wabasha County jail. The competency evaluator in the criminal case diagnosed Thompson with an unspecified personality disorder. The evaluator also noted that Thompson "consistently presented with symptoms of psychosis and mania," but that it was not clear whether this was due to a mental illness or "ongoing methamphetamine use."

Dr. Paul Reitman conducted the initial post-petition evaluation of Thompson, concluding that Thompson met the criteria for civil commitment as a mentally ill and chemically dependent person. His diagnoses of Thompson included schizoaffective disorder bipolar type with manic and psychotic features, methamphetamine abuse disorder, cannabis disorder, adult antisocial personality disorder, and attention deficit hyperactivity disorder.

Thompson's court-appointed counsel requested the appointment of Dr. Steven Norton as the second independent examiner, which request was granted by the district court. Dr. Norton opined in his report that Thompson met the diagnostic criteria for bipolar disorder, cannabis and amphetamine dependence, and antisocial personality disorder. Dr. Norton noted that Thompson was "likely too ill and disruptive to be safely managed in a community setting," that "[h]is repeated threats of aggression to multiple examiners,

recent physical aggression leading to current criminal charges, and his insistence on meeting with Gov. Walz to air his complaints [were] all quite concerning," and that Dr. Norton would be calling the Wabasha County Sheriff to alert the sheriff to those concerns. Dr. Norton concluded that Thompson met "the criteria for civil commitment as a mentally ill and chemically dependent individual as the least restrictive alternative to prevent harm to others."

At the commitment hearing, the county presented testimony by the competency evaluator, along with Drs. Reitman and Norton. Thompson testified on his own behalf and opposed his commitment.

The district court found that Thompson was "a danger to self or others and without proper treatment will suffer significant psychiatric deterioration or debilitation," and that there were no reasonable alternatives to commitment. The district court determined that Thompson therefore met the statutory criteria to be committed as a mentally ill and chemically dependent person as defined in Minn. Stat. § 253B.02, subds. 2, 17a, and ordered that Thompson be civilly committed.

DECISION

To be civilly committed as a mentally ill or chemically dependent person, the district court must "[f]ind[] by clear and convincing evidence that the proposed patient is a person who poses a risk of harm due to mental illness . . . or chemical dependency, and after careful consideration of reasonable alternative dispositions . . . that there is no suitable alternative to judicial commitment." Minn. Stat. § 253B.09, subd. 1(a). Thompson argues that the commitment order must be reversed because he (1) was not informed of his right

to a second independent examiner, (2) was under the influence of medication during the commitment hearing in violation of the provisions in the civil-commitment statute, and (3) was denied the effective assistance of counsel.

Before addressing Thompson's individual arguments, we note, generally, that none of the issues asserted by him on appeal were raised before the district court. We could thus decline review of his arguments. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that appellate courts typically address only those questions previously presented to and considered by the district court); *In re Ivey*, 687 N.W.2d 666, 671 (Minn. App. 2004) (applying this aspect of *Thiele* in a commitment appeal), *rev. denied* (Minn. Dec. 22, 2004). Nevertheless, in the interests of procedural justice, we address many of the issues on their merits.

I. Contrary to his argument on appeal, Thompson was informed of and exercised his right to a second examiner.

The civil-commitment statute provides that the district court "shall inform the proposed patient of the right to an independent second examination" and that, "[a]t the proposed patient's request, the court shall appoint a second court examiner of the patient's choosing to be paid for by the county." Minn. Stat. § 253B.07, subd. 3. Here, Thompson's counsel requested an independent second examination and designated Dr. Norton as the requested examiner. The district court granted the request and Dr. Norton conducted the

second independent examination, submitted a report, and testified at the civil-commitment hearing. Thus, subdivision 3 was not violated.[1]

II. Regardless of whether Thompson was under the influence of medication, he was able to participate in the commitment hearing and the district court did not violate Minn. Stat. § 253B.08, subd. 5.

Thompson next argues that he was under the influence of medication at the commitment hearing and that the district court therefore violated Minn. Stat. § 253B.08, subd. 5(a). That subdivision provides that "[a]t the time of the hearing, the proposed patient shall not be so under the influence of drugs, medication, or other treatment so as to be hampered in participating in the proceedings." Minn. Stat. 253B.08, subd. 5(a).

At the commitment hearing, however, the district court expressly asked Thompson whether he was on medication:

> THE COURT: Mr. Thompson, have you been taking any medications since in custody or hospitalized?
>
> THOMPSON: No, not that I'm aware of. No.

Thus, the district court inquired, and Thompson denied, that he was on medication at the time of the hearing. Moreover, subdivision 5(a) does not state that the proposed patient

[1] We note that, even though Thompson claims he was never allowed to exercise his rights under subdivision 3, he also asserts that the interview with Dr. Norton was only five minutes and that therefore a "proper examination was not completed." But Thompson did not object to the introduction of the second examiner's report during his hearing. And the record shows that it was Thompson who cut short the interview. In his report, Dr. Norton stated that his interview with Thompson lasted about ten minutes and that "Mr. Thompson was unwilling to listen to any provided information and eventually stated he would not complete an evaluation." Dr. Norton also commented that, during the interview, Thompson "displayed a high level of mania, with rapid pressured speech and flight of idea, [was] unable to stay on one topic . . . [and was] unable to answer questions."

must be free of all medication during the hearing—just that the treatment or medication cannot hamper a patient's participation in the proceedings. And here, the transcript shows that Thompson responded coherently to the questions asked of him to the point that the district court noted, at the close of Thompson's testimony, that "the last ten minutes, is the best I've heard you speak, behave, or present yourself." We thus reject Thompson's argument on this issue.

III. Because he cannot show prejudice, Thompson's ineffective-assistance-of-counsel claim fails.

Thompson asserts that he was denied the effective assistance of counsel, claiming that his attorney failed to advocate vigorously on his behalf in violation of Minn. Stat. § 253B.07, subd. 2c, which provides that appointed counsel "shall: (1) consult with the person prior to any hearing; . . . and (4) be a vigorous advocate on behalf of the person." The right to counsel in a civil-commitment proceeding is a statutory right. *See* Minn. Stat. § 253B.07, subd. 2c. When analyzing an ineffective-assistance-of-counsel claim arising out of a civil-commitment proceeding, we apply the two-prong test articulated in *Strickland v. Washington*, 466 U.S. 668 (1984), for assessing such claims in criminal cases. *In re Civ. Commitment of Johnson*, 931 N.W.2d 649, 657 (Minn. App. 2019), *rev. denied* (Minn. Sept. 17, 2019). We review ineffective-assistance-of-counsel claims de novo. *Id.*

To establish a claim that counsel provided ineffective assistance, both prongs of the test laid out in *Strickland* must be satisfied. 466 U.S. at 687; *see also Johnson*, 931 N.W.2d at 657 (stating that the two prongs of *Strickland* must be met in civil-commitment cases). First, a defendant must prove that their counsel's performance was deficient and that it "fell

below an objective standard of reasonableness." *Strickland*, 466 U.S. at 687-88. Second, a defendant must prove that they were prejudiced by their counsel's deficient performance. *Id.* at 694; *Andersen v. State*, 830 N.W.2d 1, 10 (Minn. 2013). "If a claim fails to satisfy one of the *Strickland* requirements, [appellate courts] need not consider the other requirement." *State v. Mosley*, 895 N.W.2d 585, 591 (Minn. 2017).

When analyzing an attorney's performance under the first prong of *Strickland*, "Appellate courts apply a strong presumption that an attorney's performance falls within the wide range of reasonable professional assistance." *Johnson*, 931 N.W.2d at 657 (quotation omitted). An attorney's performance does not need to be perfect, it must only be "reasonable[] under prevailing professional norms." *Strickland*, 466 U.S. at 688; *accord State v. Bailey*, 132 N.W.2d 720, 724-25 (Minn. 1965) (quoting *United States ex rel. Weber v. Ragen*, 176 F.2d 579, 586 (7th Cir. 1949)).

If an attorney's performance is determined to have been deficient, the represented party must still establish prejudice under the second prong of the *Strickland* test—that, but for counsel's deficient performance, there is a reasonable probability that the outcome of the proceeding would have been different. *Johnson*, 931 N.W.2d at 658; *see also Strickland*, 466 U.S. at 694 (stating that a reasonable probability is "a probability sufficient to undermine confidence in the outcome"). Prejudice is not presumed and reviewing courts "must consider the totality of the evidence before the judge or jury" when determining if the second prong is satisfied. *Johnson*, 931 N.W.2d at 658 (quotation omitted).

A. Deficient Performance

Thompson asserts that his counsel's performance was deficient because the attorney failed to vigorously advocate on Thompson's behalf as required by Minn. Stat. § 253B.07, subd. 2c(4), because his counsel failed to (1) object to any evidence admitted by the county or ask any questions of Dr. Norton, (2) call Thompson's wife to testify on Thompson's behalf, or (3) communicate with him prior to the hearing.

As to Thompson's first argument—that his counsel's performance was deficient due to a failure to object and ask questions—decisions concerning which questions to ask and which objections to make are considered matters of trial strategy, and appellate courts "generally 'will not review attacks on counsel's trial strategy.'" *Johnson*, 931 N.W.2d at 657 (quoting *Opsahl v. State*, 677 N.W.2d 414, 421 (Minn. 2004)). "It is well-established that we give an attorney's trial-strategy decisions particular deference." *Mosley*, 895 N.W.2d at 592 (quotation omitted). This includes decisions about what objections to make during commitment hearings. *See Johnson*, 931 N.W.2d at 657. Furthermore, "[m]ere improvident strategy, bad tactics, mistake, carelessness, or inexperience do not necessarily amount to ineffective assistance of counsel unless taken as a whole the trial was a mockery of justice." *Bailey*, 132 N.W.2d at 724 (quotation omitted).

Here, we cannot evaluate Thompson's claim concerning objections because he has failed to identify which objections should have been made. And, while it is true that Thompson's attorney did not cross-examine Dr. Norton, the attorney did thoroughly question the county's other two witnesses—the competency evaluator and Dr. Reitman—in addition to questioning Thompson.

Thompson also argues that his counsel's performance was deficient because counsel should have called Thompson's wife as a witness. Generally, an attorney's decision to call someone as a witness is a matter of trial strategy. *See State v. Munger*, 858 N.W.2d 814, 822 (Minn. App. 2015) (stating that trial strategy includes "what evidence to present and what witnesses to call at trial"), *rev. denied* (Minn. Mar. 25, 2015). And "[a] strong presumption exists in favor of finding that counsel's representation was reasonable, and particular deference is given to matters of trial strategy, including which witnesses to call and what information to present to the jury."[2] *State v. Pearson*, 775 N.W.2d 155, 165 (Minn. 2009).

Finally, Thompson argues that his counsel's performance was deficient because his counsel failed to consult with him prior to the commitment hearing outside of "a brief communication via phone" during which Thompson told his counsel "he wishe[d] to

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[2] We note that Thompson also argues that the failure to call his wife violated a statutory right to have her testify under Minn. Stat. § 253B.08, subd. 3. That subdivision states, in relevant part:

> All persons to whom notice has been given may attend the hearing and, except for the proposed patient's counsel, may testify. The court shall notify them of their right to attend the hearing and to testify. The court may exclude any person not necessary for the conduct of the proceedings from the hearings except any person requested to be present by the proposed patient.

Minn. Stat. § 253B.08, subd. 3. The "persons to whom notice has been given" references the provision in Minn. Stat. § 253B.08, subd. 2, which provides that notice is required to be given to "[t]he proposed patient, patient's counsel, the petitioner, the county attorney, and any other persons as the court directs." Thompson's wife is not on the list of persons required to be notified of the commitment hearing, and therefore, did not have a *statutory right* to testify during his hearing.

proceed Pro Se." As set out above, Minn. Stat. § 253B.07, subd. 2c(1), provides that counsel "shall . . . consult with the person prior to any hearing." However, as discussed below, even if counsel's performance was deficient on this or any of the other grounds Thompson has asserted, Thompson has not articulated prejudice under the second prong of the *Strickland* test.

B. Prejudice

The second prong of the ineffective-assistance-of-counsel test requires a showing that, but for counsel's alleged deficient performance, there is a reasonable probability that Thompson would not have been civilly committed. *See Johnson*, 931 N.W.2d at 658. Thompson fails to make such a showing. First, Thompson does not identify how correcting his counsel's alleged deficiencies would have impacted the district court's determination that he is "a mentally ill and chemically dependent person as defined by Minn. Stat. 253B.02, Subd. 2 and 17a, and meets the statutory criteria for civil commitment." Second, given that all three experts, including the independent examiner that Thompson requested, agreed that Thompson satisfied the criteria for civil commitment as a mentally ill and chemically dependent person, the totality of the evidence leads us to conclude that there is no reasonable probability that, but for any alleged deficiency in counsel's performance, the outcome would have been different. We therefore decline to reverse the commitment order on this basis.

IV. None of the other issues raised in Thompson's brief warrant a reversal of the commitment order.

Finally, Thompson makes many other broad and sweeping arguments regarding certain aspects of the commitment proceeding that he asserts require reversal. He contends that the district court erred by denying all his motions, that it muted him during hearings, and that "most of the witness statements and evidence presented were bias[ed], incorrect, hearsay and possess[ed] no merit." Beyond broad assertions of error, Thompson does not provide any citations to the record or legal authority to support his arguments. Generally, appellate courts decline to consider questions that are inadequately briefed. *State, Dep't of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (declining to consider an inadequately briefed question); *see In re Civ. Commitment of Kropp*, 895 N.W.2d 647, 653 (Minn. App. 2017) (applying *Wintz* in a commitment matter), *rev. denied* (Minn. June 20, 2017). And we decline to depart from this general rule here.

Affirmed.