STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0092

Tyler Todd Plaster, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed November 6, 2023
Affirmed
Ede, Judge

Sherburne County District Court
File No. 71-CR-19-832

Cathryn Middlebrook, Chief Appellate Public Defender, Michael McLaughlin, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Kathleen Heaney, Sherburne County Attorney, George Kennedy, Assistant County Attorney, Elk River, Minnesota (for respondent)

Considered and decided by Frisch, Presiding Judge; Ede, Judge; and Smith, John, Judge.*

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

NONPRECEDENTIAL OPINION

EDE, Judge

Challenging an order denying postconviction relief, appellant seeks to withdraw his guilty plea to fourth-degree criminal sexual conduct. Appellant asserts that his plea attorney misinformed him of the aggregate sentence he could receive if convicted at trial. From that premise, appellant argues that the district court erroneously concluded (1) that he did not receive ineffective assistance of counsel and (2) that he was not prejudiced by his plea attorney's advice. Because we conclude that there is no reasonable probability that appellant would not have pleaded guilty even if he were properly advised of his potential sentencing exposure, we affirm.

FACTS

In June 2019, respondent State of Minnesota charged appellant Tyler Todd Plaster with two counts of felony fourth-degree criminal sexual conduct, in violation of Minnesota Statutes section 609.345, subdivision 1(b) (2014), and one count of gross misdemeanor fifth-degree criminal sexual conduct, in violation of Minnesota Statutes section 609.3451, subdivision 1(1) (2016). These allegations arose from three separate sexual assaults, which occurred in 2014, 2015, and 2018. When the state filed these charges, Plaster was serving an 85-month sentence for an unrelated first-degree controlled-substance offense. His anticipated release date for the controlled-substance charge was in November 2022.

In December 2019, Plaster entered into the following plea agreement with the state. Plaster agreed to plead guilty to one count of felony fourth-degree criminal sexual conduct.

The state agreed to dismiss the two remaining charges and to request a sentence of 59 months, based on a criminal history score of 4.

At the plea hearing, the district court asked Plaster if he wanted to proceed with the agreement, and he answered: "I do *under the pretense that there will be no additional time* as a result of this plea." (Emphasis added.) Similarly, during a colloquy that preceded Plaster's guilty plea, Plaster's plea attorney asked him: "[D]o you understand that[,] what the negotiation is[,] is that you plead guilty to this offense and that it's anticipated by all the parties that *you would not receive any additional time beyond the time that you're presently serving*?" (Emphasis added.) Plaster responded: "That is correct."

The district court accepted the parties' agreement and imposed an executed sentence of 59 months concurrent to Plaster's existing 85-month controlled-substance sentence.

In March 2022, Plaster filed a petition for postconviction relief. Plaster contended that he had received ineffective assistance of counsel because his plea attorney misinformed him regarding the aggregate guidelines sentence he could have received after trial and conviction.[1] At an evidentiary hearing on Plaster's petition, the district court received several exhibits, including the plea hearing transcript. The district court did not receive testimony from Plaster's plea attorney because he had passed away prior to the hearing.

[1] Plaster also maintained that his sentence was illegal because it was based on an erroneous criminal history score. The district court ultimately granted Plaster's request for resentencing based upon his correct criminal history score.

At the postconviction hearing, Plaster testified as follows. On the morning of his December 2019 guilty plea, Plaster met with his plea attorney before his pretrial conference to discuss his options, including a potential resolution of the case. Plaster's attorney informed him that, if Plaster was convicted at trial, the state would seek separate consecutive sentences of 59 months for each of the two felony charges and ask that the court impose those sentences consecutive to Plaster's existing controlled-substance sentence.[2] The plea attorney also informed Plaster of the state's proposed plea agreement, i.e., that Plaster could plead guilty to one count of felony fourth-degree criminal sexual conduct, that the state would move to dismiss the two other counts, and that Plaster would serve a 59-month sentence concurrent to his controlled-substance sentence.

According to Plaster, if he had known his correct post-trial guidelines sentencing exposure, he would not have pleaded guilty. Plaster said that he had "very little to lose by going to trial." Plaster claimed that, given "[t]he amount of time that [he] would have served as a result of going to trial and losing[,] there was essentially nothing for [him] to lose[,]" even if the district court excluded certain defense evidence. But Plaster also testified that pleading guilty was "just really simple logic[,]" agreeing that he "discuss[ed] taking the deal" with his plea attorney in order to avoid the "risk [of] serving additional time beyond [his] controlled substance conviction." Under questioning by his

[2] Such consecutive sentencing would have resulted in Plaster remaining in custody until 2029, instead of the November 2022 release he anticipated for his controlled-substance offense. But under the applicable Minnesota Sentencing Guidelines, the district court could not have imposed sentences for the current offenses consecutive to Plaster's prior controlled-substance offense without an aggravated departure. *See* Minn. Sent'g Guidelines 2.F.2.a.(1)(i)(a); 6 (2014).

postconviction lawyer, Plaster affirmed that, "if [he] would have known that [he] didn't face [additional sentencing] exposure and that *it was unlikely that [he] would serve additional time beyond [his] controlled substance conviction*[,] if that had been [his] understanding[, then he] would have made a different decision." (Emphasis added.)

The district court denied Plaster's request to withdraw his guilty plea. The court found that "Plaster's sole concern when entering the plea agreement was avoiding any extension of his anticipated release date from his Controlled Substance offense sentence." The district court also found that, "[d]uring the evidentiary hearing, . . . Plaster testified . . . that accepting the offer was 'simple logic' to avoid additional time in prison." Based on these findings, the district court concluded that "Plaster would have accepted any plea agreement that did not affect his anticipated release date" relating to the controlled-substance sentence he was serving. Thus, the district court ruled that "Plaster has not proven by a reasonable probability that he would have insisted on trial instead of pleading guilty."[3]

Plaster appeals.

DECISION

Plaster challenges the district court's denial of his postconviction request to withdraw his guilty plea based on the alleged ineffective assistance of his plea attorney. Plaster argues that, if he had been accurately advised by his plea attorney about his total

[3] The district court also concluded that Plaster's attorney's advice about Plaster's post-trial guidelines sentencing exposure was objectively reasonable.

guidelines sentencing exposure after trial, he would not have pleaded guilty. The state counters that the plea advice Plaster received did not prejudice him, and we agree.

"We review a district court's denial of postconviction relief for an abuse of discretion." *Edwards v. State*, 950 N.W.2d 309, 314 (Minn. App. 2020) (citing *Brown v. State*, 895 N.W.2d 612, 617 (Minn. 2017)). "'A postconviction court abuses its discretion when it has exercised its discretion in an arbitrary or capricious manner, based its ruling on an erroneous view of the law, or made clearly erroneous factual findings.'" *Id.* (quoting *Pearson v. State*, 891 N.W.2d 590, 596 (Minn. 2017)). "Legal issues are reviewed de novo, but our review of factual issues is limited to whether there is sufficient evidence in the record to sustain the postconviction court's findings." *Pearson*, 891 N.W.2d at 596 (quotation and citation omitted). In other words, we "do not reverse the postconviction court's findings unless they are clearly erroneous." *Id.* (quotation omitted); *see also id.* at 600 (reiterating this same standard of review specifically as to postconviction ineffective-assistance-of-counsel appeals). "Findings of fact are clearly erroneous if, on the entire evidence, we are left with the definite and firm conviction that a mistake occurred." *State v. Andersen*, 784 N.W.2d 320, 334 (Minn. 2010) (citations omitted).

"We apply the *Strickland* standard[4] to determine whether a criminal defendant received ineffective assistance of counsel in entering a guilty plea." *State v. Bell*, 971 N.W.2d 92, 106 (Minn. App. 2022) (citing *Campos v. State*, 816 N.W.2d 480, 485 (Minn. 2012)), *rev. denied* (Apr. 27, 2022). To succeed on an ineffective assistance of counsel

[4] *Strickland v. Washington*, 466 U.S. 668, 687 (1984).

claim, a defendant must demonstrate *both* (1) "that counsel's representation fell below an objective standard of reasonableness" *and* (2) "a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *Campos*, 816 N.W.2d at 486 (quotations and citations omitted); *see also Bell*, 971 N.W.2d at 106. "We may address the prongs in either order, and a claim may be disposed of on one prong without analyzing the other." *Eason v. State*, 950 N.W.2d 258, 268 (Minn. 2020).

Assuming without deciding that Plaster's plea counsel's representation fell below an objective standard of reasonableness regarding Plaster's post-trial guidelines sentencing exposure, we consider whether there is a reasonable probability that, but for such assumed error by Plaster's plea attorney, Plaster would not have pleaded guilty and would have insisted on going to trial. *See, e.g., Allwine v. State,* 994 N.W.2d 528, 538 (Minn. 2023); *Reed v. State,* 793 N.W.2d 725, 735 (Minn. 2010); *State v. Bell,* 971 N.W.2d 92, 106 (Minn. App. 2022), *rev. denied* (Apr. 27, 2022).

The district court did not clearly err in finding that "Plaster's sole concern when entering the plea agreement was avoiding any extension of his anticipated release date from his Controlled Substance offense sentence" because that finding is sustained by sufficient evidence in the record. Plaster testified at the plea hearing that he wanted to proceed with his plea negotiation "under the pretense that there [would] be no additional time as a result of [his guilty] plea" and that he and all parties understood that he would "not receive any additional time beyond the time that [he was] presently serving" for his controlled-substance offense. And he testified at the postconviction hearing that "accepting the offer

was 'simple logic' to avoid additional time in prison," that he "discuss[ed] taking the deal" with his plea attorney so he "wouldn't risk serving additional time beyond [his] controlled substance conviction[,]" and that "if [he] would have known that . . . it was unlikely that [he] would serve additional time beyond [his] controlled substance conviction[,] . . . [he] would have made a different decision." Considering the entire evidentiary record before us, we are not left with the definite and firm conviction that a mistake occurred.

With the foregoing finding in mind, we review the district court's analysis of *Strickland*'s prejudice prong de novo. Applying that standard, we agree with the district court's conclusions that "Plaster would have accepted any plea agreement that did not affect his anticipated release date" for the controlled-substance sentence he was serving and that Plaster did not prove "by a reasonable probability that he would have insisted on trial instead of pleading guilty" if his plea attorney had properly advised him regarding his post-trial guidelines sentencing exposure.

Under the 2014 Sentencing Guidelines applicable to Plaster's felony charges, the two counts of fourth-degree criminal sexual conduct are both severity-level F offenses. *See* Minn. Sent'g Guidelines 4.B, 5.B (2014). Accordingly, had Plaster sustained convictions on all charges after trial, the district court could have imposed—without an aggravated departure from the guidelines and based on Plaster's undisputed criminal history score of 4—an executed sentence of 70 months for his first felony offense and a concurrent executed sentence of 92 months for his second felony offense.[5] And the district court could have

[5] The guidelines provide that, when a district court imposes multiple sentences in the same proceeding, it must sentence each count in the order of occurrence and, "[a]s each offense

imposed a 365-day sentence, consecutive to Plaster's concurrent felony sentences, for his gross-misdemeanor fifth-degree criminal sexual conduct offense. *See* Minn. Stat. §§ 609.03, .15, subd. 1(b) (2014). Presuming Plaster's same sentencing date and awarded jail credit, Plaster's earliest eligible release date from such aggregated sentences would have been in October 2023—approximately 11 months later than his anticipated release from his existing controlled-substance sentence. *See* Minn. Stat. § 244. 101, subd. 1 (providing for the supervised release of offenders after serving two-thirds of an executed felony sentence); Minn. Stat. § 643.29, subd. 1 (providing for a reduction of a local jail sentence by one day for every two days served in custody based on the offender's "good conduct" while incarcerated) (2014).

Consequently, had Plaster's plea attorney provided him with accurate advice concerning his post-trial guidelines sentencing exposure, that advice would have included an admonition that, by proceeding to trial, Plaster risked nearly a year beyond the prison time he was serving for his controlled-substance offense. And because the district court did not clearly err in finding that "Plaster's sole concern when entering the plea agreement was avoiding any extension of his anticipated release date from his Controlled Substance offense sentence[,]" we conclude that there is no reasonable probability that Plaster would have rejected that agreement—which guaranteed him no additional time in custody—in favor of a trial.

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is sentenced, include it in the criminal history on the next offense to be sentenced." Minn. Sent'g Guidelines 2.B.1.e (2014).

Based on the record before us, the district court did not abuse its discretion by acting in an arbitrary or capricious manner, nor did the court base its ruling on an erroneous view of the law, nor did it make clearly erroneous factual findings. Plaster has failed to establish that he was prejudiced by his plea counsel's advice. Plaster's ineffective-assistance-of-counsel claim therefore fails, and he is not entitled to withdraw his guilty plea. *See Bell*, 971 N.W.2d at 106.

Affirmed.