

*This opinion is nonprecedential except as provided by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
A24-0369**

State of Minnesota,
Respondent,

vs.

Samuel Thaddeus McCarty,
Appellant.

**Filed April 27, 2026
Affirmed
Ross, Judge**

Dakota County District Court
File No. 19HA-CR-22-1893

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

Kathryn M. Keena, Dakota County Attorney, Cheri A. Townsend, Assistant County Attorney, Hastings, Minnesota (for respondent)

Max A. Keller, Barry S. Edwards, Keller Law Offices, Minneapolis, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Reyes, Judge; and Bratvold, Judge.

NONPRECEDENTIAL OPINION

ROSS, Judge

While Samuel McCarty awaited trial on three counts of criminal sexual conduct for twice assaulting his estranged wife, his attorney obtained three pretrial examination reports from two experts to opine as to mental-health issues bearing on McCarty's competency to

stand trial and the viability of a mental-illness defense. McCarty was deemed competent to proceed with no ground on which to assert the defense. After the jury found him guilty as charged and the district court entered a judgment of conviction, McCarty unsuccessfully petitioned the district court for postconviction relief on the theory that his attorney provided ineffective assistance of counsel by failing to investigate his brain-injury history, failing to call brain-injury witnesses to testify, and failing to conduct practice sessions to help McCarty decide whether to testify. We affirm the district court's denial of McCarty's petition for postconviction relief because he has not established that any of the alleged deficiencies in his attorney's performance prejudiced his defense.

FACTS

Police officers went to a home in Rosemount in July 2022 to investigate a reported sexual assault and spoke with a woman whom we will call "Sarah," a name we have randomly chosen to protect her privacy. Sarah told police that she had recently informed her husband that she wanted a divorce and that the two slept in different rooms. She said that her husband, Samuel McCarty, had entered her bedroom, climbed on top of her, and overpowered her to perpetrate multiple sex acts despite her demands that he stop and her physical resistance. She later reported that he had similarly assaulted her a week or two earlier while she was asleep and under the influence of muscle-relaxing medication. The state initially charged McCarty with one count of third-degree criminal sexual conduct, and it later amended the complaint to charge him with two counts of third-degree and one count of first-degree criminal sexual conduct.

The district court appointed Alexander Vian to represent McCarty. Although Vian discussed odd behavior in McCarty's recorded interactions with police and in his own encounters with him, McCarty denied having a traumatic brain injury (TBI), delusions, or any other issues with his mental health. Vian learned from police reports that McCarty's mother and Sarah saw changes in his behavior about six months before the alleged sexual assaults. Vian also observed that McCarty did not maintain good hygiene while he was in jail awaiting trial. These concerns led Vian to seek mental-health evaluations under Minnesota Rules of Criminal Procedure 20.01 and 20.02 to assess McCarty's competency to stand trial and the viability of a mental-illness defense.

The district court granted Vian's request. Dr. Kimberly Turner performed the evaluation and produced reports, opining that McCarty may suffer from unspecified bipolar disorder but was competent for court proceedings. She also reported that he was not laboring under a defect of reason that would have prohibited him from knowing the nature and wrongfulness of his alleged criminal conduct.

Vian consulted with a dispositional advisor to determine whether the defense should seek an independent evaluation. He secured a neuropsychological evaluation by Dr. Norman Cohen to assess McCarty's potential cognitive deficiencies. Dr. Cohen reported that McCarty has a frontal lobe deficit and "rule-out memory deficit." Vian asked Dr. Turner to review Dr. Cohen's report and provide an addendum to her reports. She did so, stating in her addendum that Dr. Cohen's results did not change her opinion on McCarty's competency or potential mental-illness defense. The district court considered the reports and found McCarty competent to stand trial.

At that point, which was before the state amended its initial single-count complaint, the state offered McCarty a plea deal: he could plead guilty to the sole charge of third-degree criminal sexual conduct and argue for a departure from the presumptive guidelines prison sentence of 48 months. McCarty rejected the offer. The state made a second offer a week before the scheduled trial: McCarty could plead guilty to the original charge and receive a 48-month sentence, and the state would not amend the complaint to charge him with first-degree criminal sexual conduct, which carried a presumptive prison sentence of at least 144 months. McCarty rejected that offer too. The state amended the complaint to add the charges listed above, and the case proceeded to trial.

The state provided evidence consistent with the charges. The jury learned Sarah had noticed changes in McCarty's behavior beginning in spring 2022. McCarty thought their house was under surveillance, he slept in random places, and he started wearing wigs. Sarah took McCarty to the doctor multiple times in July 2022 because she thought something was medically wrong with him. Sarah testified about the two nonconsensual sexual encounters that occurred that same month. Sarah told her friend about the second assault, and her friend reported it to police. The jury also learned that Rosemount police officers investigated and spoke with McCarty about the allegations in a two-hour interview captured in a video recording. McCarty minimized his behavior, describing himself as having taken roleplaying too far. He claimed that he thought "no" meant "yes" but admitted that he "should have stopped."

Vian cross-examined the state's witnesses but did not present any evidence after McCarty waived his right to testify. Vian argued to the jury that the sexual contact between

McCarty and Sarah had been consensual. The jury found McCarty guilty on all counts. The district court entered judgments of conviction for first-degree criminal sexual conduct and one count of third-degree criminal sexual conduct, and it sentenced McCarty to serve concurrent prison terms of 168 and 48 months.

McCarty filed notice of his direct appeal, which this court stayed to allow him to petition the district court for postconviction relief. McCarty did so, arguing that Vian provided him with ineffective assistance of counsel. The district court held an evidentiary hearing and received testimony from McCarty, his mother, and Vian. McCarty also submitted medical records from a July 2022 doctor's visit during which McCarty or Sarah reported that he had a history of TBI.

McCarty based his postconviction argument primarily on his theory that Vian had failed to investigate his TBI history or call favorable witnesses, including McCarty's mother and an unnamed TBI specialist who, according to McCarty, would have testified about TBIs and their impact on his behavior. McCarty also argued that Vian had failed to prepare him for trial in a manner that would have informed his decision whether to testify.

Vian testified that the challenged aspects of his performance were based on trial strategy. He described his investigation into McCarty's competence, outlined above. He emphasized that Dr. Turner disagreed that any mental deficit impaired McCarty's "ability to make legal and safe decisions." Vian testified that he does not discuss legal defenses with his clients' family members because those discussions are not protected by attorney-client privilege. And Vian said that he counseled McCarty about his right to testify

and recommended that he not testify to avoid being cross-examined extensively with his incriminating police interview.

The district court denied McCarty's postconviction petition, we dissolved the stay of his direct appeal, and we now decide the appeal issues he presents.

DECISION

McCarty challenges the district court's denial of his petition for postconviction relief. We review *de novo* a district court's denial of a postconviction petition based on claims of ineffective assistance of counsel. *State v. Sardina-Padilla*, 7 N.W.3d 585, 602 (Minn. 2024). McCarty's challenge fails under that standard.

McCarty had the right to effective assistance of counsel, guaranteed by the Sixth Amendment to the United States Constitution and article I, section 6 of the Minnesota Constitution. *See Strickland v. Washington*, 466 U.S. 668, 685–86 (1984); *Taylor v. State*, 887 N.W.2d 821, 823 (Minn. 2016). To overturn McCarty's conviction based on ineffective assistance of counsel, we would have to conclude both that his attorney's performance was objectively deficient and that the result of the trial reasonably could have been different but for the attorney's performance. *Strickland*, 466 U.S. at 687–88, 694; *Peltier v. State*, 946 N.W.2d 369, 372 (Minn. 2020). We need not address both elements if deciding one resolves the appeal, *Sardina-Padilla*, 7 N.W.3d at 603, and in this case deciding the question of prejudice resolves this appeal.

McCarty argues that Vian acted unreasonably by not investigating his history of TBIs and not calling his mother and an unspecified TBI specialist as trial witnesses. We need not consider whether these alleged failures constitute unconstitutionally deficient

advocacy, because even if they do, McCarty offered no evidence of prejudice. Prejudice must be established with evidence, not conjecture. *Gates v. State*, 398 N.W.2d 558, 562–63 (Minn. 1987). And a party alleging counsel’s failure to present testimony of an exculpatory witness must show “that there is [such a witness], that he could have been located, that he would have testified, and that his testimony would have helped [the] defendant.” *Id.* at 563. McCarty did not offer any evidence that a TBI specialist would have testified, or that a specialist’s hypothetical testimony would have helped his defense. McCarty’s mother testified at the postconviction hearing that he sustained a TBI 20 years before the sexual assaults, but McCarty did not call a medical expert to testify at the hearing. And he offered no documentary support indicating that a medical professional had ever diagnosed him as having suffered a TBI. He offered instead a 12-page medical record from a doctor’s visit during which either he or Sarah stated that he had a history of TBI. This is not evidence establishing a reasonable possibility that, had Vian further investigated McCarty’s TBIs and procured witnesses, the result of the criminal trial would have been different. We are not persuaded otherwise by McCarty’s assertion that the “resulting lack of exculpatory evidence impacted the verdict at trial,” because the assertion is conjecture.

McCarty’s other bases for his postconviction petition similarly fail. He contends that, absent Vian’s errors, he “could have” accepted the state’s plea offer or presented additional mental-health evidence “for sentence mitigation.” But during oral argument on appeal, McCarty conceded through counsel that the record contains no evidence that he would have pleaded guilty. Indeed, McCarty testified at the evidentiary hearing that he rejected the state’s plea offers specifically because he wanted “to fight this tooth and nail.”

Also unconvincing is McCarty's contention that Vian performed deficiently by not conducting a practice session of direct examination and cross-examination. He theorizes that this practice would have shown him "what the experience would be like" to inform his decision whether to testify. But trial counsel need not "prepare a direct examination before the defendant makes the decision to testify at trial." *Andersen v. State*, 830 N.W.2d 1, 12 (Minn. 2013) (rejecting a similar ineffective-assistance claim). And regarding prejudice, McCarty's detailed colloquy under oath strongly suggests that he voluntarily waived his right to testify based on Vian's advice. *See id.* at 11 (stating that, absent evidence of coercion by trial counsel, appellate courts "presume that the defendant waived the right to testify for the reasons stated on the record"). Not only did McCarty offer no evidence that he would have decided to testify had he experienced a practice session, in testifying at the evidentiary hearing that he wanted to go "on the stand" to "explain why [he] ravished [his] wife and it was okay," he echoed his police-interview comments, which jurors heard at trial. Even if McCarty had testified at trial, his postconviction testimony indicates that he would have done so to remind the jury of his unique, highly dubious justification about the sexual encounter. We are confident that the jury, so reminded, would have rendered the same verdict. Because McCarty presented no evidence establishing the second element of his ineffective-assistance claim, the district court properly denied his postconviction petition.

Affirmed.