

*This opinion is nonprecedential except as provided by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
A24-0903**

State of Minnesota,
Respondent,

vs.

Paul Wayne Swan, Sr.,
Appellant.

**Filed August 24, 2026
Affirmed
Rasmusson, Judge**

Beltrami County District Court
File No. 04-CR-21-2059

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

David L. Hanson, Beltrami County Attorney, Bemidji, Minnesota (for respondent)

Eric J. Olson, Olson Defense, Bloomington, Minnesota (for appellant)

Considered and decided by Rasmusson, Presiding Judge; Johnson, Judge; and Bond,
Judge.

NONPRECEDENTIAL OPINION

RASMUSSON, Judge

In this direct appeal stayed for postconviction proceedings, appellant challenges the district court's denial of his petition for postconviction relief, arguing that the district court abused its discretion by determining that he did not receive ineffective assistance of

counsel. Because appellant fails to demonstrate that counsel's allegedly deficient performance prejudiced him, we affirm.

FACTS

Respondent State of Minnesota charged appellant Paul Wayne Swan Sr. with ten counts of first-degree criminal sexual conduct and one count of second-degree criminal sexual conduct. Swan was 72 years old when the state first brought the charges against him in August 2021.

That November, Swan's first attorney filed a motion seeking a competency examination under Minnesota Rule of Criminal Procedure 20.01, which provides for competency proceedings when a prosecutor, defense attorney, or the court "doubts the defendant's competency to proceed." Counsel raised concerns regarding Swan's memory and potential dementia. The district court ordered a competency examination. The examiner stated that he believed that Swan was competent but that it was "a close call." Swan's attorney objected to the examiner's report.

Swan's first attorney left her position, and substitute counsel took over as Swan's attorney.¹ At a hearing in May 2022, substitute counsel requested a second examination. When asked about the legal authority for a second examination, substitute counsel stated that he had not yet identified relevant legal authority. The district court declined to order a second examination but stated that it would be willing to reconsider the request upon

¹ Multiple attorneys represented Swan during the relevant period. Throughout this opinion, we refer to the attorney who allegedly provided ineffective assistance of counsel as "substitute counsel."

submission of additional legal authority. It additionally scheduled a contested rule 20.01 hearing. Subsequently, substitute counsel filed motions raising challenges to the first examination, seeking a continuance of the contested hearing, and requesting a second evaluation. These motions did not cite legal authority regarding the district court's ability to order a second examination.

The parties addressed the motions at a subsequent hearing. Substitute counsel contended that rule 20.01, subdivision 4(a), and a nonprecedential decision from this court supported his request for a second examination. Additionally, substitute counsel stated that it might be necessary to call Swan's first attorney to testify and that he was "looking into the possibility that the Defense could request funding to do an evaluation . . . but that would require [him] to requisition funds," which he had "not had time to really dig into yet." The district court granted the request for a continuance but denied the request for a second examination.

Before the rescheduled contested competency hearing, substitute counsel moved for an additional continuance to accommodate the schedule of Swan's first attorney, whom he intended to call as a witness. The district court denied the motion, noting that counsel could seek a subpoena or court order to secure the presence of Swan's first attorney. Substitute counsel subsequently filed a notice requesting that Swan's first attorney be allowed to appear via Zoom. The record does not reflect that the district court addressed this request or that substitute counsel pressed the district court to address this request.

On June 30, 2022, the parties appeared for the contested competency hearing. The state presented testimony from the examiner, and the defense presented testimony from

Swan. Following the hearing, substitute counsel filed a memorandum of law and cited caselaw demonstrating that a district court ordered a second examination under facts similar to the case at bar. Following the hearing, the district court filed an order finding Swan competent.²

The matter proceeded to a jury trial in January 2024. The jury found Swan guilty of five of the first-degree criminal-sexual-conduct counts and not guilty of the six remaining counts. The district court entered convictions on those five counts and sentenced Swan to 360 months in prison.

Swan filed a direct appeal, and we granted Swan's motion to stay his appeal and remanded to the district court for postconviction proceedings. Swan subsequently filed a petition for postconviction relief in which he alleged that substitute counsel provided ineffective assistance during the competency proceedings and requested an evidentiary hearing. During a September 2025 evidentiary hearing, Swan presented testimony from an examiner who evaluated Swan's competency in 2025, an expert witness who addressed the standard of care, and substitute counsel. The district court filed an order denying the petition, and we dissolved the stay and reinstated the appeal.

² In September 2022, Swan filed notice of his intent to raise a mental-illness or cognitive-impairment defense. The district court ordered a separate examination of Swan pursuant to Minnesota Rule of Criminal Procedure 20.02, which allows a district court to order a mental examination of a defendant when the defendant plans to present a defense of mental illness or cognitive impairment. The rule 20.02 report did not support a claim of mental illness.

DECISION

This case concerns a challenge to a denial of a petition for postconviction relief following a stay of Swan's direct appeal. "When a defendant initially files a direct appeal and then moves for a stay to pursue postconviction relief, we review the [district] court's decisions using the same standard that we apply on direct appeal." *State v. Beecroft*, 813 N.W.2d 814, 836 (Minn. 2012). When reviewing a district court's denial of relief on an ineffective-assistance-of-counsel claim, appellate courts "will consider the court's factual findings that are supported in the record, conduct a de novo review of the legal implication of those facts on the ineffective assistance claim, and either affirm the court's decision or conclude that the court abused its discretion because postconviction relief is warranted." *State v. Nicks*, 831 N.W.2d 493, 503-04 (Minn. 2013).

Swan sought postconviction relief on the basis that he received ineffective assistance from substitute counsel, arguing that more diligent representation would have changed the competency determination. Criminal defendants enjoy the right to counsel under the federal and state constitutions. U.S. Const. amend. VI; Minn. Const. art. I, § 6. This right includes "the right to the effective assistance of counsel." *Strickland v. Washington*, 466 U.S. 668, 686 (1984) (quotation omitted). In reviewing claims of ineffective assistance of counsel, Minnesota courts apply the two-pronged test set forth in *Strickland*. *Gates v. State*, 398 N.W.2d 558, 561 (Minn. 1987). Under this test, a defendant bears the burden of showing that "counsel's representation 'fell below an objective standard of reasonableness' and 'that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'"

Id. (quoting *Strickland*, 466 U.S. at 688, 694). Appellate courts “may analyze the *Strickland* requirements in either order and may dispose of a claim on one prong without considering the other.” *Lussier v. State*, 853 N.W.2d 149, 154 (Minn. 2014).

Swan’s ineffective-assistance-of-counsel argument relates to substitute counsel’s handling of the 2022 competency proceedings. Minnesota law provides that “[n]o person having a mental illness or cognitive impairment so as to be incapable of understanding the proceedings or making a defense shall be tried, sentenced, or punished for any crime.” Minn. Stat. § 611.026 (2024). A defendant is not competent to stand trial if “the defendant lacks the ability to: (1) rationally consult with counsel; (2) understand the proceedings; or (3) participate in the defense.” Minn. Stat. § 611.42, subd. 1 (2024).

We begin our analysis by addressing whether substitute counsel’s allegedly deficient performance prejudiced Swan. Under this prong, a defendant must show “that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Gates*, 398 N.W.2d at 561 (quoting *Strickland*, 466 U.S. at 694). A reasonable probability is “a probability sufficient to undermine confidence in the outcome.” *Berry v. State*, 33 N.W.3d 683, 694 (Minn. 2026) (quotation omitted). In other words, “a defendant must show that counsel’s errors actually had an adverse effect.” *Id.* (quotation omitted). A defendant must prove this “actual prejudice” “by a preponderance of the evidence.” *State v. Blanche*, 696 N.W.2d 351, 376 (Minn. 2005).

In his postconviction petition, Swan argued that he received ineffective assistance of counsel during the rule 20.01 proceedings because substitute counsel failed to

“meaningfully contest[]” the competency examination. In support of this argument, Swan contended that counsel “fail[ed] to seek funding for a second examination, fail[ed] to obtain a second examination, fail[ed] to call an expert witness, fail[ed] to subpoena the first public defender, and fail[ed] to ensure that the first public defender could testify [virtually].” Regarding prejudice, Swan noted that the initial examiner believed that it was a “close call” whether Swan was competent, meaning that more diligent representation by substitute counsel would have resulted in a different outcome. At the postconviction hearing, Swan presented the testimony and report of a private examiner who found him incompetent following an April 2025 examination.

The district court determined substitute counsel’s performance did not prejudice Swan. It first explained that the argument that a second examination would have caused the court to rule differently is speculative because it relied on multiple assumptions. The district court additionally noted that the 2025 examination is not relevant to Swan’s competency in 2022 and that observations of other examiners and the court contradict the 2025 report. The district court further reasoned that some of Swan’s daily activities showed higher-level functioning in 2022.

In challenging the district court’s decision, Swan raises three primary arguments. He argues that the district court erred by (1) requiring proof of certainty of prejudice rather than proof of a probability of prejudice, (2) concluding that the only relevant time to find competency was 2022, and (3) relying on irrelevant facts.

We first address Swan’s argument that the district court applied an incorrect standard by requiring proof of “certainty” rather than a proof of “probability” of prejudice.

Swan contends that, in the process of showing proof of prejudice, one must necessarily invent a scenario that might have otherwise occurred.

Swan was required to show a “reasonable probability” of prejudice “by a preponderance of the evidence.” *Id.* We are not convinced that the district court misapplied these standards. Notably, the district court explained that Swan’s offer of prejudice relied on the following three assumptions: the district court would have granted the request to appoint a second examiner, the second examiner would have opined that Swan was incompetent, and the district court would have found the second examiner more persuasive than the first examiner. The district court concluded that Swan’s multiple assumptions, with their speculative nature, do not create a “reasonable probability” of prejudice. *Gates*, 398 N.W.2d at 561. It is clear that the district court considered the reasonable probability of Swan’s arguments and did not require Swan to provide certainty of prejudice.

Swan next argues that the district court erred by concluding that the only relevant period to evaluate his competency was in 2022. He contends that his 2025 evaluation is relevant because the fact that he is presently incompetent, coupled with the initial competency determination being a close call, raises the likelihood that he would have been found incompetent in 2022 had substitute counsel obtained a second evaluation or made other efforts to challenge the initial competency evaluation. He additionally points to the 2025 examiner’s testimony at the evidentiary hearing, who stated that it is more likely for a subsequent evaluator to disagree with an initial evaluation when the initial evaluation is a close call.

Although the 2025 competency evaluation is not irrelevant, it provides limited probative value. Swan's main challenge to substitute counsel's performance primarily relates to substitute counsel's failure to obtain a second evaluation or otherwise more diligently contest his competency in 2022. More than three years elapsed between the two competency evaluations, leaving ample time for Swan's competency to deteriorate. Additionally, this argument again relies on the same assumptions that the district court would have ordered the second evaluation, that the second evaluator would have found Swan incompetent, and, after a contested hearing, the district court would have agreed. It likewise assumes that other possible efforts by substitute counsel, such as calling Swan's first attorney as a witness at the competency hearing, would have been similarly persuasive. These suppositions, when considered in their totality, demonstrate only a limited likelihood that a second evaluation or other efforts by substitute counsel would have yielded a different result. We therefore discern no error in the district court's conclusion that Swan failed to demonstrate a reasonable probability of prejudice.³

Swan last argues that the district court's prejudice determination erroneously relied upon irrelevant facts, such as his ability to take care of himself and perform daily tasks.

³ Swan additionally notes that, because competency protections apply throughout the entirety of the proceedings and the trial did not occur until 2024, the 2025 evaluation is more temporally relevant. Swan is correct that competency protections apply throughout the course of the legal proceedings. Minn. Stat. § 611.026; Minn. R. Crim. P. 20.01, subd. 3. This argument, however, again relies on the same multiple assumptions that we found unpersuasive for the reasons explained above. Additionally, the record reflects no additional requests for a competency determination until after trial, raising an inference that neither the district court nor the parties observed deterioration in Swan's mental condition during the trial.

Swan contends substitute counsel should have secured expert testimony regarding the relevancy of these facts and consulted an expert to better prepare to cross-examine the 2022 examiner. We are not persuaded.

The district court's competency determination offered a detailed analysis of Swan's ability to consult with counsel, his knowledge of the charges, and his ability to participate in his defense. In doing so, the district court frequently referenced findings from the examination that went well beyond Swan's ability to complete his daily tasks.

Further, Swan fails to identify any authority that holds that a defendant's ability to complete daily tasks is completely irrelevant to a competency determination. To the contrary, the first examiner testified that, although Swan's ability to live independently is not as relevant as some considerations, it was at least of some relevance.

Swan fails to show that hiring a separate expert or conducting another examination would have had a reasonable probability of yielding a different competency determination. Because Swan failed to demonstrate a reasonable probability of prejudice, we conclude that the district court acted within its discretion by denying his petition for postconviction relief.⁴

Affirmed.

⁴ Because the prejudice prong is dispositive, we decline to address whether substitute counsel's performance was deficient. *See Lussier*, 853 N.W.2d at 154.