This opinion is nonprecedential except as provided by Minn.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
A25-0088

State of Minnesota,
Respondent,

vs.

Elise Christine Nelson,
Appellant.

Filed August 3, 2026
Affirmed
Cochran, Judge

Stearns County District Court
File No. 73-CR-20-6407

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

Janelle P. Kendall, Stearns County Attorney, Michael J. Lieberg, Chief Deputy County Attorney, St. Cloud, Minnesota (for respondent)

Daniel S. Adkins, North Star Criminal Defense, St. Paul, Minnesota (for appellant)

Considered and decided by Cochran, Presiding Judge; Ross, Judge; and Schmidt, Judge.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

In this appeal from an order denying postconviction relief following a conviction for second-degree murder, appellant challenges the district court's denial of her request for resentencing based on claims of ineffective assistance of counsel. Appellant argues that the district court abused its discretion by summarily denying her petition for postconviction relief based on ineffective assistance of counsel. We affirm.

FACTS

In September 2020, respondent State of Minnesota charged appellant Elise Christine Nelson with second-degree intentional murder pursuant to Minnesota Statutes section 609.19, subdivision 1 (2018) (count I), and second-degree manslaughter pursuant to Minnesota Statutes section 609.205 (2018) (count II) for the death of her child. The complaint alleged as follows. On the weekend of June 18, 2020, Nelson was home alone with the child, Child A. Her husband was away fishing, and Child B, her other child, was staying with a family friend.

Child A required 24-hour medical care from birth due to significant medical issues. Nelson was one of the child's primary caregivers. The child had a pulse oximeter to routinely monitor her blood oxygen saturation and pulse rate, due to chronic respiratory failure. The device had an alarm that sounded when the monitored blood oxygen level or pulse rate fell below a set threshold. The device retained data for a 48-hour period.

On the morning of June 20 around 6:00 a.m., the child's oximeter alarm sounded. Nelson manually silenced the alarm and reduced the alarm threshold. The alarm threshold had been set at an oxygen saturation level of 90%, but Nelson reduced the level to 87%. About an hour later, the child's alarm sounded again, indicating the saturation level had fallen below 87%. Nelson silenced the alarm. That evening, Nelson turned off the oximeter machine at 6:40 p.m. She did not turn it back on until 12:32 a.m. on June 21. At that time, she restored the oxygen alarm level to 90%.

Then, between the hours of 1:08 a.m. and 6:43 a.m., Nelson repeatedly silenced the alarm and lowered the oximeter's saturation limit. From 6:43 a.m. to 6:59 a.m., the machine indicated a status of "LP" meaning a pulse could not be found. Nelson turned off the machine at 7:24 a.m.

Around midday, Nelson received a text message and unanswered phone calls from a family friend. The friend texted and called to say that she was on her way to Nelson's home to drop off Child B. Nelson did not respond. When the friend arrived at the home, she was unable to gain access through the service door that she usually opened with a code. The friend noted that the house was locked and the blinds were drawn. An hour later, Nelson texted the friend that she had been performing CPR for an hour and was waiting for police. Nelson then called her friend and they had a 17-minute conversation. Shortly after, Nelson called 911.

Police officers arrived and observed the child lying on the living room floor. The child's body was cold to the touch and had blood pooling on her back and on the backside of her legs, which the responding officer knew from training does not occur immediately upon death. The child was transported to a local hospital where she was pronounced dead at 1:50 p.m.

Following the filing of the criminal complaint, Nelson was arrested and released on bond. The court appointed a public defender to represent Nelson. Shortly thereafter, Nelson retained private counsel who substituted for the public defender.

In October 2023, after the charges had been pending for about three years, Nelson entered a guilty plea under a negotiated plea agreement. Nelson agreed to plead guilty to second-degree intentional murder pursuant to a *Norgaard* plea and to receive a prison sentence of 90 to 261 months.[1] A 261-month sentence was the low end of the presumptive sentencing range under the Minnesota Sentencing Guidelines. The plea agreement reflected that Nelson intended to seek a downward durational departure at sentencing.

At the plea hearing, Nelson provided a factual basis for her *Norgaard* guilty plea. In particular, she testified that she consumed a 1.75-liter bottle of vodka during the weekend when her child died, and she did not recall all of the events that occurred. But she ultimately testified that even though she did not recall many of the details of what happened, she agreed that there was a substantial likelihood that the state's evidence would lead a jury to find her guilty beyond a reasonable doubt of second-degree intentional murder. The district court accepted Nelson's guilty plea, ordered a presentence investigation (PSI), and set the matter for a sentencing hearing.

Plea-Withdrawal Motion

On December 21, 2023, Nelson retained her third attorney, who requested a continuance of the sentencing hearing. Nelson filed a motion to withdraw her guilty plea on the grounds that "the guilty plea was interposed only because [Nelson] was coerced into signing the plea petition which she saw approximately one [] minute before going into court never having seen it previously." The district court granted a continuance to permit

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[1] A defendant enters a *Norgaard* plea when asserting a lack of memory on the essential elements of the offense but pleads guilty because the record establishes, and the defendant believes, that the evidence is sufficient to obtain a conviction. *State v. Ecker*, 524 N.W.2d 712, 716-17 (Minn. 1994); *see State ex rel. Norgaard v. Tahash*, 110 N.W.2d 867 (Minn. 1961).

Nelson to file a brief in support of the plea-withdrawal motion. In her brief, Nelson argued that she should be permitted to withdraw her plea because her plea was neither voluntary nor intelligent. Following the filing of the state's brief, the district court ordered an evidentiary hearing.

At the hearing, the district court heard testimony from Nelson and her husband, who is not the child's father. In support of her position that her plea was not intelligent, Nelson testified that she understood a *Norgaard* plea to be "nonintentional" and thought she was pleading guilty to second-degree unintentional murder. And in support of her claim that her plea was not voluntary, Nelson testified that she was not given a copy of the plea petition to read in advance and did not understand the details. When asked about when she decided to seek withdrawal of her guilty plea, Nelson stated that she decided "[t]he moment [she] walked out of that courtroom." Nelson's husband testified similarly, stating that he had concerns with Nelson's plea "the next day."

The state presented testimony from Nelson's second attorney who represented her at the plea hearing. He testified that, while he did not give Nelson a physical copy of the plea petition, he showed the petition to Nelson via Zoom. He further testified that he went over the entire plea petition with Nelson including the *Norgaard* addendum and she understood the terms. He also testified that she first told him that she wanted to withdraw her plea when she informed him that she had new counsel.

The district court denied Nelson's request to withdraw her guilty plea. In a written order, the district court found that Nelson's testimony in support of her plea withdrawal motion was not credible. The district court further found that Nelson's plea was accurate, voluntary, and intelligent. The district court then set the matter for sentencing.

Sentencing

Prior to sentencing, a PSI was prepared by a probation agent and filed with the district court. The PSI indicated that Nelson's presumptive sentence was 306 months, with a range of 261 to 367 months under the guidelines. In the PSI, the probation agent noted that Nelson planned to seek a downward durational departure at sentencing. The probation agent recommended against such a departure because the offense was "certainly not less onerous than the typical offense of this nature." In support, the probation agent noted that the child "was disabled, medically fragile, depended on others for all of her needs, and could not defend herself in any way or seek help on her own." The PSI also included several comments from Nelson indicating that she felt guilt and grief about the crime. Considering the record as a whole, the probation agent recommended a sentence of 261 months in prison "in accordance with the plea agreement."

As expected, Nelson requested that the district court impose a 90-month sentence—a downward durational departure—at the sentencing hearing. In arguing for a downward durational departure, Nelson's attorney emphasized that Nelson was intoxicated when she committed the act and that she was remorseful. He also highlighted a psychological evaluation report that suggested Nelson was too inebriated to assist the child, but he did not argue that the offense was less serious than the typical offense of intentional second-degree murder.

The district court denied the motion and sentenced Nelson to 261 months in prison, finding that there were no substantial or compelling grounds to support a downward durational departure. The district court explained that Nelson's conduct was not significantly less serious than that typically involved in the offense of second-degree murder. In support of the decision, the district court emphasized that Nelson "slowly killed [her] child" over the course of two days and her "job" was to be Child A's "protector."

Postconviction Petition

In 2025, Nelson's fourth attorney filed a petition for postconviction relief, claiming her third attorney provided ineffective assistance of counsel in relation to the plea-withdrawal motion and sentencing.[2] The petition alleged three grounds for relief: (1) Nelson's third attorney provided ineffective assistance of counsel in relation to the plea-withdrawal motion by convincing Nelson to seek withdrawal of her guilty plea; (2) Nelson's third attorney provided ineffective assistance of counsel at the sentencing hearing, particularly in relation to the motion for a downward durational departure; and (3) cumulatively, if not individually, Nelson's third attorney's actions rise to the level of ineffective assistance of counsel. The district court dismissed the petition without an evidentiary hearing, concluding that the petition along with the files and records from the

[2] Prior to filing her petition for postconviction relief, Nelson filed a notice of direct appeal. In her statement of the case, Nelson indicated that she intended to appeal the district court's denial of her request for a downward durational departure and argue ineffective assistance of counsel. Following that filing, Nelson requested a stay to pursue postconviction relief. We granted her request and stayed her direct appeal while she pursued postconviction proceedings. In the present appeal, the issues raised by Nelson are only those related to her postconviction petition. She does not directly challenge the denial of her downward durational departure.

proceeding conclusively showed that Nelson was not entitled to relief based on her claims of ineffective assistance of counsel.[3]

This appeal follows.

DECISION

Nelson challenges the district court's denial of her petition for postconviction relief without an evidentiary hearing. She argues that the district court abused its discretion by summarily denying her claims of ineffective assistance of counsel.

A person convicted of a crime may seek postconviction relief by filing a petition alleging that the conviction "violated the person's rights under the Constitution or laws of the United States or of the state." Minn. Stat. § 590.01, subd. 1(1) (2024). A district court must hold a hearing on a timely postconviction petition "[u]nless the petition and the files and records of the proceeding conclusively show that the petitioner is entitled to no relief." Minn. Stat. § 590.04, subd. 1 (2024). "In determining whether an evidentiary hearing is required," the district court must "consider[] the facts alleged in the petition as true and construe[] them in the light most favorable to the petitioner." *Andersen v. State*, 913 N.W.2d 417, 422-23 (Minn. 2018). But if the district court "conclusively determines that the facts alleged in the postconviction petition, if proved, would be legally insufficient to entitle the petitioner to any relief," it may summarily dismiss the petition. *State v. Zielinski*, 10 N.W.3d 1, 19 (Minn. 2024).

[3] Following the denial of Nelson's petition for postconviction relief, we dissolved the stay of the direct appeal.

"We review the [postconviction] court's denial of postconviction relief, including a denial of relief without an evidentiary hearing, for an abuse of discretion." *State v. Allwine*, 963 N.W.2d 178, 188 (Minn. 2021). "A [postconviction] court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record." *Id.* But we review ineffective-assistance-of-counsel claims de novo. *State v. Mosley*, 895 N.W.2d 585, 591 (Minn. 2017).

To be entitled to an evidentiary hearing on a postconviction claim of ineffective assistance of counsel, a petitioner "must allege facts that, if proven by a fair preponderance of the evidence, would satisfy the two-prong test set forth in *Strickland*." *Zielinski*, 10 N.W.3d. at 19-20 (quotation omitted). Under the *Strickland* test, "a petitioner must demonstrate that (1) counsel's performance was deficient and (2) the deficient performance prejudiced her defense." *Id.* at 19 (citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984)). In other words, a petitioner has the burden "to show both that counsel's performance was not objectively reasonable and, but for counsel's errors, the result of the proceeding would have been different." *Id.* (quotation omitted). "A court may address the two prongs of the test in any order and may dispose of the claim on one prong without analyzing the other." *Id.* at 20 (quotation omitted).

Nelson argues that the district court abused its discretion by summarily denying her postconviction petition because her petition demonstrates that (1) counsel was ineffective and (2) she was prejudiced as a result. In support of her position, Nelson raises the same three arguments that she made in her petition for postconviction relief. We consider each argument in turn.

I. Plea Withdrawal

We begin by addressing Nelson's argument that the district court abused its discretion by denying an evidentiary hearing on Nelson's claim that her attorney provided ineffective assistance by "convincing" her to seek withdrawal of her guilty plea. The district court concluded that this claim of ineffective assistance of counsel failed because Nelson did not meet either *Strickland* prong, even viewing the facts as alleged in the petition in the light most favorable to Nelson. We discern no abuse of discretion in the district court's conclusion. We focus our analysis on the first prong—the performance prong—because it is dispositive.

To meet the first *Strickland* prong, the petitioner has the burden to show that counsel's performance fell below an objective standard of reasonableness. *Pierson v. State*, 637 N.W.2d 571, 579 (Minn. 2002). "That objective standard is defined as 'representation by an attorney exercising the customary skills and diligence that a reasonably competent attorney would perform under similar circumstances.'" *Opsahl v. State*, 677 N.W.2d 414, 421 (Minn. 2004) (quoting *State v. Gassler*, 505 N.W.2d 62, 70 (Minn. 1993)). "There is a strong presumption that counsel's performance was reasonable." *State v. King*, 990 N.W.2d 406, 417 (Minn. 2023) (quotation omitted).

Nelson argues that her third attorney's performance fell below an objective standard of reasonableness regarding plea withdrawal because, while she considered seeking to withdraw her plea before retaining her third attorney, that attorney's advice convinced her of the strategy. But Nelson provided no factual support in her petition for her claim that her attorney's advice convinced her to seek withdrawal of her plea, and her sworn testimony at the plea-withdrawal hearing indicates the opposite. As the district court noted, she testified at the plea hearing that "she made the decision to withdraw her guilty plea the moment she walked out of the courtroom." And her husband testified that he had concerns with Nelson's plea "the next day." In short, Nelson has failed to support her contention that her third attorney convinced her to file a plea-withdrawal motion. A petitioner "must do more than offer conclusory, argumentative assertions, without factual support" in a postconviction petition to be entitled to relief. *State v. Turnage*, 729 N.W.2d 593, 599 (Minn. 2007).

In support of this claim, Nelson also argues that "[n]owhere in the file or record does it show that [her third attorney] communicated to [Nelson] the potential drawbacks of withdrawing a plea." Here again, Nelson does not identify any factual allegations in the postconviction petition to support her argument or the "potential drawbacks." Nelson has not met her burden to demonstrate facts to support her assertions. *See Zielinski*, 10 N.W.3d at 19.

For these reasons, we are satisfied that the district court did not abuse its discretion by concluding that Nelson failed to demonstrate that her attorney's performance fell below an objective standard of reasonableness in relation to the filing of her plea-withdrawal motion and therefore failed to satisfy the first *Strickland* prong. Having concluded that the district court did not abuse its discretion when it determined that this claim fails on the first *Strickland* prong, we need not analyze the second *Strickland* prong. *See id.* at 20 ("A court may address the two prongs of the test in any order and may dispose of the claim on one prong without analyzing the other.").[4]

II. Departure Motion and Hearing

We next consider Nelson's argument that the district court abused its discretion by denying an evidentiary hearing to Nelson on her second, independent claim of ineffective assistance of counsel. This claim relates to her attorney's performance at the sentencing hearing following denial of her plea-withdrawal motion. Like the last claim, we discern no abuse of discretion by the district court in denying this claim without an evidentiary hearing.

In her postconviction petition, Nelson argued that her third attorney's performance fell below the objective standard of reasonableness at sentencing in arguing for a downward durational departure. Nelson claimed that her third attorney "was unfamiliar with the format of a felony sentencing hearing," did not make any reference to the legal standard for a downward durational departure, and was generally unprepared for the hearing. She further asserted that her counsel's failure to prepare for the sentencing hearing prejudiced her because she received "the maximum sentence" under the plea agreement of 261 months' imprisonment. The district court concluded that Nelson met the first *Strickland* prong but not the second *Strickland* prong.

In concluding that the second *Strickland* prong was not met, the district court determined that Nelson failed to allege any facts that "show a reasonable probability exists

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[4] If we were to reach the second prong, our analysis would mirror the analysis of the second prong in the next section because Nelson alleges the same prejudice for both claims.

that the outcome of her sentencing hearing would have been different had [her third attorney] represented [Nelson] appropriately." Specifically, the district court reasoned that Nelson's postconviction petition failed to identify any facts that, if true, would support a downward durational departure. The district court emphasized that the petition did not show that Nelson's conduct was significantly less serious than that involved in the typical offense—the standard for a downward durational departure. And the district court further noted that, absent the plea agreement capping Nelson's sentence at 261 months, the court could have imposed a much longer sentence based on aggravating factors. For these reasons, the district court concluded that Nelson failed to make the required showing of prejudice under the second *Strickland* prong. *Ecker*, 524 N.W.2d at 718.

On appeal, Nelson challenges the district court's conclusion that she did not meet the second *Strickland* prong. Nelson argues that the district court abused its discretion when it concluded that the second *Strickland* prong was not met because the district court failed to consider that her third attorney "never utilized" the PSI "in a timely or correct fashion," as he never referenced it in the sentencing proceedings. Nelson asserts that a PSI "can contain useful information regarding a defendant's remorse, which is a factor to consider that may justify a downward durational departure." Her reliance on the PSI and remorse to support her claim of prejudice is unavailing because, even if her attorney had utilized the PSI in the sentencing proceedings, any reference to remorse in the PSI would not have supported a downward durational departure.

"A downward durational departure is justified only if the defendant's conduct was significantly less serious than that typically involved in the commission of the offense."

State v. Solberg, 882 N.W.2d 618, 624 (Minn. 2016) (quotation omitted). Offender-related reasons "are not legally permissible reasons for a downward durational departure." *State v. Rund*, 896 N.W.2d 527, 533 (Minn. 2017). And

> [a] defendant's remorse generally does not bear on a decision to reduce the length of a sentence, but cases may exist in which the defendant's remorse could relate back and be considered as evidence of remediation that makes the conduct significantly less serious than the typical conduct underlying the offense . . . .

Id. at 535 (quotation omitted). "[S]howing the relevance of remorse to a durational departure [is not] an easy task, because the offender must show that [her] demonstrated remorse is directly related to the criminal conduct at issue and made that conduct significantly less serious than the typical case." *Id.* (quotations omitted).

Nelson's petition for postconviction relief did not meet this demanding standard. At best, Nelson only alleged that her third attorney failed to identify Nelson's remorse from her PSI as a valid basis for a downward durational departure. But Nelson did not articulate in her postconviction petition how her remorse plausibly made her conduct significantly less serious than the typical case of second-degree intentional murder. And Nelson's postconviction petition is devoid of any other facts that would show her conduct was significantly less serious than that involved in the typical offense. *See id.* at 532. Moreover, the files and records in the proceeding show otherwise. As the district court explained, the PSI indicates that this case involves egregious facts including the vulnerability of the child and the fact that Nelson, as the child's mother, was supposed to protect the child but instead slowly killed her. Further, in its order denying postconviction relief, the district court also noted that "[a]bsent the plea agreement capping the [c]ourt's prescribed sentence, [the facts in this case] could have qualified the offense for an *upward* departure under the sentencing guidelines." Therefore, even viewing the postconviction petition in the light most favorable to Nelson, we conclude the district court correctly determined that Nelson failed to show any reasonable probability that she would have received a downward durational departure but for her attorney's deficient performance at sentencing. Because the second *Strickland* prong was not met, the district court did not abuse its discretion by denying an evidentiary hearing on this claim of ineffective assistance of counsel.

We are not persuaded otherwise by Nelson's argument that an evidentiary hearing would have given her an opportunity to demonstrate specifically how she was prejudiced. "An evidentiary hearing is not required unless the petitioner alleges such facts which, if proved by a fair preponderance of the evidence, would entitle him or her to the requested relief." *Brown v. State*, 895 N.W.2d 612, 618 (Minn. 2017) (quotation omitted). Here, Nelson fails to allege sufficient facts which would entitle her to relief. In sum, we discern no abuse of discretion in the district court's decision summarily denying this claim.

III. Cumulative Error

Finally, in her petition, Nelson asserted that if either of her two separate claims of ineffective assistance of counsel did not individually merit relief, the cumulative effect of the errors was sufficient to satisfy the *Strickland* test. The district court rejected this argument based on its conclusion that Nelson had not met the second *Strickland* prong—prejudice—for either of the separate claims. On appeal, Nelson argues that the district court abused its discretion in summarily dismissing her argument that her third attorney's "mistakes cumulatively arose to the level of ineffective assistance of counsel." This argument is unavailing. As discussed above, Nelson has not shown cumulative errors. Consequently, we discern no abuse of discretion on the part of the district court in summarily dismissing Nelson's petition for postconviction relief.

Affirmed.