

*This opinion is nonprecedential except as provided by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
A25-1061**

State of Minnesota,
Respondent,

vs.

Mitchell Allan Phillippi,
Appellant.

**Filed May 26, 2026
Affirmed
Smith, Tracy M., Judge**

Hubbard County District Court
File No. 29-CR-24-558

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

John Olson, Hubbard County Attorney, Park Rapids, Minnesota; and

Scott A. Hersey, Special Assistant County Attorney, St. Paul, Minnesota (for respondent)

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

Considered and decided by Wheelock, Presiding Judge; Connolly, Judge; and
Smith, Tracy M., Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In this direct appeal from the judgment of conviction for eight counts of disseminating child sexual abuse materials¹ involving a minor under the age of 14, appellant Mitchell Allan Phillippi argues that his right to effective assistance of counsel was violated by his attorney's failure to subject the state's case at trial to any meaningful adversarial testing. We affirm.

FACTS

Respondent State of Minnesota charged Phillippi with eight counts of dissemination of child sexual abuse material involving a minor under the age of 14, in violation of Minnesota Statutes section 617.247, subdivision 3(b)(3) (2022). At his initial appearance, Phillippi appeared with his attorney, who requested time to review what the prosecutor described as the “voluminous discovery” in the case.

After Phillippi and his attorney reviewed the state's evidence, Phillippi filed a plea petition under which he would enter a *Norgaard*² guilty plea to four of the eight counts

¹ At the time of Phillippi's offenses, the relevant statute stated that it criminalized the possession of “pornographic work” involving a minor. Minn. Stat. § 617.247 (2022). In 2025, the legislature amended the statute and changed the phrase to “child sexual abuse material.” Minn. Stat. § 617.247 (Supp. 2025); 2025 Minn. Laws ch. 35, art. 5, § 21, at 704. Because this amendment does not affect the resolution of the case, we use the updated language.

² In a *Norgaard* plea, “[a] defendant may . . . plead guilty even though he or she claims a loss of memory, through amnesia or intoxication, regarding the circumstances of the offense. In such cases, the record must establish that the evidence against the defendant is sufficient to persuade the defendant and his or her counsel that the defendant is guilty or

and, in exchange, the state would dismiss the remaining counts and recommend that he receive concurrent sentences at the low end of the sentencing-guidelines range for each count. At the plea hearing, the district court asked Phillippi whether he had had enough time to speak with his lawyer about the case and he confirmed that he had. Phillippi also confirmed that he had reviewed the police reports and complaint and that he was satisfied that his attorney had represented his interests and fully advised him.

However, when the prosecutor attempted to establish a factual basis for the plea, Phillippi said that he did not watch more than half of the video of his police interview because it was “too traumatizing” for him. The district court determined that a factual basis could not be established until Phillippi had time to review the entire video because it was “important that [he] understand the evidence against [him].” It advised Phillippi to “focus very carefully on the evidence” when his attorney went through it with him because “this [plea] is a very favorable resolution to your case.”

About a month later, the district court held another plea hearing. Phillippi again confirmed that he was satisfied that his attorney had fully represented his interests and answered all of his questions. After Phillippi disclosed his medications, the district court asked, “Is there anything about taking those medications that makes it hard for you to understand what we’re talking about today?” Phillippi responded, “Slightly, yes. They impair my judgment and my mental health.” The district court then said that it “[did not]

likely to be convicted of the crime charged.” *State v. Ecker*, 524 N.W.2d 712, 716-17 (Minn. 1994) (citing *State ex rel. Norgaard v. Tahash*, 110 N.W.2d 867 (Minn. 1961)).

know how to work around that” and that it was inclined to enter a plea of not guilty so that the parties could proceed to trial. Phillippi’s attorney then requested permission question Phillippi. The following colloquy took place between Phillippi and his trial counsel:

COUNSEL: And those medications that you’re prescribed, do you now take them as prescribed?

THE DEFENDANT: Yes.

COUNSEL: And you and I, we’ve been working together pretty sensibly for quite a while now, correct.

THE DEFENDANT: Yes.

COUNSEL: Would it be fair to say that when you say that something impairs your judgment it means that your thinking might be a little bit slower than it would off the medications?

THE DEFENDANT: Absolutely.

COUNSEL: It might take you a little bit longer to understand what somebody is saying.

THE DEFENDANT: To understand what people are saying and to comprehend what they are saying.

COUNSEL: But you can get there, um, if a person slows down, asks the right questions, all of that, right?

THE DEFENDANT: Yes.

COUNSEL: So, you can understand, and you do understand what’s happening now?

THE DEFENDANT: Ah, yes, I believe so.

COUNSEL: And you - do you feel that your judgment is impaired and that you’re making a bad choice or that it causes you to make bad choices?

THE DEFENDANT: Yes, it makes me, ah, do like reckless choices . . .

COUNSEL: I don’t think we can do this.

The district court then stated that it planned to enter a not guilty plea and set the matter for trial.

Two months later, the parties submitted the case to the district court for a stipulated-facts trial pursuant to Minnesota Rule of Criminal Procedure 26.01, subdivision 3. The district court questioned Phillippi to ensure that he understood the rights that he was waiving, that he waived them voluntarily, and that counsel had adequately discussed his options with him. Phillippi answered all the questions in the affirmative. Phillippi also signed a waiver of trial by jury and associated rights along with a stipulation of facts, and he confirmed through questioning by the district court that he had gone through the waiver, that his attorney had answered all of his questions, and that he had signed the document. Neither the prosecution nor the defense submitted closing arguments. The district court later filed its findings of fact, conclusions of law, verdict, and order, finding Phillippi guilty on all eight counts.

At sentencing, the state requested sentences for Phillippi at the top of the guidelines range based on the severity of the child sexual abuse depicted in the videos. But the state requested that the sentences be concurrent, even though the offenses were eligible for permissive consecutive sentences, because Phillippi had spared a jury from having to see the images and people who “do arguably worse conduct” do not face similar sentences under the sentencing guidelines. Defense counsel then addressed the district court, emphasizing that, even though Phillippi was unable to enter the guilty plea, he chose a stipulated-facts trial to spare a jury from having to view videos of child sexual abuse. She explained that Phillippi did this despite knowing that the district court could impose consecutive sentences. Defense counsel advocated for “middle-of-the-box concurrent sentences.”

The district court sentenced Phillippi to the presumptive sentence for all counts, to run concurrently. Because of the *Hernandez* method of sentencing,³ Phillippi’s criminal-history score increased with each conviction. Although his criminal-history score kept increasing, the presumptive sentence for the last five convictions was 180 months—the statutory maximum. *See* Minn. Stat. § 617.247, subd. 3(b) (setting 15-year statutory maximum). As a result, Phillippi is serving a 180-month prison term.

This appeal follows.

DECISION

Phillippi argues that his trial counsel’s assistance was ineffective because his counsel did not subject the prosecution’s case to any meaningful adversarial testing, which violated his Sixth Amendment right to effective assistance of counsel.

“The Sixth Amendment guarantees a defendant the effective assistance of counsel.” *State v. Nissalke*, 801 N.W.2d 82, 111 (Minn. 2011). “Ineffective-assistance-of-counsel claims are generally analyzed as trial errors under *Strickland v. Washington*, [466 U.S. 668 (1984)].” *Dereje v. State*, 837 N.W.2d 714, 721 (Minn. 2013) (quotation omitted). “Certain counsel-related errors, however, may be structural errors, which do not require a showing of prejudice.” *State v. Dalbec*, 800 N.W.2d 624, 627 (Minn. 2011). “There is a fundamental difference between structural error and trial error.” *Id.* A trial error is an error that “occurred

³ *See State v. Hernandez*, 311 N.W.2d 478 (Minn. 1981) (allowing courts, when sentencing a defendant on the same day for multiple separate offenses, to impose the sentences in chronological order and to use each conviction to incrementally increase the criminal-history score for the next offense to be sentenced); Minn. Sent’g Guidelines 2B.1.e (2023) (encoding the *Hernandez* method into Minnesota’s sentencing guidelines).

during the presentation of the case” and can “be quantitatively assessed in the context of other evidence.” *Id.* (quoting *Arizona v. Fulminante*, 499 U.S. 279, 307-08 (1991)). A structural error, on the other hand, “affects the framework within which the trial proceeds, rather than simply an error in the trial process itself and calls into question the reliability and fairness of the trial.” *Id.* (quotation omitted).

One circumstance in which a structural error arises is “if counsel entirely fails to subject the prosecution’s case to meaningful adversarial testing.” *United States v. Cronin*, 466 U.S. 648, 659 (1984). This narrow exception to the *Strickland* standard “must involve a complete failure by counsel and does not apply to counsel’s failure to oppose the State’s case at specific points in the proceeding.” *Dalbec*, 800 N.W.2d at 628 (quotations omitted). “Structural errors require automatic reversal.” *State v. Brown*, 732 N.W.2d 625, 630 (Minn. 2007).

Appellate courts review claims of ineffective assistance of counsel de novo. *State v. Hokanson*, 821 N.W.2d 340, 357 (Minn. 2012). But, because appellate courts “presume that the lawyer is competent . . . , the burden rests on the [appellant] to demonstrate a constitutional violation.” *Cronin*, 466 U.S. at 658.

Phillippi contends that his defense counsel failed to subject the state’s case to any meaningful adversarial testing because she did not (1) file pretrial motions or seek suppression or exclusion of any of the state’s evidence, (2) advocate for a better outcome, or (3) “ensure that any mitigating evidence or any evidence that would support a not-guilty verdict was included in the stipulated facts submitted at trial.” Phillippi’s arguments are unpersuasive.

First, as to the absence of pretrial motions, the narrow exception to the *Strickland* standard “must involve a complete failure by counsel and does not apply to counsel’s failure to oppose the State’s case at specific points in the proceeding.” *Dalbec*, 800 N.W.2d at 628 (quotations omitted). The decision whether to file pretrial motions or motions to suppress evidence takes place at a specific point in the proceeding. It is similar to the defense counsel’s decision in *Dalbec* not to submit a written closing argument although he had requested and was granted that opportunity, which the supreme court concluded was subject to the *Strickland* standard, not the structural-error standard. *Id.* at 627-28. In addition, the decision whether to file pretrial motions relates to trial strategy, *Carridine v. State*, 867 N.W.2d 488, 494 (Minn 2015), and tactical decisions about whether to file such motions “do not prove that counsel’s performance fell below an objective standard of reasonableness,” *State v. Nissalke*, 801 N.W.2d 82, 111 (Minn. 2011). And, although Phillippi claims that counsel could have filed pretrial motions or sought to suppress evidence, he fails to identify which motions would have been appropriate or which suppression motions counsel failed to bring. As a result, Phillippi has not met his burden to show that trial counsel’s strategy was unreasonable or that the strategy was deficient enough to constitute structural error.

Second, Phillipi’s contention that trial counsel failed to advocate for better outcomes focuses on the results he wishes she would have achieved—namely the dismissal of some of the charges, a sentencing agreement, and a better sentencing outcome than multiple executed statutory-maximum 15-year sentences. But Phillippi points to no evidence in the record to support his contention that his counsel’s negotiations on his behalf were

inadequate. *See State v. Eling*, 355 N.W.2d 286, 293 (Minn. 1984) (“To be reasonably effective, it is not required that representation by counsel obtain a favorable result . . .”). Moreover, his trial counsel’s arguments at sentencing were successful in obtaining concurrent sentences, substantially reducing his time in a correctional facility compared to what it would have been had the district court imposed consecutive sentences.

Third, Phillippi’s challenge to his counsel’s performance with respect to the stipulated facts is unconvincing. Phillippi argues that the facts that were stipulated to as part of this process demonstrate a failure to meaningfully test the prosecution’s case. He complains that almost all of the stipulated facts supported his guilt and were imported from the probable-cause statement in the complaint, that the only facts that were “added” to the stipulation beyond what appeared in the complaint assisted the state in meeting its burden to prove the charges, and that there were no stipulated facts that undermined the state’s case.

In a stipulated-facts trial, “[t]he defendant and the prosecutor may agree that a determination of the defendant’s guilt, or the existence of facts to support an aggravated sentence, or both, may be submitted to and tried by the court based entirely on stipulated facts, stipulated evidence, or both.” Minn. R. Crim. P. 26.01, subd. 3(a). To participate in this type of trial, the defendant, “after an opportunity to consult with counsel,” must “personally waive the following specific rights: (1) to testify at trial; (2) to have the prosecution witnesses testify in open court in the defendant’s presence; (3) to question those prosecution witnesses; and (4) to require any favorable witnesses to testify for the defense in court.” *Id.*, subd. 3(b).

Phillippi contrasts his case with *Dereje*, in which the supreme court rejected Dereje's structural-error argument and concluded that his defense counsel had sufficiently challenged the state's case. 837 N.W.2d at 723-24. In *Dereje*, in a purported trial on stipulated facts under rule 26.02, subdivision 3, the parties stipulated to a body of evidence that included the victim's version of events and Dereje's contrary version of events. *Id.* at 718. Phillippi suggests that, like the defense counsel in *Dereje*, his trial counsel should also have included exculpatory evidence in the stipulated facts.

The argument is unpersuasive. First, the supreme court in *Dereje* decided that the submission of contradictory evidence made Dereje's trial a bench trial, not a stipulated-evidence or stipulated-facts trial. *Id.* at 721. That case therefore does not provide a model for what defense counsel must include in a stipulated-facts trial to provide the effective assistance of counsel. Second, unlike Dereje, Phillippi did not deny the conduct—he provided a confession to police. Phillippi identifies no different version of events that his counsel could have included in the stipulated facts, nor did he provide a different version at any time during his criminal proceedings prior to his conviction. There is also nothing in the record to support Phillippi's contention that his trial counsel failed to negotiate the most favorable stipulated facts possible. Defense counsel's failure to present a more favorable version of events does not implicate a structural error when Phillippi has not identified what favorable evidence could have been presented. In sum, Phillippi's argument about the stipulated facts is unavailing.

Finally, as noted above, a structural error “must involve a complete failure by counsel and does not apply to counsel's failure to oppose the State's case at specific points

in the proceeding.” *Dalbec*, 800 N.W.2d at 628 (quotations omitted). A “proceeding” does not consist solely of the trial, but refers to “the multiple, progressive hearings within a particular action at law or case in litigation.” *State v. Hohenwald*, 815 N.W.2d 823, 830 (Minn. 2012) (quotation omitted). Here, before the stipulated-facts trial, Phillippi’s trial counsel reviewed very extensive discovery; went to the local law enforcement center to view the video evidence; reviewed the evidence with Phillippi; negotiated a *Norgaard* plea deal, which the district court characterized as “a very favorable resolution” to the case; prepared a petition to plead guilty along with a *Norgaard* addendum; met with Phillippi after the first attempt to plead guilty; and tried at the second plea hearing to help Phillippi establish a factual basis for his plea. At sentencing, his counsel argued that the district court should sentence Phillippi to concurrent, middle-of-the-box sentences and suggested to the district court that his attempts to minimize or deny his actions were the result of him feeling shame because of the nature of the offenses. And Phillippi himself stated multiple times to the district court that his attorney had gone over everything with him and was doing a good job representing his interests.

Phillippi agreed to a stipulated-facts trial after an extensive and voluntary waiver of trial rights. He has identified no facts that should have been included in the stipulated facts, no evidence that his attorney should have attempted to suppress, and no arguments that may have been effective to combat his confession and the extensive digital evidence against him. We conclude that, given the facts and circumstances of this case, Phillippi’s attorney provided effective assistance of counsel by opposing the state’s case where possible.

Affirmed.