STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1037

Jordan Lee Wachter, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed July 3, 2023
Affirmed
Segal, Chief Judge

Big Stone County District Court
File Nos. 06-CR-19-137, 06-CR-19-179

Cathryn Middlebrook, Chief Appellate Public Defender, Erik I. Withall, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Maggie Kluver, Big Stone County Attorney, Ortonville, Minnesota (for respondent)

Considered and decided by Cochran, Presiding Judge; Segal, Chief Judge; and Wheelock, Judge.

NONPRECEDENTIAL OPINION

SEGAL, Chief Judge

Appellant challenges the district court's denial of postconviction relief, arguing that he received ineffective assistance of counsel because his attorney failed to adequately

assess whether a competency evaluation should be requested before allowing appellant to enter guilty pleas. We affirm.

FACTS

Appellant Jordan Lee Wachter pleaded guilty to domestic assault in July 2019 and to violation of a domestic-abuse no-contact order (DANCO) in November 2019. He was placed on probation in both cases. In June 2021, at a hearing on alleged probation violations in the two cases, the district court ordered an evaluation of Wachter's competency to proceed. The evaluator opined that Wachter was not competent. Wachter then petitioned for postconviction relief in both cases, the denial of which is at issue on this appeal.

As noted by the competency evaluator, Wachter has "long held a diagnosis . . . [of] schizophrenia" as his "primary treating condition." Following an earlier competency evaluation conducted in 2015, Wachter was found competent to proceed in a prior criminal case. The evaluator noted in the 2015 report, however, that Wachter's "symptoms seem to wax and wane somewhat rapidly." The evaluator cautioned that "[s]hould his symptoms increase, he could be rendered incompetent" and that "[h]is competency should therefore be considered somewhat tenuous."

The same defense counsel (DC) represented Wachter in both of the 2019 criminal cases. DC knew Wachter had been hospitalized in the past for mental illness and had a psychiatric condition for which he received treatment. During the plea colloquies in the 2019 cases, DC elicited testimony related to Wachter's history of having a mental illness. In the plea colloquy in the DANCO-violation case, Wachter acknowledged that he had

been "a patient in [a] mental hospital, . . . talked with counselors and psychiatrists, and [was] taking some pills or medications per [his] prescription." In the domestic-assault case, DC elicited testimony that Wachter sees a psychiatrist, gets an "[intra]muscular injection every two weeks," and "take[s] other pills" to treat his mental illness. DC then asked Wachter in both cases whether Wachter nevertheless believed he was making a rational decision in pleading guilty. Wachter answered in the affirmative.

Wachter appealed his conviction in the domestic-assault case, arguing that the guilty plea was not constitutionally valid because it was not accurate, intelligent, or voluntary.[1] As relevant here, Wachter maintained "that his guilty plea could not have been intelligent or voluntary if he was not competent, and that his history of mental illness along with his behavior at the [plea] hearing 'triggered the district court's responsibility' to inquire into his competency before accepting his plea." *State v. Wachter*, No. A19-2011, 2021 WL 318018, at *4 (Minn. App. Feb. 1, 2021), *rev. denied* (Minn. Apr. 28, 2021). This court affirmed Wachter's conviction, reasoning that the transcript of the plea colloquy, "taken together with the plea petition, demonstrates that [Wachter] was capable of understanding the proceedings and participating in his defense." *Id.* at *5. We concluded that Wachter's plea was therefore intelligent and voluntary and that, "under the circumstances presented by this case, the district court was not required to inquire further into Wachter's competence." *Id.* at *6.

[1] Wachter did not pursue a direct appeal of his conviction in the DANCO-violation case.

In May 2021, Wachter's probation officer filed probation-violation reports in both 2019 cases, alleging that Wachter failed to stay in contact as required by his probation conditions. Based on Wachter's behavior during an initial hearing in June 2021 on the probation violations, the district court ordered a rule 20 competency evaluation. *See* Minn. R. Crim. P. 20.01, subds. 2, 3 (requiring the court, prosecutor, or defense counsel to seek an evaluation of a defendant's mental condition if the defendant's "ability to: (a) rationally consult with counsel; or (b) understand the proceedings or participate in the defense" is doubtful at any time).

Dr. Krislea Wegner conducted the 2021 competency evaluation of Wachter. Dr. Wegner's report noted Wachter's long held diagnosis of schizophrenia and stated that he also has attention-deficit/hyperactivity and alcohol-use disorders. She opined that, "based upon current information," Wachter was not competent "to aid in his defense and requires additional mental health treatment to restore competency." Dr. Wegner commented that "[a]ssisting with his defense and complying with court proceedings do not appear within [Wachter's] capabilities, at present time, given his mental illness and severely agitated state."

In the subsequent petitions for postconviction relief at issue here, Wachter asserted that he was "denied due process when the [c]ourt accepted his guilty plea[s] without first ordering a competency evaluation when there was reason to doubt [Wachter's] competency," and was "denied effective assistance of counsel when his attorney failed to investigate [Wachter's] history of mental illness . . . or bring a motion for a competency evaluation before presenting [his] guilty plea[s]." At the evidentiary hearing on the

petitions, the district court heard testimony from Dr. Wegner, Wachter's mental-health case manager with Big Stone County, and DC.

Dr. Wegner reviewed the results of her examination of Wachter and testified that Wachter's schizophrenia diagnosis and associated symptoms are "the most debilitating of his diagnoses." Dr. Wegner provided information about the symptomatology of schizophrenia generally, as well as Wachter's specific presentation. She opined that Wachter's symptoms wax and wane rapidly, even during a two-hour clinical interview. She also explained that Wachter engages in "yea-saying" due to his difficulty with comprehension, which she described as:

> if he wants to get something over quickly or he just wants to move on, he'll be like "yeah, yeah, yeah, I get it." And then someone thinks he understood it and then he gets upset then in the later conversation when he says no wait, I don't understand that. . . . So, that has happened numerous times for him and so an individual needs to ask him to explain it back to make sure that he has understood, comprehends the information, and can literally teach it back so that it's sure that he has comprehended it.

On cross-examination, Dr. Wegner agreed it was "possible" that Wachter could be found competent on a less-symptomatic day and that a lay person would not necessarily be able to pick up on Wachter's symptoms of internal preoccupation which interfere with his comprehension.

Wachter's mental-health case manager testified that she began working with Wachter in May 2016. She agreed that Wachter "has days or moments that are better than others" and that his symptoms "can turn very quickly." She testified that Wachter is well-known in the community as living with mental illness as he often walks around talking to

himself and consistently has trouble engaging in conversation. She also stated that "there's not very often when . . . if you know him, you don't notice some of those symptoms [of his mental illness] going on."

DC testified that he first worked with Wachter in 2016. At that time, DC considered moving for a competency evaluation based on Wachter's behaviors. DC stated that he asked another attorney—either a former county attorney or another defense attorney—about Wachter. The attorney told DC that Wachter was evaluated "within the past year or so," and the evaluator concluded that Wachter was competent. Based on that information, DC decided not to pursue another competency evaluation; he also did not seek to obtain or read the 2015 evaluation.

DC testified that Wachter exhibited behaviors in 2019 that were "[c]ertainly consistent with mental illness," including being "very focused on . . . particular things that he wanted to talk about," "hav[ing] trouble focusing on the things that [DC] wanted to and needed to talk with him about," "rais[ing] his voice . . . in a way that wasn't really appropriate for the situation," and leaving "close to incoherent" voicemails. DC did not, however, believe that Wachter's presenting symptoms were such that he should request a competency evaluation, reasoning:

> I knew that he had been found competent in that 2015 evaluation. And, in 2019 . . . he was exhibiting the same behaviors that I observed in 2016 . . . to a little bit lesser degree. And so, I would say . . . that I made an assumption that the behaviors that I saw in 2016 were similar to the behaviors that the competency evaluator would have been . . . seeing during the evaluation in 2015 [in which he was found competent].

DC added that he did not doubt Wachter's competency in 2019 based on his interactions and phone conversations with him at the time. DC also acknowledged that, having heard Dr. Wegner's testimony and knowing what was in the 2015 competency evaluation, he now believes, based on an objective standard, that there might have been reason to doubt Wachter's competency in 2019.

Following the hearing, the district court denied Wachter's petition for postconviction relief in both cases. The district court rejected Wachter's argument that the court's acceptance of his guilty pleas without ordering a competency evaluation violated his due-process rights and rejected his claim of ineffective assistance of counsel. As to the ineffective-assistance claim—the ground at issue on this appeal—the district court found that DC's performance did not fall below an objective standard of reasonableness.

DECISION

On appeal, Wachter challenges the district court's denial of his petitions for postconviction relief. He maintains that DC's failure to investigate his mental health as it relates to competency fell below an objective standard of reasonableness and deprived him of his right to effective assistance of counsel. This court "review[s] the denial of a petition for postconviction relief for an abuse of discretion." *Pearson v. State*, 891 N.W.2d 590, 596 (Minn. 2017). "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, or exercises its discretion in an arbitrary or capricious manner." *Crow v. State*, 923 N.W.2d 2, 9 (Minn. 2019) (quotation omitted). This court reviews the "postconviction court's legal determinations de novo, and its factual findings for clear error." *Brown v. State*, 895

N.W.2d 612, 617 (Minn. 2017) (quotation omitted). A postconviction court's evaluation of a petitioner's ineffective-assistance-of-counsel claim involves a mixed question of law and fact that is reviewed de novo. *State v. Mouelle*, 922 N.W.2d 706, 715 (Minn. 2019).

The right to effective assistance of counsel is guaranteed to all criminal defendants by the United States and Minnesota Constitutions. U.S. Const. amend. VI; Minn. Const. art. I, § 6. To prevail on a claim that counsel was ineffective, a petitioner must satisfy the two-part test set forth in *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Under this test, a defendant must show (1) counsel was deficient and (2) the deficient performance prejudiced the defense. *Strickland*, 466 U.S. at 687. "If a claim fails to satisfy one of the *Strickland* requirements, [an appellate court] need not consider the other requirement." *State v. Mosley*, 895 N.W.2d 585, 591 (Minn. 2017).

Under the first prong of *Strickland*, a counsel's performance will be considered deficient if it falls "below an objective standard of reasonableness." 466 U.S. at 687-88. This standard requires defense counsel to represent a client "exercising the customary skills and diligence that a reasonably competent attorney would perform under the circumstances." *State v. Doppler*, 590 N.W.2d 627, 633 (Minn. 1999) (quotation omitted). A petitioner alleging ineffective assistance of counsel must overcome the "strong presumption that counsel's performance fell within a wide range of reasonable assistance." *Gail v. State*, 732 N.W.2d 243, 248 (Minn. 2007).

Having set out the general standard of performance required of defense counsel, we now must apply that standard in the context of a client's competency to proceed. "A defendant has a due process right not to be tried or convicted of a criminal charge if he or

she is legally incompetent." *Bonga v. State*, 797 N.W.2d 712, 718 (Minn. 2011) (citing *Drope v. Missouri*, 420 U.S. 162, 171 (1975), and *Pate v. Robinson*, 383 U.S. 375, 378 (1966)) (other citations omitted). To that end, rule 20.01 provides that "[a] defendant is incompetent and must not plead . . . if the defendant due to mental illness or cognitive impairment lacks ability to: (a) rationally consult with counsel; or (b) understand the proceedings or participate in the defense." Minn. R. Crim. P. 20.01, subd. 2; *see also Bonga*, 797 N.W.2d at 718 (stating that "a defendant is competent to stand trial in a criminal matter if he or she has sufficient present ability to consult with [the defendant's] lawyer with a reasonable degree of rational understanding and 'has a rational as well as factual understanding of the proceedings against him'" (quoting *Dusky v. United States*, 362 U.S. 402, 402 (1960)).

Rule 20.01 further provides that "[i]f the prosecutor, defense counsel, or the court, at any time, doubts the defendant's competency, the prosecutor or defense counsel must make a motion challenging competency, or the court on its initiative must raise the issue." Minn. R. Crim. P. 20.01, subd. 3. "Evidence of the defendant's irrational behavior, demeanor at trial, and any prior medical opinion on competence to stand trial are relevant in determining whether there is reason to doubt the defendant's competence." *State v. Camacho*, 561 N.W.2d 160, 172 (Minn. 1997).

Wachter argues that DC's representation of Wachter was deficient because DC essentially performed *no* investigation into Wachter's mental health even though he knew Wachter had a mental illness for which he had been hospitalized, was seeing a psychiatrist, and was on psychiatric medications when Wachter pleaded guilty in the two 2019 cases.

Wachter notes that DC inquired about the outcome of the 2015 competency evaluation—that Wachter was found competent to proceed. But he faults DC for failing to seek out and read the evaluation. Wachter maintains that the 2015 evaluation, which stated that Wachter's "symptoms seem to wax and wane somewhat rapidly" and that "[h]is competency should therefore be considered somewhat tenuous," offered good reason to continuously question Wachter's competence.

While we may be sympathetic to Wachter's argument given his diagnosis of schizophrenia, we are not persuaded that DC's performance was constitutionally deficient. DC was familiar with Wachter and had represented him previously in 2016. DC testified that Wachter's symptoms of mental illness were exhibited "to a little bit lesser degree" in 2019 than in 2016, which was closer in time to Wachter having been found competent. DC also testified that Wachter, at least in DC's subjective opinion, was able to rationally consult with him and understood the proceedings. DC thus testified at the postconviction hearing that he did not, at the time of the 2019 guilty-plea proceedings, doubt Wachter's competence.

The transcripts of the guilty-plea colloquies in the two 2019 cases support DC's postconviction testimony. For example, in the domestic-assault case, when questioned by DC, Wachter was able to provide a description of the offense, including a statement demonstrating that he understood the elements of the offense of assault:

> Q: Now are you pleading guilty just to get out of jail?
> A: No.

> Q: Okay, you feel you are guilty?
> A: No, 'cause I do remember at least pulling [the victim's] hand and trying to drag her out of the house.
>
> Q: Okay.
> A: Which is you know that's assault too.
>
> Q: Okay.
> A: I guess so that's why I—I just well plead guilty to it.

Wachter also testified that he "told [the victim] to leave the house and . . . was trying to pull her out the door by her hair."

In the DANCO-violation case, Wachter was also able to describe in his own words what occurred. He testified: "I ran into her on the sidewalk I think and—and we did some talking and she asked me if I'd like to take a walk." He further testified, "I had told her, you know, I can't talk to you, but you know, she said 'why' and I don't know." The court then asked, "And then you continued to walk with her for a ways . . . on the sidewalk?" Wachter replied, "Yeah . . . well there is no sidewalk on 1st Street."

In addition, the transcript shows that Wachter was also able to answer questions about the number of prior assault cases he had. He testified:

> I was convicted of an assault, yes, I was. . . . I had—I had two cases; actually three, but the third was, you know, I guess the judge must of realized, you know, it was family and that, you know, I'm telling the truth and they just kind of just decided he just said we're just going to continue with everything that's been put upon you.

He was also able to provide information to the district court about the years of his convictions. For example, in the domestic-assault case, the district court asked, "[You] were also convicted of Fourth Degree Assault sometime around 2015 or 2016, is that

correct?" Wachter answered, "Ah, yeah, I believe I got the first charge in '15 and the second charge in '16."

This testimony demonstrates that, at least at the time of the plea colloquies in the two cases, that Wachter could answer questions rationally, had some understanding of the proceedings, and could provide a summary of his memory of the offenses.

The above-quoted testimony also demonstrates that Wachter did not just engage in "yea-saying," which was one of the risks identified by Dr. Wegner in her testimony at the postconviction hearing. Wachter answered these questions in his own words and not just in "yes" or "no" responses. This further supports DC's testimony that, based on his subjective opinion of Wachter's condition, that he did not doubt Wachter's competence at that time.

Wachter argues that counsel for a defendant has a greater duty than the state or the court in identifying possible competency issues in clients with mental illness. He cites the American Bar Association (ABA) Criminal Justice Standards as support:

> Attorneys who represent defendants with mental disorders should explore all mental state questions that might be raised, including whether the client's capacities at the time of police interrogation bear on the admissibility or reliability of any incriminating statements that were made, whether the client is competent to proceed at any stage of the adjudication, and whether the defendant's mental state at the time of the offense might support a defense to the charge, a claim in mitigation of sentence, or a negotiated disposition.

ABA Standards for Criminal Justice: Criminal Justice Standards on Mental Health 7-1.4 (2016); *see also Strickland*, 466 U.S. at 688 ("Prevailing norms of practice as reflected in [ABA] standards and the like . . . are guides to determining what is reasonable, but they

are only guides."). This citation, however, offers little value to the specific issue involved in this case. Moreover, while defense counsel has greater opportunity to identify competency issues of their clients given the meetings and discussions that defense counsel would be expected to have with their clients, this does not necessarily lead us to conclude that DC's representation of Wachter was constitutionally deficient under the circumstances presented here.

To support his argument that DC's representation was deficient, Wachter primarily relies on our nonprecedential decision in *Trevino v. State*, No. A19-0901, 2020 WL 610590 (Minn. App. Feb. 10, 2020) (*Trevino II*).[2] In the case, Trevino had alleged in his postconviction petition that, prior to the entry of his guilty plea, he had been civilly committed three times; his probation officer had informed his attorney that Trevino had a long history of mental illness, had been civilly committed, had been placed in a group home, and would benefit from adult foster care; his probation officer offered to provide the attorney Trevino's mental-health records, but the attorney declined the offer; and Trevino had exhibited symptoms of mental illness to his attorney. *Trevino I*, 2018 WL 3340077, at *1. Moreover, the plea petition prepared by Trevino's counsel inaccurately stated that Trevino had not been treated by a psychiatrist for a mental condition, had not been recently ill, and did not take medication. *Id.* This court reversed the district court's denial of

[2] Our opinion in this case was preceded by our opinion in *Trevino v. State*, No. A17-1911, 2018 WL 3340077 (Minn. App. July 9, 2018) (*Trevino I*), in which we held that the district court erred by denying Trevino's postconviction petition without holding an evidentiary hearing and remanded the case to the district court to hold such a hearing. Under Minn. R. Civ. App. P. 136.01, subd. 1(c), nonprecedential opinions may be cited for their persuasive value.

Trevino's postconviction petition, concluding in part that Trevino's counsel's performance was deficient. *Trevino II*, 2020 WL 610590, at *3. Specifically, this court reasoned:

> [T]he hearing clearly revealed that [Trevino's attorney] R.L. (1) was aware of Trevino's very recent civil commitment following a finding of incompetence; (2) was advised from the outset that Trevino was not just ambiguously mentally ill, but "very" mentally ill; and (3) provided erroneous information on the plea petition when she had plenty of information to reveal its erroneousness. Any one of these considerations might well be insufficient to support a finding of unreasonable performance, but it is the combination of them—in tandem with the fact that R.L. not only elected to refrain from even a cursory investigation of Trevino's competency, but affirmatively declined [Trevino's probation officer's] offer to hand-deliver everything she would need to conduct a thorough one—that leads us to conclude that a reasonable attorney in R.L.'s position would have acted more prudently.

Id.

Wachter argues that his case is like *Trevino II* and that we should reach the same conclusion—that his counsel's assistance was deficient. But in contrast to the facts in *Trevino II*, information about Wachter's mental-health history was included in both the plea petition and in the guilty-plea colloquy. Further, Wachter had not recently been civilly committed and DC at least inquired about the 2015 competency evaluation and learned that Wachter was assessed as competent at that time. DC had also represented Wachter in 2016 and believed that Wachter was in better condition in 2019 than in 2016 and relied on that fact in assessing whether a competency evaluation should be requested. In addition, DC did not engage in the proactive negligence of turning down an offer from a probation officer to review Wachter's mental-health records as did the defense counsel in *Trevino II*. The circumstances here are thus distinguishable.

In sum, given the "strong presumption that counsel's performance fell within a wide range of reasonable assistance," we affirm the district court's conclusion that DC's representation of Wachter was not constitutionally deficient. *Gail*, 732 N.W.2d at 248. Consequently, we need not review the second prong of the *Strickland* analysis—whether Wachter suffered prejudice. *Mosley*, 895 N.W.2d at 591.

Affirmed.