This opinion is nonprecedential except as provided by Minn.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
A22-1689

Jamie Allen Andrews, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed July 31, 2023
Affirmed
Slieter, Judge

Anoka County District Court
File Nos. 02-CR-07-3337, 02-CR-09-2746

Cathryn Middlebrook, Chief Appellate Public Defender, Kathryn J. Lockwood, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Brad Johnson, Anoka County Attorney, Robert I. Yount, Assistant County Attorney, Anoka, Minnesota (for respondent)

Considered and decided by Reilly, Presiding Judge; Larkin, Judge; and Slieter, Judge.

NONPRECEDENTIAL OPINION

SLIETER, Judge

Appellant Jamie Allen Andrews argues that the district court erred by denying his petition for postconviction relief—based on newly discovered evidence in the form of an

alleged victim recantation—without an evidentiary hearing. Because there is no authority to support Andrews' requested relief, we affirm.

FACTS

In May 2007, respondent State of Minnesota charged Andrews with one count of second-degree intentional murder and one count of second-degree murder while committing a felony for causing the death of his infant daughter. In July 2007, a grand jury indicted Andrews for first-degree murder based on this same event.

In March 2009, the state charged Andrews with two counts of first-degree criminal sexual conduct for engaging in sexual penetration with two of his children. Andrews' daughter, A.M.A., age nine at the time of the charges, provided law enforcement with statements about Andrews' criminal sexual conduct.

In July 2009, and with the assistance of counsel, Andrews entered an *Alford* plea[1] pursuant to a global plea agreement. The plea agreement included amended charges of second-degree criminal sexual conduct, in violation of Minn. Stat. § 609.343, subd. 1(h)(iii) (2006), naming A.M.A. as the only victim, and second-degree manslaughter, in violation of Minn. Stat. § 609.205, subd. 1 (2006).[2] The district court accepted Andrews' *Alford* plea, entered convictions, and sentenced Andrews to 90 months in prison and ten years of conditional release for the criminal-sexual-conduct conviction and a consecutive

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[1] In *North Carolina v. Alford*, 400 U.S. 25, 38 (1970), the United States Supreme Court held that, in some circumstances, a court may constitutionally accept a defendant's guilty plea even though the defendant professes innocence. The Minnesota Supreme Court adopted *Alford* pleas in *State v. Goulette*, 258 N.W.2d 758, 760-61 (Minn. 1977).

[2] The first-degree criminal-sexual-conduct charge involving another child of Andrews was dismissed as part of the global plea agreement.

57-month term of imprisonment for the second-degree manslaughter conviction. Andrews did not file a direct appeal.[3]

In July 2022, Andrews, represented by an appellate public defender, submitted a petition for postconviction relief, seeking plea withdrawal and a new trial. This followed the delivery of an affidavit from A.M.A. to the appellate public defender's office in 2020. In her affidavit, A.M.A. stated, "my dad never touched us and if he did it was in a normal way a parent should" and "[n]ever disrespectfully." A.M.A. explained, "I was pressured by multiple people and at times words seemed to be put in my mouth." She also stated that she "told stories to satisfy the adults," she believed Andrews was innocent, and he "never made [her] feel unsafe."

Andrews sought to withdraw his *Alford* plea to second-degree manslaughter and second-degree criminal sexual conduct because, he argued, A.M.A.'s alleged recantation made his plea inaccurate. In the petition, Andrews asserted that the victim's recantation "negates an essential element of the crime to which [Andrews] pleaded guilty and serves to exonerate him" and, because the criminal-sexual-conduct plea was part of a "global plea agreement" that was not severable from the second-degree manslaughter plea, the entire plea agreement must be invalid because it is inaccurate.

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[3] Prior to his anticipated release from prison in 2015, the district court indeterminately committed Andrews as a sexually dangerous person. Andrews challenged the sufficiency of the evidence supporting his civil commitment as a sexually dangerous person and the district court's determination that there was no less-restrictive alternative to commitment to the sex-offender program. *In re Civ. Commitment of Andrews*, No. A16-0237, 2016 WL 4163180 (Minn. App. Aug. 8, 2016), *rev. denied* (Minn. Oct. 18, 2016). This court affirmed his civil commitment and the Minnesota Supreme Court denied review. *Id.*

The district court, without an evidentiary hearing, denied Andrews' petition.[4] Andrews appeals.

DECISION

Andrews' sole argument on appeal is that the district court committed reversible error when it denied his postconviction petition without an evidentiary hearing. We review the decision by the district court to grant or deny an evidentiary hearing for an abuse of discretion. *See Riley v. State*, 819 N.W.2d 162, 167 (Minn. 2012). In doing so, we review the district court's factual findings for clear error and its legal conclusions *de novo*. *See Martin v. State*, 825 N.W.2d 734, 740 (Minn. 2013).

Pursuant to Minn. Stat. § 590.04, subd. 1 (2022), a district court must hold an evidentiary hearing on a petition for postconviction relief "[u]nless the petition and the files and records of the proceeding conclusively show that the petitioner is entitled to no relief." The Minnesota Supreme Court has "interpreted this section to require the petitioner to allege facts that, if proven, would entitle him to the requested relief." *Opsahl v. State*, 677 N.W.2d 414, 423 (Minn. 2004).

In denying Andrews' petition, the district court considered the *Larrison* standard—a three-prong test used by Minnesota courts to assess whether to grant a new trial based on

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[4] In 2019, Andrews filed a *pro se* petition for postconviction relief that sought similar relief, which was forwarded by the district court to the appellate public defender's office. The postconviction court acknowledged the *pro se* petition though it did not provide a separate reason to deny it. We presume, therefore, the district court's reason for denial applies equally to his *pro se* petition. Andrews did not file a *pro se* supplemental brief on appeal.

recanted *trial testimony*.[5] *See id.* at 422-23 (explaining that pursuant to the *Larrison* standard, a petitioner must establish the following: "(1) the [district] court must be reasonably well-satisfied that the testimony in question was false; (2) without that testimony the jury might have reached a different conclusion; and (3) the petitioner was taken by surprise at trial or did not know of the falsity until after trial"). To receive an evidentiary hearing in the recantation setting, the petitioner must "present competent material evidence that, if found to be true following an evidentiary hearing, could satisfy the *Larrison* test." *Martin*, 825 N.W.2d at 743. "Although an evidentiary hearing is often necessary, the recantation must still contain sufficient indicia of trustworthiness to warrant a hearing." *Id.* at 740 (quotation omitted). The district court determined that because A.M.A.'s affidavit did not "bear indicia of trustworthiness," Andrews failed the first prong of the *Larrison* test and he was not entitled to an evidentiary hearing on the purported recantation.

Andrews argues that he is entitled to an evidentiary hearing because A.M.A.'s purported recantation, if found credible by the district court at an evidentiary hearing, would entitle him to relief. The relief he requested is withdrawal of his *Alford* plea which, he claims, is necessary to avoid a manifest injustice.

However, Andrews pleaded guilty and therefore did not have a trial at which A.M.A. testified. The *Larrison* standard only governs our analysis in cases in which there are

[5] *See State v. Caldwell*, 322 N.W.2d 574, 584-85 (Minn. 1982) (adopting test set forth in *Larrison v. United States*, 24 F.2d 82, 87-88 (7th Cir. 1928), *overruled by United States v. Mitrione*, 357 F.3d 712, 718 (7th Cir. 2004)).

allegations that "false testimony was given *at trial*." *Pippitt v. State*, 737 N.W.2d 221, 227 (Minn. 2007) (emphasis added) (quotation omitted). Moreover, Andrews has not presented authority, nor are we aware of any, that substantively applies *Larrison* in a postconviction proceeding in which a petitioner seeks relief in the form of plea withdrawal due to a victim's recantation. Therefore, the *Larrison* test is not applicable here.

We recognize that guilty pleas may be withdrawn after sentencing if it is necessary to correct a manifest injustice. *See* Minn. R. Crim. P. 15.05, subd. 1. "A manifest injustice exists if a guilty plea is not valid." *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). To be constitutionally valid, "a guilty plea must be accurate, voluntary, and intelligent." *Taylor v. State*, 887 N.W.2d 821, 823 (Minn. 2016). An accurate *Alford* plea involves the following: (1) a strong factual basis, (2) an admission from the defendant that the evidence is sufficient to convict him at trial, and (3) the district court's independent conclusion that "there is a *strong* probability that the defendant would be found guilty of the charge to which he pleaded guilty, notwithstanding his claims of innocence." *State v. Theis*, 742 N.W.2d 643, 649 (Minn. 2007).

The accuracy of Andrews' *Alford* plea is evaluated on the basis of the evidence available at the time he entered the plea. *See id.* at 649-50 (analyzing accuracy of an *Alford* plea based on the evidence available at the plea hearing). In addition to the three factors listed above, the "key consideration" in an *Alford* plea is "whether the plea is voluntary and represents a knowing and intelligent choice of the alternative courses of action available" at the time it was entered. *Goulette*, 258 N.W.2d at 761. Andrews does not provide any authority, and we are aware of none, that allows the accuracy of his plea—or

his choice to enter an *Alford* plea—to be reassessed due to a subsequent change in evidentiary circumstances in the form of victim recantation.[6]

Thus, the district court acted within its discretion in denying Andrews an evidentiary hearing because the record conclusively shows that he is not entitled to relief.

Affirmed.

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[6] We recognize that the record before us does not include the transcript from the plea hearing. But this does not impact our conclusion because Andrews' postconviction filings only assert a post-guilty plea recantation.