STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0289

Wallace James Beaulieu, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed November 26, 2012
Affirmed
Halbrooks, Judge

Beltrami County District Court
File No. 04-K2-90-000810

David W. Merchant, Chief Appellate Public Defender, Jennifer L. Lauermann, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Timothy R. Faver, Beltrami County Attorney, Bemidji, Minnesota (for respondent)

Considered and decided by Chutich, Presiding Judge; Halbrooks, Judge; and Toussaint, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

HALBROOKS, Judge

Appellant Wallace James Beaulieu challenges the denial of his motion for postconviction relief, arguing that the postconviction court abused its discretion by not holding an evidentiary hearing on his ineffective-assistance-of-counsel and invalid-plea claims. Beaulieu asserts additional challenges to his conviction in a pro se supplemental brief. Because we conclude that the postconviction court properly denied relief, we affirm.

FACTS

In July 1990, Beaulieu was charged with two counts of attempted first-degree murder, two counts of first-degree criminal sexual conduct, two counts of kidnapping, and theft of a motor vehicle in connection with the brutal assault of M.H. Pursuant to a plea agreement with the state, Beaulieu submitted an *Alford* plea to the charges of third-degree criminal sexual conduct, third-degree assault, and kidnapping.

At his plea hearing, Beaulieu testified that he understood the plea agreement and had had enough time to consult his attorney. Under oath, Beaulieu acknowledged that he faced potential imprisonment of 150-180 months if convicted at trial. He admitted that he faced a substantial likelihood of conviction at trial and that he was pleading guilty to get the "benefit of the bargain." He acknowledged that the state's case was largely based on testimonial evidence and, given the nature of that evidence, he wanted to plead guilty. Beaulieu stated that no one coerced or forced him to plead guilty. And he testified that in so pleading, he was foregoing his right to require "the [s]tate to prove [its] case by

evidence beyond a reasonable doubt." In Beaulieu's plea colloquy, his attorney asked whether he had any objection to the state offering police reports or other documents to "supplement the factual basis" of the plea. Beaulieu replied that he had no objection.

Beaulieu was sentenced in December 1990. At the sentencing hearing, the district court ordered a stay of imposition of sentence for each conviction and placed Beaulieu on probation, the terms of which called for one year in county jail and full restitution. The imposition of a sentence was stayed for a period of 3 years for the third-degree assault conviction; 10 years for the third-degree criminal-sexual-conduct conviction; and 40 years for the kidnapping conviction.

In 1992, Beaulieu violated the terms of his probation when he was convicted of a misdemeanor and charged with new felony offenses. The commissioner of corrections sought to have the stay of imposition vacated on the basis of these violations. In response, Beaulieu asked the district court to impose and execute a sentence and to order that it run concurrently with a sentence that he was already serving in an unrelated matter. Beaulieu also notified the district court that his attorney could appear on his behalf and submit his written request in lieu of his personal appearance in the matter. Accordingly, in February 1993, the district court vacated the stay and imposed and executed a sentence of 12 months and a day for the conviction of third-degree assault and two 48-month sentences for the convictions of third-degree criminal sexual conduct and kidnapping. The district court also granted Beaulieu's request that these sentences be served concurrently with the sentence that he was already serving.

In 2006, Beaulieu was civilly committed as a sexually dangerous person and a sexual psychopathic personality. The commitment court based its determination on four incidents of sexual misconduct, including the 1990 sexual assault implicated in this matter. The other incidents include a 1992 sexual assault of a 13-year-old girl, resulting in Beaulieu's conviction of third-degree criminal sexual conduct; a 1999 sexual assault in Wisconsin, resulting in acquittal; and a 2002 sexual assault, also resulting in acquittal. Since 2006, Beaulieu has challenged his civil commitment in both state and federal courts. Beaulieu currently has a matter pending before the Minnesota Supreme Court in which he contends that he was denied effective assistance of counsel because his attorney did not file a timely appeal of his civil commitment.

In September 2011—21 years after conviction—Beaulieu filed a pro se motion for postconviction relief, seeking to withdraw his 1990 guilty plea on the grounds that (1) his counsel was ineffective; (2) his plea is invalid; (3) his sentence is invalid; (4) DNA evidence exonerates him; and (5) the holding in *Padilla v. Kentucky*, 130 S. Ct. 1473 (2010), retroactively applies to his case. He also filed a waiver of counsel, a request for hearing on his motion, and a request for court-ordered disclosure of scientific evidence. The state did not file a responsive memorandum. The postconviction court denied relief without an evidentiary hearing, concluding that each of Beaulieu's claims is without merit.[1] This appeal follows.

[1] We mention, as a threshold matter, that Beaulieu's motion was untimely. Minnesota law imposes a two-year statute of limitations on petitions for postconviction relief, subject to five exceptions. Minn. Stat. § 590.01, subd. 4 (2010). Whether labeled a "motion" or "petition," Beaulieu's request to withdraw his guilty plea is subject to the

D E C I S I O N

I.

Because the state did not file a brief to this court, the matter proceeds pursuant to Minn. R. Civ. App. P. 142.03. Beaulieu challenges the postconviction court's adjudication of his ineffective-assistance-of-counsel and invalid-plea claims without an evidentiary hearing. This court reviews the denial of a petition for postconviction relief, as well as a request for an evidentiary hearing, for an abuse of discretion. *Ferguson v. State*, 645 N.W.2d 437, 442, 446 (Minn. 2002). Summary denial of postconviction relief is appropriate when "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 (2010). In postconviction proceedings, "[an] evidentiary hearing is required whenever material facts are in dispute that have not been resolved in the proceedings resulting in conviction and that must be resolved in order to determine the issues raised on the merits." *Hodgson v. State*, 540 N.W.2d 515, 517 (Minn. 1995). The allegations raised in the postconviction

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procedural requirements of the postconviction statute. *See State v. Hughes*, 758 N.W.2d 577, 583 (Minn. 2008) ("After [the time to file a direct appeal passes], the only means by which [a defendant] could seek withdrawal of his guilty plea would be through a postconviction petition."). Because Beaulieu's conviction became final in May 1993, he had until August 1, 2007, to file for postconviction relief. *See Roby v. State*, 808 N.W.2d 20, 24 (Minn. 2011) ("The legislation amending [Minn. Stat. § 590.01] is effective as of August 1, 2005, and any person whose conviction became final before August 1, 2005, shall have two years after the effective date of the amendments to file a petition for postconviction relief." (quotation omitted)).

The state, however, never raised this procedural issue to the postconviction court and the postconviction court did not address it. Because the issue of timeliness is not properly before us, we review the postconviction court's decision on the merits of Beaulieu's motion.

petition must be more than conclusory, argumentative assertions without factual support in the record. *State v. Turnage*, 729 N.W.2d 593, 599 (Minn. 2007).

Ineffective Assistance of Counsel

Beaulieu contends that his trial counsel was ineffective for waiving an omnibus hearing. To prevail on a claim of ineffective assistance, Beaulieu must prove, first, that his counsel's performance fell below an objective standard of reasonableness and, second, that there is a reasonable probability that but for counsel's deficient performance, the outcome would have been different. *Staunton v. State*, 784 N.W.2d 289, 300 (Minn. 2010) (citing *Strickland v. Washington*, 466 U.S. 668, 687-88, 104 S. Ct. 2052, 2064 (1984)). Matters involving trial tactics lie within the discretion of trial counsel and are not subject to review for competence. *State v. Voorhees*, 596 N.W.2d 241, 255 (Minn. 1999).

Beaulieu argues that, had there been an omnibus hearing, DNA evidence would have "shown there was no sexual assault" and that the state lacked sufficient evidence to proceed to trial. This argument is without merit. The postconviction court properly ruled that the trial strategy of waiving an omnibus hearing does not constitute ineffective assistance because that decision rests within the discretion of trial counsel. *See id.* (holding that decisions as to trial tactics are not reviewable for competence). Furthermore, Beaulieu fails to point to any record evidence, scientific or otherwise, that reveals, as he suggests, that "there was no sexual assault." To the contrary, the record

supports the finding that the victim had been sexually assaulted. And the scientific evidence to which Beaulieu refers does not exonerate him.[2]

Beaulieu argued in his motion, and does so again on appeal, that *Padilla* retroactively applies to his case—the implication being that he received ineffective assistance because his attorney never advised him of the potential civil-commitment consequences of pleading guilty to criminal sexual conduct. But Minnesota courts have held that *Padilla* neither applies retroactively to postconviction proceedings, *Campos v. State*, 816 N.W.2d 480, 499 (Minn. 2012), nor extends to civil-commitment cases, *see Sames v. State*, 805 N.W.2d 565, 569-70 (Minn. App. 2011) (limiting the holding in *Padilla* to the deportation context), *review denied* (Minn. Dec. 21, 2011). Because Beaulieu's assertions that his trial counsel was ineffective are without factual support in the record, the postconviction court did not abuse its discretion by denying relief on this claim without a hearing.

Plea validity

Beaulieu also contends that an evidentiary hearing was required to determine whether his *Alford* plea was accurate, voluntary, and intelligent. This court reviews de novo the validity of a guilty plea. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). A defendant may withdraw a guilty plea after sentencing if it is "necessary to correct a

[2] Beaulieu directs us to two reports from the Minnesota Bureau of Criminal Apprehension, containing results from its examination of sexual-assault-kit specimens collected from the victim, blood from clothing of both the victim and Beaulieu, and blood found on leaves near the crime scene. Examination of the sexual-assault kit failed to reveal the presence of human semen. Testing of the clothing was inconclusive, and examination revealed that the blood on the leaves could have been the victim's but was not Beaulieu's. These results are not dispositive of Beaulieu's guilt.

manifest injustice." Minn. R. Crim. P. 15.05, subd. 1. Manifest injustice occurs when a plea is not valid. *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007). To be valid, a guilty plea must be accurate, voluntary, and intelligent. *Id.*

1. Accuracy

Beaulieu argues that his *Alford* plea lacks an adequate factual basis. A plea is accurate only if established by a proper factual basis. *Raleigh*, 778 N.W.2d at 94. The factual basis must establish sufficient facts on the record to support a conclusion that the defendant's conduct meets all elements of the charge to which he is pleading guilty. *Barnslater v. State*, 805 N.W.2d 910, 914 (Minn. App. 2011). The law permits an *Alford* plea "if the court, on the basis of its interrogation of the accused and its analysis of the factual basis offered in support of the plea, reasonably concludes that there is evidence which would support a jury verdict of guilty." *Theis*, 742 N.W.2d at 647 (quoting *State v. Goulette*, 258 N.W.2d 758, 760 (Minn. 1977)). The factual basis for an *Alford* guilty plea may be established, despite the defendant's claim of innocence, by reference at the plea hearing to police reports or other documents setting forth the evidence of guilt. *See id.* at 649.

Beaulieu asserts that his plea colloquy failed to establish that he was aware of the evidentiary burden on the state if he had proceeded to trial. This assertion is unsupported by the record. Beaulieu acknowledged under oath that, in pleading guilty, he was foregoing his right to require "the [s]tate to prove [its] case by evidence beyond a reasonable doubt." Beaulieu also contends that the factual basis of his plea was weak because the state offered no evidence to support its case. But the state did support the

charges against Beaulieu. Prior to his plea, the state notified Beaulieu of the prosecution's right to call as trial witnesses any person referred to in any report, statement, or document provided to the defendant. The complaint contains detailed statements made by the victim describing her attack—statements that inculpate Beaulieu—and the victim was available to testify at trial. Furthermore, Beaulieu was given an opportunity to object to the factual basis as supplemented by the state's documents. He declined to do so. As a consequence, the facts alleged in the police reports and other prosecution documents become a part of the factual basis of Beaulieu's guilty plea. *See id.*

Beaulieu also claims that his plea is inaccurate because DNA evidence was never submitted to the district court. But Beaulieu cites no legal authority for the proposition that the state had to prove its case by physical evidence if it proceeded to trial. In fact, Beaulieu conceded, in his plea colloquy, that the state's case turned on testimonial evidence.

2. Voluntary and intelligent

Beaulieu also argues that his plea was involuntary and unintelligent because his attorney misrepresented the prison time he faced if he proceeded to trial. But the record contradicts this assertion. Beaulieu first argues that his attorney guaranteed him a 40-year sentence if convicted at trial. The postconviction court declined to find that Beaulieu's attorney made this statement. And there is nothing in the record before us to support Beaulieu's allegation. Beaulieu also argues that his attorney never informed him that he could serve up to 180 months in prison if convicted. But, at his plea hearing,

Beaulieu testified that if he were to be found guilty at trial, he could be sentenced to 150-180 months in prison.

Beaulieu also contends that his plea is invalid because he was never formally charged with third-degree criminal sexual conduct. But the record indicates that Beaulieu was properly charged by criminal complaint and that he subsequently entered into a plea agreement to plead to a less serious offense.

Finally, Beaulieu argues that he did not understand the charges that he faced. But at his plea hearing, Beaulieu was present when each term of the plea agreement was recited on the record. He replied, "Guilty" when each charge was announced and testified that he understood the agreement and had had enough time to discuss it with his attorney. There is no indication in this record that Beaulieu did not understand the charges to which he pleaded guilty.

We conclude that Beaulieu's plea was accurate, voluntary, and intelligent. Because Beaulieu's assertions are without factual support in the record, the postconviction court did not abuse its discretion by denying, without a hearing, Beaulieu's motion to withdraw his plea.

II.

Beaulieu raises several issues in his pro se supplemental brief, many of which are duplicative of arguments that we have already addressed. We address the remaining three issues here.

First, Beaulieu challenges the validity of his sentence, arguing that his presence was required at the imposition and execution of his sentence in 1993. A defendant must

be present at trial-stage sentencing. Minn. R. Crim. P. 26.03, subd. 1(1); Minn. R. Crim. P. 27.03, subd. 2(A); *see also* Minn. R. Crim. P. 26.03, subd. 1(3) (prohibiting a defendant's waiver of presence at felony sentencing). The sentencing-presence requirement applies to the "*original* sentencing hearing, and not modifications to a sentence." *State v. Calmes*, 632 N.W.2d 641, 650 (Minn. 2001) (construing rule 27.03); *see* Minn. R. Crim. P. 26.03, subd. 1(1) (governing trial-stage proceedings). Modifications to a sentence arising from probation revocation are governed by rule 27.04, which provides that a district court may "impose and execute a sentence" upon a finding of a violation of probation. Minn. R. Crim. P. 27.04, subd. 3(2)(b)(iii).

Beaulieu was present when he was sentenced in 1990. At this proceeding, the district court accepted Beaulieu's plea, adjudged him convicted of each offense to which he pleaded guilty, and imposed the following sentence: probation, which included one year in county jail, and a stay of imposition of sentence for each conviction. Three years later, in 1993, the district court vacated the stay of imposition that was granted, and imposed and executed a sentence for each of the three convictions. The record indicates, and the postconviction court properly determined, that Beaulieu waived his right to be present when the district court vacated the stay. Moreover, Beaulieu requested that the sentences run concurrently with his current sentence, and the district court complied with that request. We discern nothing to prohibit a defendant from waiving his right to be present when a court imposes and executes a sentence upon the revocation of probation. *See State v. Vieburg*, 404 N.W.2d 312, 315 (Minn. App. 1987) (noting that rule 27.04 permits a defendant's waiver of hearing).

Second, Beaulieu argues that his conviction is void under Minn. R. Civ. P. 60.02(d). The postconviction court determined that this civil rule has no application to criminal convictions. We agree.

Finally, Beaulieu contends that he has been denied review, arguing that he has had neither appellate nor postconviction review of his conviction. But this court, as well as the postconviction court, reviewed the merits of each of Beaulieu's postconviction claims and determined that none warrants relief.

Affirmed.