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STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2158

John Gerald Motyl, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed December 23, 2008
Reversed and remanded
Halbrooks, Judge

Anoka County District Court
File No. KX-00-5318

Mary M. McMahon, Special Assistant State Public Defender, McMahon & Associates Criminal Defense, Ltd., 670 Commerce Drive, Suite 110, Woodbury, MN 55125 (for appellant)

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101; and

Robert M.A. Johnson, Anoka County Attorney, Robert D. Goodell, Assistant County Attorney, Anoka County Government Center, 2100 Third Avenue, Suite 720, Anoka, MN 55303 (for respondent)

Considered and decided by Schellhas, Presiding Judge; Halbrooks, Judge; and Harten, Judge.[*]

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

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant challenges the district court's denial of his petition for postconviction relief on the ground that his appellate counsel was ineffective in not challenging the imposition of a five-year conditional-release term. The district court based its denial on its determination that appellant failed to meet his burden to establish that his appellate counsel was ineffective and because he waived his right to have the matter heard by failing to raise it on direct appeal. Because we conclude that *Knaffla* does not bar review in this case and because the record before us does not contain sufficient findings to allow this court to determine whether or not appellant was afforded effective assistance of appellate counsel, we reverse and remand.

FACTS

In August 1998, appellant Jonathan Gerald Motyl pleaded guilty pursuant to a plea agreement to two counts of first-degree criminal sexual conduct in violation of Minn. Stat. § 609.342 (1996).[1] As part of the plea agreement, appellant was sentenced as an extended-jurisdiction juvenile (EJJ) offender and received two stayed 129-month sentences to be served consecutively.

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[1] We have used "John" in the caption for this case because the district court order denying the petition for postconviction relief uses "John" in the caption. But based on our review of this matter, we believe that appellant's first name is "Jonathan." Appellant's first name appears in various documents in the district court file as "John," "Jonathan," and "Jonathon." But his previous appeal is captioned with the first name of "Jonathan," and the Minnesota Department of Corrections website lists appellant's first name as "Jonathan." Finally, and most importantly, appellant signed his name as "Jonathan." Accordingly, we refer to appellant as Jonathan.

In January 2000, appellant used alcohol in violation of his probation. The court continued his probationary status and ordered him to complete sex-offender treatment. On June 22, 2000, after finding that appellant had failed to complete a halfway-house placement, the district court revoked appellant's EJJ status and placed him on adult probation for 30 years with the 129-month sentences stayed. In September 2002, due to additional probation violations, the district court executed one of appellant's 129-month sentences, stayed the other 129-month sentence, and continued the original 30-year term of probation. One month later, the district court modified appellant's original sentence to include a five-year conditional-release period as required by Minn. Stat. § 609.346, subd. 5(a) (1996).

Appellant challenged the district court's order denying him jail credit for the time he spent in the Long Term Sex Offender Program. *State v. Motyl*, No. CX-02-2153, 2003 WL 21321823, at *1 (Minn. App. June 10, 2003). The Minnesota Sentencing Guidelines state that "[j]ail credit shall reflect time spent in confinement as a condition of a stayed sentence when the stay is later revoked and the offender is committed to the custody of the Commissioner of Corrections. Such credit is limited to time spent in jails, workhouses, and regional correctional facilities." Minn. Sent. Guidelines III.C.3. The comments to this guideline explain that "[c]redit should not be extended for time spent in residential treatment facilities." *Id.* cmt. III.C.04; *see also State v. Peterson*, 359 N.W.2d 708, 710 (Minn. App. 1984) (holding that appellant, who received treatment in a secure state hospital, was not entitled to jail credit), *review denied* (Minn. Mar. 13, 1985). The offender has the burden to show that the sex-offender placement is a jail, workhouse,

regional correctional facility, or the equivalent. *See State v. Willis*, 376 N.W.2d 427, 428 n.1 (Minn. 1985) ("[T]he defendant carries the burden of establishing that he is entitled to jail credit for detention for any specific period of time."). Because the district court did not make any findings as to whether appellant met his burden, we reversed and remanded for specific findings on whether the "Anoka County Juvenile Center Secure Long-Term Sex Offender Treatment Program qualifies as a jail, workhouse, or regional correctional facility, or the equivalent." *Motyl*, 2003 WL 21321823, at *2.

In 2007, appellant petitioned for postconviction relief, arguing that his appellate counsel was ineffective for not challenging the addition of the five-year conditional-release period. The district court denied appellant's petition on the grounds that the issue was barred by *State v. Knaffla*, 309 Minn. 246, 243 N.W.2d 737 (1976), and because appellant could not satisfy either prong of the *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064 (1984), ineffective-assistance-of-counsel test. This appeal follows.

D E C I S I O N

I.

As an initial matter, in denying appellant's petition for postconviction relief, the district court found that the petition was barred by *Knaffla*. We review a denial of postconviction relief based on the *Knaffla* procedural bar for an abuse of discretion. *Quick v. State*, 692 N.W.2d 438, 439 (Minn. 2005). Under *Knaffla*, "where *direct* appeal has once been taken, all matters raised therein, and all claims known but not raised, will

not be considered upon a subsequent petition for postconviction relief." 309 Minn. at 252, 243 N.W.2d at 741 (emphasis added).

Here, appellant never filed a direct appeal. Appellant's prior challenge was in response to the district court's order denying him jail credit after his probation was revoked. *Motyl*, 2003 WL 21321823, at *1. Because appellant has not filed a direct appeal, *Knaffla* is inapplicable. Accordingly, the district court abused its discretion when it denied appellant's petition for postconviction relief based on the *Knaffla* procedural bar.

II.

The district court also denied appellant's petition for postconviction relief on the ground that appellant had not met either prong of the *Strickland* ineffective-assistance-of-counsel test when he argued that his appellate counsel should have challenged the addition of the five-year conditional-release period. A postconviction decision regarding a claim of ineffective assistance of counsel involves mixed questions of fact and law, which this court reviews de novo. *Opsahl v. State*, 677 N.W.2d 414, 420 (Minn. 2004).

Under the Due Process Clause of the Fourteenth Amendment, a criminal defendant has the right to effective assistance of appellate counsel. *Pierson v. State*, 637 N.W.2d 571, 579 (Minn. 2002) (citing *Evitts v. Lucey*, 469 U.S. 387, 396, 105 S. Ct. 830, 836 (1985)); *Swenson v. State*, 426 N.W.2d 237, 239 (Minn. App. 1988). The standard for an ineffective-assistance-of-appellate-counsel claim is the two-prong test from *Strickland*. *Swenson*, 426 N.W.2d at 239–40. Under *Strickland*, a claimant must show that his counsel's performance "fell below an objective standard of reasonableness" and "that

there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." 466 U.S. at 687–88, 694, 104 S. Ct. at 2064, 2068.

An objective standard of reasonableness is met "when [an attorney] provides his client with the representation of an attorney exercising the customary skills and diligence that a reasonably competent attorney would perform under the circumstances." *Pierson*, 637 N.W.2d at 579 (quoting *State v. Doppler*, 590 N.W.2d 627, 633 (Minn. 1999)). Appellant contends that his appellate counsel was ineffective because he did not have notice of the additional five-year conditional-release period when he pleaded guilty, that this additional conditional-release period violated his plea agreement, and that he should be allowed to either withdraw his guilty plea or have his sentence altered. Minnesota law provides that every person sentenced to prison for a conviction of first-degree criminal sexual conduct must be sentenced to a conditional-release period after the person is released from incarceration. Minn. Stat. § 609.346, subd. 5(a). The mandatory conditional-release period is five years for a first-time sex offender. *Id.*

"[W]hen a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled." *State v. Brown*, 606 N.W.2d 670, 674 (Minn. 2000) (alteration in original) (quoting *Santobello v. New York,* 404 U.S. 257, 262, 92 S. Ct. 495, 499 (1971)); *see also State v. Wukawitz*, 662 N.W.2d 517, 522 (Minn. 2003); *State v. Jumping Eagle*, 620 N.W.2d 42, 43 (Minn. 2000). "Allowing the government to breach a promise that induced a guilty plea violates due process." *Brown*, 606 N.W.2d at 674

(quotation omitted). Only when a defendant can show that his plea agreement has been breached will he be afforded relief. *Id.* Determining the terms of a plea agreement is a question of fact for the district court, but issues of interpreting and enforcing the plea agreement are questions of law. *Id.*

If a defendant can show that he had no notice of the imposition of a conditional-release period and that the addition of this period violates a term of his plea agreement that induced him to plead guilty, the remedy is either withdrawal of the guilty plea or modification of the conditional-release period to fit within the plea agreement. *Wukawitz*, 662 N.W.2d at 528–29. If the district court finds that the state will be unduly prejudiced by the withdrawal of the guilty plea, the district court has the discretion to shorten the length of the conditional-release period so as to fit within the length of the plea agreement. *Id.* But if there is no undue prejudice, the defendant should be allowed to withdraw his guilty plea. *Id.* In *Wukawitz*, the Minnesota Supreme Court remanded to the district court so that the district court could make findings as to the issue of prejudice to the state. *Id.* at 529.

Here, the record does not provide an adequate basis for appellate review of whether appellant was afforded the effective assistance of appellate counsel. "It is not within the province of [appellate courts] to determine issues of fact on appeal." *Kucera v. Kucera*, 275 Minn. 252, 254, 146 N.W.2d 181, 183 (1966). Therefore, we direct the district court on remand to make the following findings: (1) whether appellant had notice of the conditional-release period when he pleaded guilty; (2) the terms of the plea agreement; (3) whether the two 129-month sentences or the opportunity for EJJ status

induced appellant to plead guilty; and (4) if appellant had no notice of the conditional-release period and it violates the terms of appellant's plea agreement, whether the state will be prejudiced by allowing appellant to withdraw his guilty plea. On remand, the district court has discretion to reopen the record if it determines that additional evidence would assist it in these determinations.

Reversed and remanded.