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STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0001

Dominique Salatheia Williams, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed August 27, 2018
Affirmed
Bjorkman, Judge

Washington County District Court
File No. 82-CR-14-4176

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

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

Pete Orput, Washington County Attorney, Nicholas A. Hydukovich, Stillwater, Minnesota (for respondent)

Considered and decided by Reilly, Presiding Judge; Bjorkman, Judge; and Klaphake, 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UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant challenges the summary denial of his postconviction petition seeking plea withdrawal based on ineffective assistance of counsel. We affirm.

FACTS

Appellant Dominique Salatheia Williams was charged with two counts of first-degree criminal sexual conduct for multiple sexual assaults perpetrated on an eight-year-old girl. Williams reached an agreement with the state under which he would plead guilty to one count of first-degree criminal sexual conduct in exchange for dismissal of the second count. The parties agreed that Williams could argue for no incarceration and the state could argue for imprisonment of up to 172 months.[1] Williams's signed plea petition states that no one, including his attorney, made promises or threats to induce his guilty plea.

At his plea hearing, Williams initially repudiated the plea agreement, stating to the district court, "Your Honor, I'm going to have to step out of this. I'm not guilty. I'm sorry. I can't do it. . . . I would love to take this deal, but I'm innocent and I did not commit this crime." The prosecutor noted that the record supported three grounds for an aggravated 288-month sentence, and conviction of both offenses would subject Williams to conditional release for the rest of his life. Williams then asked to speak with his attorney and the district court called a recess.

[1] The presumptive sentencing range for Williams's offense is 144 to 187 months in prison. Minn. Sent. Guidelines 4.B. (2014).

When the plea hearing resumed, Williams told the district court that he was guilty and wanted to proceed with the plea agreement. The district court questioned Williams, reminding him that the plea was a big decision that must "be the one that's what [he] want[s] to do." Williams assured the district court that he wanted to plead guilty and said he was sure of the decision. Williams also testified that he had sufficient time to talk with his attorney, was fully advised about his case, and was satisfied with his attorney's representation. Williams answered "no" when asked whether anyone "made any promises or threats in order to get [him] to plead guilty." He also indicated that his plea was voluntary and that he was guilty. He further acknowledged that there was no specific agreement as to sentencing and the district court could sentence him to up to 172 months in prison.

At sentencing, Williams moved for a downward dispositional departure. The district court denied the motion, imposing an executed 172-month sentence. Williams did not file a direct appeal.

On July 12, 2017, one day before expiration of the statutory period for seeking postconviction relief, Williams filed a petition seeking to withdraw his guilty plea based on ineffective assistance of counsel. The petition asserts that Williams's attorney misrepresented the terms of the plea agreement by promising that he "would be placed on probation if [he] pleaded guilty."

On September 8, Williams filed a supporting affidavit. The affidavit alleges that during the recess of the plea hearing, Williams's attorney promised that he "would be going on probation" and told him that he could not win at trial. And the affidavit avers that

Williams is not guilty and would not have pleaded guilty but for his attorney's promise of a stayed sentence. The postconviction court[2] denied the petition without an evidentiary hearing. Williams appeals.

DECISION

This court reviews a postconviction court's denial of a petition for an abuse of discretion, analyzing legal issues de novo and factual findings to determine if there is sufficient evidentiary support in the record. *Pearson v. State*, 891 N.W.2d 590, 596 (Minn. 2017). The petitioner has the burden of producing facts that entitle him to relief. *Carridine v. State*, 867 N.W.2d 488, 492 (Minn. 2015).

I. The postconviction court properly considered Williams's affidavit.

Minn. Stat. § 590.01, subd. 4 (2016), requires that petitions for postconviction relief be filed within two years of sentencing or disposition of a direct appeal. Because Williams did not timely file the affidavit establishing the factual basis for his petition, the state urges us not to consider it and to conclude the petition lacks factual support. But the postconviction statute contemplates that petitions may be amended after filing. Minn. Stat. § 590.03 (2016). And the statute further directs district courts to "liberally construe the petition and any amendments thereto" and "waive any irregularities or defects in form." *Id*. That is what the postconviction court did here. The order denying the petition shows the court considered the allegations of the petition as well as information contained only in Williams's affidavit, including the averment that counsel promised a sentence limited to a

[2] The same judge presided at Williams's initial criminal and postconviction proceedings.

"365-day local incarceration." We discern no error by the postconviction court and consider Williams's affidavit to be within the scope of our review.

II. Summary denial of Williams's petition was proper because the record conclusively shows that he is entitled to no relief on his ineffective-assistance-of-counsel claim.

A postconviction court must hold an evidentiary hearing unless "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 (2016); *Bobo v. State*, 820 N.W.2d 511, 516 (Minn. 2012) (stating an evidentiary hearing is not required "when the petitioner alleges facts that, if true, are legally insufficient to entitle him to the requested relief"). In postconviction cases based on ineffective assistance of counsel, petitioners are only entitled to an evidentiary hearing if the petition "alleges facts . . . that, if proved, would show both that counsel's performance was not objectively reasonable and, but for counsel's errors, the result of the proceeding would have been different." *Evans v. State*, 788 N.W.2d 38, 44-45 (Minn. 2010) (quotation omitted). If one ground is determinative, the appellate court need not address the other. *State v. Vang*, 847 N.W.2d 248, 266 (Minn. 2014).

Williams asserts that his petition establishes that his attorney's "affirmative misadvice" about the certainty of a probationary sentence was objectively unreasonable. And he argues that the postconviction court improperly made a determination of his credibility in summarily rejecting his claim. We disagree.

First, Williams's allegations regarding purported promises made by defense counsel are defeated by representations he made in his signed plea petition and his testimony under oath at the plea hearing. His plea petition recites that "[n]o one—including my attorney

. . . has made any promises to me . . . in order to obtain a plea of guilty from me." And the petition indicates that the state was "seeking 172 months." During the plea hearing, Williams responded "yes" when asked to affirm that there was no "specific sentencing agreement with the state," and that the sentencing decision was up to the judge and "could include up to 172 months to serve." In *State v. Trott*, the supreme court considered similar circumstances, rejecting the defendant's claim that he should be permitted to withdraw his guilty plea because defense counsel made an "unqualified promise of probation." 338 N.W.2d 248, 252 (Minn. 1983). The supreme court relied, in part, on the fact that any such promise was "negated" by the defendant's plea petition and by statements he made at his plea hearing. *Id.*; *see Coolen v. State*, 288 Minn. 44, 50-51, 179 N.W.2d 81, 86 (1970) (rejecting postconviction petitioner's plea-withdrawal request that was based on an alleged promise of a lenient sentence, that "directly contradict[ed] his own testimony given under oath at the time of his guilty plea"); *Anderson v. State*, 746 N.W.2d 901, 907 (Minn. App. 2008) (rejecting postconviction petitioner's argument that attorney's failure to advise the defendant of sentencing ramifications demonstrated ineffective assistance of counsel when the petitioner's claim was contradicted by her plea hearing testimony), *overruled on other grounds by Wheeler v. State*, 909 N.W.2d 558 (Minn. 2018).

As in *Trott*, Williams's postconviction averments are inconsistent with both the statements he made in his plea petition and his sworn testimony. We are satisfied that the postconviction court properly executed its duty to ensure the validity of Williams's guilty plea in the first instance, including closely questioning Williams about his intention to plead guilty and the fact no one made any promises to induce his plea. *Cf. State v. Healy*,

521 N.W.2d 47, 50 (Minn. App. 1994) (recognizing that making a statement under oath means "that the person consciously affirms the truth of the testimony he gives"), *review denied* (Minn. Oct. 27, 1994). In fact, Williams's plea was subject to keener scrutiny because of his initial expressed intent to repudiate the plea agreement. After Williams reaffirmed his desire to plead guilty, the district court again verified that Williams wanted to plead guilty, that it was his decision to do so, and that he made the decision voluntarily. Under defense counsel questioning, Williams agreed that nobody "made any promises or threats in order to get [him] to plead guilty," that he was pleading guilty voluntarily and because he was guilty, and that he was satisfied with defense counsel's representation. Williams also acknowledged that his sentence could include "no more additional time" or "up to 172 months to serve, or anything in between." In short, Williams's plea petition and testimony negate his new allegation that he pleaded guilty because his lawyer promised a probationary sentence.

Second, we are convinced that summary denial of Williams's petition does not run afoul of the principle that postconviction courts may not "make credibility determinations without first holding an evidentiary hearing." *Andersen v. State*, 913 N.W.2d 417, 424 (Minn. 2018). *Andersen* involved affidavits of two witnesses—neither of whom was the defendant—who asserted facts that contradicted evidence presented at trial. *Id.* at 422. Labelling the affidavits as "inherently unreliable" and "inherently dubious," the postconviction court, without a hearing, denied Andersen's petition alleging newly discovered evidence. *Id.* Our supreme court reversed, citing precedent dating back to

2007[3] and chastising the postconviction court for determining witness credibility without first holding an evidentiary hearing. *Id*. at 423. On remand, the supreme court directed the postconviction court to assume that the facts alleged in the affidavits were true and view them in the light most favorable to the petitioner before determining whether an evidentiary hearing was necessary. *Id.* at 424.

But *Andersen* and the cases it references involve only newly discovered evidence and witness recantation—factual scenarios not present here. Williams's petition did not require the postconviction court to assess the credibility of a third-party witness or new evidence. Rather, the petition challenges only Williams's sworn testimony, which the postconviction court found credible following a searching inquiry at the plea hearing. Because Williams was accorded all of the protections to ensure that his guilty plea was, in all respects, voluntary, the postconviction court was not left to speculate about whether Williams pleaded guilty because of a promise made by his lawyer. *See Caldwell*, 853 N.W.2d at 773 (clarifying that a postconviction court may deny an evidentiary hearing on other grounds, but "it is impermissible for a court to deny an evidentiary hearing in a witness-recantation case based on nothing more than its own speculation about whether the recantation is credible").

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[3] *Andersen* cites *Henderson v. State*, 906 N.W.2d 501, 507 (Minn. 2018); *Caldwell v. State*, 853 N.W.2d 766, 772-73 (Minn. 2014); *Bobo v. State*, 820 N.W.2d 511, 517 n.4 (Minn. 2012); *Ferguson v. State*, 779 N.W.2d 555, 560 (Minn. 2010); *State v. Turnage*, 729 N.W.2d 593, 597-98 (Minn. 2007); *Wilson v. State*, 726 N.W.2d 103, 107 (Minn. 2007). 913 N.W.2d at 423, 423 n.5.

On this record, we discern no legal error by the postconviction court in rejecting Williams's allegations that his lawyer made promises or misrepresentations that induced his guilty plea. Accordingly, Williams has not overcome the "strong presumption that counsel's performance was reasonable." *Schleicher v. State*, 718 N.W.2d 440, 447 (Minn. 2006) (quotation omitted). We conclude that the postconviction court did not abuse its discretion by denying Williams's petition alleging ineffective assistance of counsel, which was limited to a direct attack on his own sworn testimony. To rule otherwise would unduly burden postconviction courts and jeopardize the finality of convictions following guilty pleas. *See State v. Miller*, 849 N.W.2d 94, 97 (Minn. App. 2014) (stating that following plea acceptance and entry of conviction, public policy favors "the finality of judgments").

Affirmed.