STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0197

Dylan Matthew Deling, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed October 4, 2021
Affirmed
Reilly, Judge

Nicollet County District Court
File No. 52-CR-17-513

Cathryn Middlebrook, Chief Appellate Public Defender, Christopher L. Mishek, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Michelle M. Zehnder Fischer, Nicollet County Attorney, Megan E. Gaudette Coryell, Assistant County Attorney, St. Peter, Minnesota (for respondent)

Considered and decided by Jesson, Presiding Judge; Reilly, Judge; and Bratvold, Judge.

NONPRECEDENTIAL OPINION

REILLY, Judge

Appellant challenges the district court's denial of his postconviction petition, arguing that the district court erred by concluding that (1) his guilty plea and certification

hearing waivers were intelligently made, and (2) he received effective assistance of counsel. We affirm.

FACTS

In September 2017, respondent State of Minnesota filed a juvenile delinquency petition charging appellant Dylan Matthew Deling with eight felony counts of possessing pornographic work involving a minor. The petition alleged that in November 2016, the online storage service, Dropbox, sent a "cybertip" to the National Center for Missing and Exploited Children (NCMEC) that one of its users was accessing files containing "suspected videos of apparent child pornography." NCMEC shared the information with the Minnesota Bureau of Criminal Apprehension (the BCA). The BCA reviewed the files and found 293 videos containing child pornography. The BCA traced the Dropbox account to appellant and executed a search warrant at his home. During the search, appellant admitted to a BCA agent that he accessed the Dropbox files and had joined a group chat. Appellant admitted the purpose of the group chat was to "trade" sexual images, including images of "little kids being raped." The BCA found additional pornographic images of minors on appellant's email platform.

Although appellant was a juvenile when he accessed the child pornography, the state moved to certify him for prosecution as an adult. In December 2017, appellant waived his right to a contested certification hearing under a plea agreement. Appellant agreed to plead guilty to two counts of possessing child pornography and the state agreed to recommend a 20-month stayed sentence. The district court determined that appellant properly waived his right to a contested certification hearing. The state then filed an adult criminal

complaint asserting the same crimes alleged in the delinquency petition. Appellant pleaded guilty to two counts of the complaint under the plea agreement.

In March 2018, the district court imposed a stayed sentence and ordered appellant to follow the recommendations of probation. The probation conditions required appellant to: (1) refrain from purchasing or possessing any sexually explicit materials; (2) disclose all computers, internet-capable devices, or other digital storage devices within his possession; and (3) refrain from accessing, creating, maintaining, or viewing personal webpages or social-media accounts on platforms that permit minors to create or maintain personal webpages. The district court remanded appellant into custody at the county jail for 45 days.

Appellant was released from custody in April 2018. In July 2018, about three months after his release from custody, a BCA agent advised appellant's probation officer that appellant continued to have contact with minors that was sexual in nature. Law enforcement again searched appellant's home and found a smartphone with internet access. Appellant acknowledged he was not supposed to have the phone. Appellant also admitted he had accessed social media sites and threatened minors into sending him nude photographs. In August 2018, the state filed a probation violation report asserting that appellant violated the conditions of his probation by possessing sexual images of children.

In February 2019, the U.S. District Attorney for Minnesota filed an indictment charging appellant with the production or attempted production of child pornography, commission of a felony by a registered sex offender, and interstate communication with intent to extort. Appellant agreed to plead guilty to two counts of the federal indictment

and the U.S. Attorney's Office agreed to cap the sentencing recommendation to 40 years. The federal court later sentenced appellant to 35 years in prison.

In August 2019, appellant waived his right to a probation-violation hearing in the state case and admitted that he violated the conditions of his probation by extorting minors for nude photographs. The district court revoked appellant's probation and executed his stayed sentence.

In March 2020, appellant petitioned for postconviction relief. Appellant sought to withdraw both his certification hearing waiver and his guilty plea, claiming that he did not make an intelligent waiver of his rights and received ineffective assistance of counsel. Following an evidentiary hearing, the district court denied appellant's petition. The district court determined that appellant failed to prove that his certification waiver and guilty plea were unintelligent or that appellant received ineffective assistance of counsel.

This appeal follows.

DECISION

Appellant argues the district court erred by denying his postconviction petition. We review a denial of postconviction relief for an abuse of discretion. *Reed v. State*, 793 N.W.2d 725, 729 (Minn. 2010). We review the "[district] 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). We will not reverse a district court's postconviction order "unless the [district] court exercised its discretion in an arbitrary or capricious manner, based its ruling on an erroneous view of the law, or made clearly erroneous factual findings." *Reed*, 793 N.W.2d at 729.

I. Appellant's certification hearing waiver and guilty plea were intelligently made.

Appellant challenges the validity of his certification waiver and guilty plea. "A child may waive the right to a certification hearing if the waiver is made knowingly, voluntarily, and intelligently after the child is fully and effectively informed of the right." *Vang v. State*, 788 N.W.2d 111, 115 (Minn. 2010). Similarly, for a guilty plea to be valid, it must be "accurate, voluntary and intelligent." *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). "If a plea fails to meet any one of these requirements, it is invalid." *State v. Theis*, 742 N.W.2d 643, 650 (Minn. 2007). Appellant bears the burden of showing that a plea is invalid. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). We apply a de novo standard of review when determining the validity of a guilty plea. *Id.*

Appellant challenges only the intelligence requirement of his waiver and plea. This requirement "ensures that a defendant understands the charges against him, the rights he is waiving, and the consequences of his plea." *Id.* at 96. A defendant need not know every consequence of his plea for the plea to be intelligent. *Taylor v. State*, 887 N.W.2d 821, 823 (Minn. 2016). Appellate courts distinguish between the "direct" and "collateral" consequences of a guilty plea. *State v. Ellis-Strong*, 899 N.W.2d 531, 536 (Minn. App. 2017). "Direct consequences are those which flow definitely, immediately, and automatically from the guilty plea," including "the maximum sentence to be imposed." *State v. Crump*, 826 N.W.2d 838, 841-42 (Minn. App. 2013) (quotations omitted), *rev. denied* (Minn. May 21, 2013). Collateral consequences, by contrast, "do not flow definitely, immediately, and automatically from the guilty plea." *Id.* at 842. The

intelligence requirement applies to the direct consequences of a guilty plea, but not to any collateral consequences. *Raleigh*, 778 N.W.2d at 96. The failure to inform a defendant of direct consequences renders a plea unintelligent. *Kaiser v. State*, 641 N.W.2d 900, 903-04, 907 (Minn. 2002). But "a defendant's lack of awareness of a collateral consequence of a guilty plea does not render the guilty plea unintelligent and entitle a defendant to withdraw it." *Taylor*, 887 N.W.2d at 823 (emphasis omitted).

Appellant claims he was not advised that pleading guilty to a child-pornography crime in state court could enhance a subsequent federal conviction. He argues that the since the federal enhancement stemmed from his guilty plea in state court, the district court erred when it determined that the enhancement was a collateral consequence of the guilty plea. We disagree. The potential for a subsequent sentence enhancement if the offender commits a later offense is a collateral consequence to the guilty plea. *Crump*, 826 N.W.2d at 842-43. "[T]he possible effect that appellant's plea has upon a future charge is a collateral . . . consequence," such that "a defendant's ignorance of those consequences does not render the guilty plea unintelligent or invalid." *Id.* Similarly, an intelligently made guilty plea "will not be invalidated simply because a defendant is not informed that if he commits additional crimes in another jurisdiction, that jurisdiction may sentence him as a habitual offender." *State v. Garritsen*, 371 N.W.2d 251, 253 (Minn. App. 1985). Based on caselaw, appellant's sentence enhancement in the federal proceeding was a collateral, rather than direct, consequence of his state conviction.

The evidentiary record also shows that appellant was advised of the consequences of his plea vis-à-vis the potential for a federal prosecution. Counsel asked appellant if he

understood that the plea agreement extended only to the state investigation. Counsel inquired, "So at the time that you offered your waiver of certification, you understood . . . that you could be charged for other crimes. Do you understand that and do you agree with that?" Appellant responded, "Yes." Counsel asked appellant if he could identify anything in the record "that would have indicated that there was a federal indictment for receiving or distributing and receiving child pornography . . . looming" at the time of his waiver and plea. Appellant could not identify any evidence. Appellant also acknowledged that most of the facts in the federal case occurred after he was released from state custody. Appellant was released from custody in April 2018. Counsel inquired, "So approximately 20 days after you were released from jail you started your offenses that led to the federal charges, correct?" Appellant responded, "Yes."

While appellant claims he did not understand the consequences of his waiver and plea, the record shows he understood the charges against him and understood that the plea agreement extended only to the state's investigation. The federal sentencing enhancement arose from crimes appellant committed after his release from state custody. And caselaw is clear that "a warning that the sentences for future convictions after a plea may be enhanced is needless." *Crump*, 826 N.W.2d at 843 (quotation omitted). *Crump* reasoned that such a warning would be premature because the possibility of an enhanced sentence in another case is not automatic, as it is "within the control of the defendant" whether additional charges will occur. *Id.* Ignorance of the collateral consequences of appellant's waiver and plea does not render them unintelligent.

We are also unpersuaded by appellant's reliance on *Padilla v. Kentucky*, 559 U.S. 356 (2010). *Padilla* held that counsel had a duty to inform the defendant that a guilty plea subjected the defendant, a non-citizen, to automatic deportation. 559 U.S. at 369, 374. Appellant claims that in both his case and in *Padilla*, the federal penalties had a "close connection" to the state proceedings and "dire" consequences for the defendant. Appellant claims there was a "close connection between a prior state conviction for child pornography in adult court and an enhanced sentence in a subsequent federal case for child pornography." Appellant also argues the consequences of his prior conviction are dire because he received a much larger federal prison sentence based on the enhancement.

Padilla is easily distinguishable. First, *Padilla* is limited to "the unique nature of deportation" and does not extend to "any of the other myriad consequences of a guilty plea." *Sames v. State*, 805 N.W.2d 565, 569-70 (Minn. App. 2011) (declining to apply *Padilla*'s holding in unlawful-possession case), *rev. denied* (Minn. Dec. 21, 2011). We decline to extend *Padilla*'s holding to a child-pornography case. Second, the consequences of the defendant's guilty plea in *Padilla* were "truly clear." 559 U.S. at 369. In this case, by contrast, appellant's sentencing enhancement for a subsequent crime was not a "truly clear" consequence of his guilty plea. Instead, appellant's own conduct following his release from state custody led to his federal charges and the later enhancement of his federal sentence. *Padilla* is not controlling in this context.

In sum, we determine that the sentencing enhancement in the later federal case was a collateral consequence of appellant's guilty plea. And the record shows that appellant was advised of the potential consequences of his plea. "[I]gnorance of such consequence

does not render the guilty plea that led to the conviction unintelligent or invalid." *Crump*, 826 N.W.2d at 844. Thus, we conclude the district court did not abuse its discretion by denying appellant's postconviction petition on this basis.

II. Appellant received effective assistance of counsel.

Appellant challenges the district court's order rejecting his ineffective-assistance-of-counsel claim. This claim requires appellant to show that: (1) counsel's performance fell below an objective standard of reasonableness; and (2) absent counsel's unreasonable performance, the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668, 687-88, 694 (1984). "We review a district court's application of the *Strickland* test de novo because it involves a mixed question of law and fact." *State v. Mosley*, 895 N.W.2d 585, 591 (Minn. 2017). We consider whether the "[district] court's factual findings . . . are supported in the record, conduct a de novo review of the legal implication of those facts on the ineffective assistance claim, and either affirm the court's decision or conclude that the court abused its discretion because postconviction relief is warranted." *State v. Nicks*, 831 N.W.2d 493, 503-04 (Minn. 2013).

Appellant argues the legal representation he received fell below an objective standard of reasonableness because his attorney failed to advise him of the potential consequences of waiving certification and pleading guilty. "The objective standard of reasonableness is defined as representation by an attorney exercising the customary skills and diligence that a reasonably competent attorney would perform under similar circumstances." *State v. Vang*, 847 N.W.2d 248, 266-67 (Minn. 2014) (quotation omitted).

"[T]here is a strong presumption that counsel's performance was reasonable." *Andersen v. State*, 830 N.W.2d 1, 10 (Minn. 2013).

"In Minnesota, an attorney's representation does not fall below the objective standard of reasonableness . . . if the attorney fails to inform a defendant of the collateral consequences of a guilty plea." *Ellis-Strong*, 899 N.W.2d at 536. Here, the federal government indicted appellant for offenses committed as early as October 2017 and through August 2018. Appellant stipulated to conduct involving at least 13 known victims, which were treated as separate counts. Two of these offenses occurred before sentencing in the state case and the remaining eleven counts occurred after appellant's release from state custody. At the postconviction hearing, appellant could not identify any evidence that federal charges were pending while the state charges were unresolved. And the record shows that defense counsel tried to discover whether there were any other charges pending before the state case was resolved. Defense counsel could not have known at the time of the certification waiver and plea hearing that appellant would commit additional crimes *after* his release from state custody. Appellant has not shown that counsel's performance fell below an objective standard of reasonableness.

On review, we determine that appellant's attorney's representation did not fall below an objective standard of reasonableness. Based on this determination, we need not consider whether appellant suffered prejudice. We therefore conclude that the district court did not abuse its discretion by denying appellant's petition for postconviction relief.

Affirmed.