

*This opinion is nonprecedential except as provided by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
A21-0575**

Jamia Lee Griffith, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed November 22, 2021
Affirmed
Florey, Judge**

Scott County District Court
File No. 70-CR-18-20219

Cathryn Middlebrook, Chief Appellate Public Defender, Michael McLaughlin, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Ronald Hocesvar, Scott County Attorney, Todd P. Zettler, Assistant County Attorney, Shakopee, Minnesota (for respondent)

Considered and decided by Florey, Presiding Judge; Connolly, Judge; and Reyes, Judge.

NONPRECEDENTIAL OPINION

FLOREY, Judge

In this appeal from an order denying postconviction relief, appellant argues that the district court erred by denying her petition for postconviction relief seeking to withdraw her guilty plea to felony fifth-degree controlled-substance crime (1) because her plea was

invalid due to counsel's ineffective assistance in failing to investigate and advise her that a probation violation in a separate case would prevent her from fulfilling her sentence and (2) by finding that she was not prejudiced by ineffective assistance of counsel when the district court rejected her sworn factual assertions and resolved disputed factual issues against her without conducting an evidentiary hearing. We affirm.

FACTS

In December 2018, appellant Jamia Lea Griffith pleaded guilty to felony possession of a controlled substance in Scott County. Prior to Griffith's plea, her attorney recited on the record the agreement Griffith had made with the state, which did not contain a condition relating to substance-abuse treatment. After Griffith pleaded guilty, she told the district court that she intended to enter treatment following her jail time. The district court then imposed a stay of imposition per the parties' agreement and ordered Griffith to "get a chemical dependency evaluation" and successfully complete all recommendations, including any treatment recommendations. After Griffith had pleaded guilty, her attorney informed the district court that she had custody holds for Washington and Wright Counties. The district court told Griffith she needed "to set up probation," and explained the following:

Within 24 hours of your release from your last hold, you got to get yourself to Scott County and check in with probation. Because I need them to be able to have the releases that you need to sign so I can get information about you and how you're doing in treatment.

At the time of her plea, Griffith was on probation for an unrelated case in Washington County. As a result of her plea in Scott County, Griffith was found in violation of probation in that case and sentenced to serve 365 days in jail.

In July 2019, probation filed a probation-violation report alleging that Griffith had failed to report to probation in Scott County and failed to complete the intake process. Per the district court's order, probation completed an intake on Griffith, and then she was released from jail. Probation filed a second violation report in December 2019. The report alleged that Griffith failed to follow through with rule 25 treatment recommendations, to remain in contact with probation, to follow the instructions of probation, to refrain from using non-prescribed drugs, to remain law abiding, and to report police contacts. At a hearing, Griffith admitted to the violations, and the district court imposed the parties' "agreed disposition," which included revocation of her stay of imposition. The court then stayed execution of her sentence, continued her on probation, and imposed jail time upon completion of which she would be discharged from probation.

In December 2020, Griffith filed a postconviction petition seeking to withdraw her guilty plea based on ineffective assistance of counsel. Griffith alleged that her attorney failed to investigate and advise her that pleading guilty in Scott County would cause her to violate her probation in Washington County. Griffith further alleged that she would not have pleaded guilty in Scott County had she known of the consequences and that one of the reasons she pleaded guilty was for the opportunity to attend treatment, which she was unable to do because of the Washington County probation-violation sentence. The district court denied Griffith's petition. This appeal follows.

DECISION

I. The district court did not abuse its discretion by dismissing Griffith's postconviction petition alleging ineffective assistance of counsel.

Griffith argues that her attorney provided ineffective assistance by unreasonably failing to investigate and advise her of whether her probation violation in Washington County “would prevent her from fulfilling the direct sentencing consequences of the present case.” She asserts that she would not have pleaded guilty if she knew a guilty plea would constitute a probation violation and result in jail time, preventing her from entering treatment. Therefore, Griffith contends that the postconviction court erred by finding she was not prejudiced by ineffective assistance of counsel.

[W]hen we review a postconviction court's denial of relief on a claim of ineffective assistance of counsel, we will consider the court's factual findings that 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).

“A criminal defendant has no absolute right to withdraw a guilty plea once entered.” *Perkins v. State*, 559 N.W.2d 678, 685 (Minn. 1997). But a district court must allow a defendant to withdraw a guilty plea if “withdrawal is necessary to correct a manifest injustice.” Minn. R. Crim. P. 15.05, subd. 1. Because ineffective assistance of counsel may render a plea constitutionally invalid, *Sames*, 805 N.W.2d at 567, and “[a] manifest injustice exists if a guilty plea is not valid,” *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010), a guilty plea resulting from ineffective assistance of counsel may be invalid.

To show ineffective assistance of counsel in the context of a guilty plea, the appellant must demonstrate (1) that counsel’s performance fell below an objective standard of reasonableness and (2) that there is a reasonable probability that but for counsel’s deficient performance, appellant would not have pled guilty. *State v. Ellis-Strong*, 899 N.W.2d 531, 536 (Minn. App. 2017) (quotations omitted); see *Strickland v. Washington*, 466 U.S. 668, 688 (1984). “In considering ineffective-assistance-of-counsel claims, appellate courts make a distinction between a ‘direct’ and ‘collateral’ consequence stemming from a guilty plea.” *Id.* An attorney’s performance is constitutionally deficient when the attorney fails to advise a defendant of “direct consequences” of a guilty plea. *Leake v. State*, 737 N.W.2d 531, 540-41 (Minn. 2007). “Direct consequences are definite, immediate, and automatic and are punitive and a part of a defendant’s sentence.” *State v. Brown*, 896 N.W.2d 557, 561 (Minn. App. 2017) (citations omitted). “[A] potential probation-violation penalty in an unrelated case is not a direct consequence of a defendant’s guilty plea and conviction.” *State v. Brown*, 896 N.W.2d 557, 562 (Minn. App. 2017).

The question on the first prong is whether appellant’s attorney’s advice was within the range of competence demanded of attorneys in criminal cases. *Hill v. Lockhart*, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985). Griffith argues that the “collateral consequences” doctrine only applies to an attorney’s failure to advise, not to other types of ineffective-assistance claims. Accordingly, Griffith argues that because her claim “[does] not depend solely on a failure to advise,” but also on a claim that counsel failed to investigate, the “collateral consequences” doctrine does not “categorically deny” her claim. Griffith cites to *Ellis-Strong* in support of this argument. In that case, this court held that

affirmative misadvice on a collateral consequence of a conviction renders a guilty plea constitutionally invalid and manifestly unjust when such misadvice amounts to ineffective assistance of counsel. 899 N.W.2d 531 (Minn. App. 2017) (emphasis added). There, counsel misinformed appellant of the length of his registration period as a predatory offender. *Id.* at 539. This court determined that counsel’s affirmative misadvice was objectively unreasonable, and thus, outside of the range of competence demanded of criminal counsel. *Id.*

Unlike the appellant in *Ellis-Strong*, who was affirmatively misinformed about the consequences of pleading guilty by counsel, Griffith only alleges her attorney failed to investigate and advise her of the consequences her guilty plea could have in Washington County. Because nothing in the record shows that counsel incorrectly informed Griffith, counsel’s performance does not constitute affirmative misadvice and did not fall below objective standards of reasonableness. Thus, it is not a valid basis for Griffith to withdraw her guilty plea.

Griffith next argues that the consequence she faced in Washington County was a direct, not collateral, consequence. However, in *State v. Brown*, this court held a potential probation consequence of a guilty plea in an unrelated case is collateral. 896 N.W.2d at 561. There, appellant claimed that the possible probation-violation penalty—a life sentence in another state—was a direct consequence of his guilty plea. *Id.* However, this court explained that because the potential penalty did not flow “definitely immediately, and automatically” from appellant’s guilty plea, the consequence was collateral. *Id.*

Because the appellant did not raise a claim for ineffective assistance of counsel, this court's review was limited to whether the plea was rendered unintelligent. *Id.*

Like the appellant in *Brown*, Griffith's sanction in Washington County did not flow "definitely immediately, and automatically" from her guilty plea and was a collateral consequence. As such, Griffith's attorney's failure to investigate and advise her of the potential consequences of her guilty plea in a different case are not constitutionally deficient and did not fall below an objectively reasonable performance. *Ellis-Strong*, 899 N.W.2d at 536; *see also Taylor v. State*, 887 N.W.2d 821, 823 (Minn. 2016) (explaining that "[a] defendant's lack of awareness of a *collateral* consequence of a guilty plea does entitle a defendant to withdraw it").

Furthermore, review of the plea transcript does not comport with Griffith's claim that the district court promised her that she could participate in treatment because of the plea or that treatment was a condition of her probation. Rather, it was only after Griffith pleaded guilty that she told the district court that she planned to go to treatment. *See Mesiter v. State*, No. A20-0627 (Minn. App. Jan. 19, 2021)¹ (affirming district court's denial of postconviction plea withdrawal where there was "nothing in the record or plea agreement to show that the state told appellant that he would be eligible for early-release programming such that his guilty plea was induced by any such promise"). Also, while Griffith alleges that she was unable to fulfill the treatment condition of her sentence in Scott County, this misrepresents the record. Griffith was ordered to check in with Scott

¹ We cite to this nonprecedential opinion for its persuasive value. Minn. R. Civ. App. P. 136.01, subd. 1(c).

County probation within 24 hours of her release from her last hold. Therefore, her seven-month jail sentence in Washington County did not prevent her from complying with the conditions of her Scott County probation because she was required to check in with Scott County within 24 hours of her release from Washington County, which she failed to do. In fact, probation did not file the second violation report until approximately six months after Griffith's release from Washington County jail and four months after the first violation report was filed, giving her ample time to have complied with her Scott County probationary conditions.

Because Griffith has not shown that her counsel's performance fell below an objective standard of reasonableness, we determine that the district court did not abuse its discretion by denying her petition for postconviction relief. *Leake v. State*, 767 N.W.2d 5, 10 (Minn. 2009) (explaining that if appellant fails to meet one prong of the analysis for ineffective assistance of counsel, the other need not be analyzed).

II. The district court did not abuse its discretion by not conducting an evidentiary hearing.

Griffith next argues that the district court erred by failing to accept her allegations as true and improperly making credibility determinations against her when denying her petition without a hearing. Specifically, she points to her affidavit in which she states that she "thought that [she] would be released and start treatment soon after [her] guilty plea," and that she "was not aware that [her] plea in Scott County would affect [her] probation status in the Washington County case."

“In determining whether an evidentiary hearing is required, a postconviction court considers the facts alleged in the petition as true and construes them in the light most favorable to the petitioner.” *Brown v. State*, 895 N.W.2d 612, 618 (Minn. 2017). “An evidentiary hearing is not required unless the petitioner alleges such facts which, if proved by a fair preponderance of the evidence, would entitle him or her to the requested relief.” *Id.* We review the district court’s denial of a petition without an evidentiary hearing for an abuse of discretion. *Id.* at 617.

Here, the district court found that

[N]othing in the plea petition or discussions with the Court prior to [Griffith’s] plea suggests [Griffith] pled guilty because she believed she would enter treatment. Instead, [Griffith] likely knew of the consequences she faced in Washington County for pleading guilty in Scott County. When the bail study was completed in 2018, [Griffith] had a bail score of 61—a high score. *See State v. Wiley*, 420 N.W.2d 234, 237 (Minn. Ct. App. 1988) (finding defendant “with five criminal history points, has had extensive exposure to the criminal justice system, a factor which may be considered in determining whether a guilty plea is knowing and intelligent.”). This undercuts her assertion she would have pled “not guilty” but for her counsel’s failure to advise of her the possible Washington County consequences.

Our review of the record comports with the district court’s findings. Further, while Griffith argues that an evidentiary hearing should have been held based on the second prong of the *Ellis-Strong* analysis—that there is a reasonable probability that but for counsel’s deficient performance, she would not have pled guilty—the district court was only required to find that she failed to prove one of the prongs in order to deny her claim of ineffective assistance of counsel. *See Ellis-Strong*, 899 N.W.2d at 536. Because we determine that the district

court did not abuse its discretion in finding that Griffith failed to show her attorney's performance fell below an objective standard of reasonableness, we also determine that the postconviction court did not abuse its discretion when it summarily denied Griffith's postconviction petition and declined to hold an evidentiary hearing. *Id.*

Affirmed.