

*This opinion is nonprecedential except as provided by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
A21-0614**

Hassan Isak Omar, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

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

Hennepin County District Court
File No. 27-CR-16-31123

Cathryn Middlebrook, Chief Appellate Public Defender, Davi E. Axelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Michael O. Freeman, Hennepin County Attorney, Kelly O'Neill Moller, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Frisch, Presiding Judge; Bryan, Judge; and Kirk, Judge.

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

NONPRECEDENTIAL OPINION

KIRK, Judge

On appeal from the denial of his petition for postconviction relief, appellant Hassan Isak Omar argues that the postconviction court abused its discretion by denying his requests for plea withdrawal and a second evidentiary hearing. Because we conclude that the postconviction court did not abuse its discretion by denying both Omar's request for plea withdrawal and his request for a second evidentiary hearing, we affirm.

FACTS

In 2016, Omar groped the breast of his adult niece and used his fingers to penetrate the vagina of his nine-year-old niece. He was charged with two counts of first-degree criminal sexual conduct, in violation of Minn. Stat. § 609.342, subds. 1(a), 1(h)(i) (2016), and one count of fifth-degree criminal sexual conduct, in violation of Minn. Stat. § 609.3451, subd. 1(1) (2016).

Omar agreed to plead guilty to the fifth-degree criminal sexual conduct charge, along with one of the first-degree criminal sexual conduct charges, in exchange for the dismissal of the remaining first-degree charge and a downward durational departure in sentencing. He memorialized this agreement in a plea petition.

At his plea hearing, Omar entered guilty pleas on both counts and testified that no one, including his defense counsel and interpreter, had forced him to plead guilty.

However, at his sentencing hearing one month later, Omar moved to withdraw his guilty pleas. In arguing for withdrawal, Omar's defense counsel explained that Omar had been so scared that he had felt forced to plead guilty, and that Omar believed his interpreter

had not accurately translated his conversations.¹ Both Omar and his defense counsel were given opportunities to elaborate on these allegations, but neither provided additional facts. The state opposed Omar's motion to withdraw his pleas, and the district court denied his request. In line with the plea agreement Omar had previously entered into, the district court sentenced him to 84 months of imprisonment and ten years of conditional release. Omar filed a direct appeal challenging his convictions, but later dismissed that appeal voluntarily.

In February 2020, Omar filed a petition for postconviction relief under Minn. Stat. § 590.01 (2020). He requested that the court vacate his convictions and allow him to withdraw his guilty pleas. The reasons Omar advanced for withdrawal mirrored the reasons argued at his sentencing hearing, namely: that he was scared and had been forced to accept the plea deal, and the interpreter "who translated at the plea hearing was inaccurately translating Omar's words and interjecting his/her own opinion."² The postconviction court granted Omar an evidentiary hearing on his claim of improper interpretation, but it denied evidentiary hearings on all other claims because Omar had provided no facts to support them.

The evidentiary hearing occurred in October 2020. At the beginning of the hearing, Omar clarified that his improper-interpretation claim lay not with any in-court interpreter,

¹ Omar also stated that he wished to maintain his innocence and did not believe the state had sufficient evidence on which to convict him.

² In his petition for postconviction relief, Omar maintained his innocence and again argued withdrawal was appropriate because his pleas had not been supported by a sufficient factual basis. The postconviction court denied relief on those grounds. Omar does not raise issues relating to the denial of those claims in this appeal, and thus we do not address them here.

but instead with A.S., the interpreter used during at least one private conversation between Omar and his defense counsel.

A.S., who had 20 years of experience as a Somali interpreter, was called to testify by Omar. In his testimony, A.S. stated that his general practice is to refrain from offering advice or any personal opinions to defendants and to interpret only what was said by the attorney; however, he acknowledged that there can be instances when words do not translate well between languages and he has to elaborate beyond what an attorney has said. When questioned about the specifics of his interactions with Omar, which had occurred four years earlier, A.S. was not able to remember many details. He denied, however, that he had offered Omar his opinion on the case or interpreted anything other than what Omar's defense counsel had said.

Omar was the only other witness. At the time of the hearing, he had lived in the United States for 19 years and testified to understanding English well. In his testimony, Omar claimed that A.S. had offered his personal opinion, specifically on the believability of child witnesses. Omar then testified that A.S. and his defense counsel had colluded to get him to sign the plea petition and engaged in side conversations about the facts of the case.

When asked by the postconviction court if Omar had reason to believe that A.S. was saying things his defense counsel had not said, Omar responded no, and explained that he did not "want to accuse somebody [of] something that they didn't do," but maintained that A.S. and his defense counsel had been working together to pressure him to sign the plea petition. The court followed up and asked if A.S. had pressured Omar in a way that defense

counsel had not; Omar said no. Omar even admitted, upon questioning from his own attorney, that A.S. had played “a neutral role” in his decision to plead guilty.

In a memorandum submitted after the hearing, Omar then argued, for the first time, that an additional evidentiary hearing was necessary to explore whether his *defense counsel* had improperly pressured him into pleading guilty. Omar had not previously attributed any undue pressure as coming from his attorney.

In March 2021, the postconviction court denied both of Omar’s requests. Regarding Omar’s improper-interpretation argument, although the postconviction court found both A.S. and Omar’s testimony credible, it stated that Omar had failed to identify any instances where A.S.’s translation misaligned with the defense counsel’s statements or went beyond the bounds of acceptable professional conduct. The postconviction court also declined to grant an evidentiary hearing on Omar’s claim that his defense counsel forced him to plead guilty, concluding that Omar had not alleged any specific facts evidencing improper behavior on the part of his defense counsel.

Omar now appeals the denial of his postconviction petition.

DECISION

I. Improper Interpretation

Omar argues that it would be fair and just to allow him to withdraw his guilty pleas because his interpreter acted improperly and pressured him into pleading guilty.

We review a postconviction court’s decision to deny a petition for relief for an abuse of discretion. *Andersen v. State*, 940 N.W.2d 172, 177 (Minn. 2020). An abuse of discretion occurs when a postconviction court’s decision “is based on an erroneous view

of the law or is against logic and the facts in the record.” *Id.* (quotation omitted). We afford “great deference to a postconviction court’s findings of fact and will not reverse the findings unless they are clearly erroneous.” *Tscheu v. State*, 829 N.W.2d 400, 403 (Minn. 2013) (quotation omitted).

A defendant does not have an absolute right to withdraw a guilty plea. *State v. Raleigh*, 778 N.W.2d 90, 93 (Minn. 2010). But a court, in its discretion, may allow a “defendant to withdraw a plea at any time before sentence if it is fair and just to do so.” Minn. R. Crim. P. 15.05, subd. 2. To determine whether it is “fair and just” to do so, the court considers: “(1) the reasons a defendant advances to support withdrawal” and the “(2) prejudice granting the motion would cause the State given reliance on the plea.” *Raleigh*, 778 N.W.2d at 97. Reversal is appropriate only in the “rare case.” *Kim v. State*, 434 N.W.2d 263, 266 (Minn. 1989).

Omar argues withdrawal would be fair and just because A.S. had not accurately translated important conversations, improperly inserted his own opinion, and told Omar that a jury would not believe him. Further, Omar asserts that A.S. was working with his defense counsel to pressure him to sign the plea petition and talking with the attorney about topics they were “not supposed to talk about.”

The postconviction court did not find these reasons compelling, nor did it find that the record supported Omar’s claim. This conclusion is not an abuse of discretion. Aside from the general allegations noted above, the record lacks factual support for Omar’s contention that the interpreter’s behavior was improper. To the contrary, Omar testified

that A.S. had not said things beyond what his defense counsel had said, and that A.S. had played a “neutral” role in his plea discussions.

Omar’s failure to identify fair and just reasons for withdrawal is sufficient to affirm the postconviction court’s denial of relief. *See State v. Cubas*, 838 N.W.2d 220, 224 (Minn. App. 2013) (“Even when there is no prejudice to the state, a district court may deny plea withdrawal . . . if the defendant fails to advance valid reasons why withdrawal is fair and just.”), *rev. denied* (Minn. Dec. 31, 2013). However, we will briefly address the postconviction court’s conclusion that plea withdrawal would prejudice the state.

The postconviction court determined that the state would be prejudiced by having to recall 12 witnesses, whose memories likely would have waned after four years. More significantly, the postconviction court stated that the victims, who had relied upon Omar’s guilty pleas, would have to relive their trauma by testifying about their uncle’s actions, prejudicing the state. The postconviction court’s analysis was not an abuse of discretion. *See Kim*, 434 N.W.2d at 267 (noting a court can consider interests of the victim when evaluating prejudice to the state).

Because Omar failed to provide support for his claim of improper interpretation, we conclude that the postconviction court did not abuse its discretion in denying Omar’s petition for plea withdrawal.

II. Second Evidentiary Hearing

Omar argues that the postconviction court erred by denying his request to hold an additional evidentiary hearing to explore whether his defense counsel had forced him into

pleading guilty. We review a denial of postconviction relief without an evidentiary hearing for an abuse of discretion. *State v. Nicks*, 831 N.W.2d 493, 503 (Minn. 2013).

Generally, a postconviction court must hold a hearing “[u]nless 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 (2020). To determine “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). A defendant, however, “is not entitled to an evidentiary hearing if [their] allegations lack factual support and are directly refuted by [their] own testimony in the record.” *Williams v. State*, 760 N.W.2d 8, 14 (Minn. App. 2009), *rev. denied* (Minn. April 21, 2009).

Omar’s allegation lacks factual support and misstates the record. He contends that the district court did not give him or his defense counsel the opportunity to testify about his claim of undue pressure. This is untrue. At Omar’s sentencing hearing, he and his defense counsel were both offered the opportunity to provide statements supporting his motion for plea withdrawal, which included the claim that Omar was “scared and forced” into pleading guilty.

Furthermore, the first time Omar argued that his defense counsel had pressured him was during the evidentiary hearing regarding improper interpretation, which occurred *after* his postconviction petition had been filed. And even then, Omar’s allegations were conclusory in nature and devoid of evidentiary support. Instead, the facts in the record reflect multiple instances where Omar agreed that his pleas were voluntary. He

acknowledged both in his plea petition and at the plea hearing that no one, including his attorney, had forced him to plead guilty.

Omar's allegation of coercion by his defense counsel has no factual support and is refuted by the record. The postconviction court did not abuse its discretion when it denied Omar's request for an additional evidentiary hearing on this claim.

Affirmed.