STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0185

Stephen Dontrail Thornton, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed October 24, 2022
Affirmed
Bryan, Judge

Hennepin County District Court
File Nos. 27-CR-18-18662, 27-CR-19-5348

Cathryn Middlebrook, Chief Appellate Public Defender, Benjamin J. Butler, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Michael O. Freeman, Hennepin County Attorney, Sarah J. Vokes, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Bjorkman, Presiding Judge; Slieter, Judge; and Bryan, Judge.

NONPRECEDENTIAL OPINION

BRYAN, Judge

In this appeal from the district court's denial of appellant's motion to withdraw his guilty pleas, appellant makes four arguments: (1) his pleas were involuntarily because they were induced by the legally impossible threat of a life sentence; (2) his pleas were

unintelligent because he did not know the full implications of the mandatory conditional release period that applied; (3) the imposition of the lifetime conditional release term violated the plea agreements; and (4) appellant received ineffective assistance of counsel. We affirm.

FACTS

In July 2018, respondent State of Minnesota charged appellant Stephen Dontrail Thornton with two counts of first-degree criminal sexual conduct in district court file 27-CR-18-18662 involving a child victim. The state later amended these charges to include four separate counts of first-degree criminal sexual conduct. In March 2019, the state charged Thornton with two counts of first-degree criminal sexual conduct in district court file 27-CR-19-5348 involving a different child victim, Thornton's biological son. Thornton, who was represented in both cases by Andrew Gordon and Josh Esmay, met with his attorneys multiple times before his scheduled trial in May 2018. Counsel prepared a plea petition, reviewed it with Thornton, and discussed the consequences of a plea, including conditional release. On the date of the scheduled plea hearing in May 2019, Thornton informed the court that he wished to proceed to trial.

At the trial for the first case (court file 27-CR-18-18662), the state presented the testimony of numerous witnesses, including the child victim. When the state rested its case, Thornton informed the court that he wished to plead guilty in both pending cases, pursuant to a plea agreement negotiated with the state. The negotiations reflected a global resolution of both pending cases as well as two, uncharged, age-based criminal sexual conduct offenses involving two other victims. Thornton agreed to plead guilty to one count

of first-degree criminal sexual conduct in each court file in exchange for two 144-month prison sentences, to be served consecutively. The plea petition[1] indicated this agreement as well as the state's promise not to proceed with the two uncharged, age-based offenses in exchange for Thornton's two pleas.[2] The petition also listed Thornton's rights, stated that Thornton had sufficient time to discuss his case with counsel, and noted that his counsel had discussed with him the possible consequences of pleading guilty. The petition also explained that a lifetime period of conditional release applied, and that Thornton faced additional jail time if he violated the terms of the conditional release. It stated: "For . . . most sex offenses, a mandatory period of conditional release will follow any executed prison sentence that is imposed. Violating the terms of this conditional release may increase the time I serve in prison. In this case, the period of conditional release is LIFETIME years."[3]

During the ensuing plea colloquy, the district court confirmed that Thornton had sufficient time to discuss all the provisions of the plea petition with his attorneys. Thornton stated that he discussed the petition and the consequences of his decision with his attorneys and wished to plead guilty. The district court specifically asked Thornton, "And by signing that petition, you're telling me that you went through every single item in that petition, line by line, and your lawyer read it to you and explained anything you didn't understand?" to which Thornton replied, "Yeah." The district court also confirmed that if Thornton pleaded

[1] The parties executed one plea petition and filed this petition in both court files.
[2] The state believed that Thornton fathered children with each victim, who were both under the age of 16 at the time of conception.
[3] The word "lifetime" in all caps is written in the blank provided on the petition form.

guilty to one count of first-degree criminal sexual conduct from each pending case, the state would dismiss the remaining counts and would not charge the other two age-based criminal sexual conduct offenses. Neither the district court nor the attorneys asked specific questions regarding the lifetime period of conditional release. The district court received the guilty plea and Thornton provided his sworn testimony, admitting to the factual basis for each guilty plea.

At the ensuing sentencing hearing, Thornton moved to withdraw his guilty pleas. Thornton argued that his pleas were neither intelligent nor voluntary. The district court denied Thornton's motion, finding he waived his trial rights intelligently and voluntarily. The district court sentenced Thornton to 144 months on each of the court files, to be served consecutively. The district court also imposed the contemplated lifetime period of conditional release. Following sentencing, Thornton appealed, and this court determined in an order opinion that Thornton was entitled to a new plea withdrawal hearing with new counsel. *State v. Thornton*, No. A19-1341, (Minn. App. Aug. 26, 2020) (order op.), *rev. denied* (Minn. Nov. 25, 2020).

On remand, the district court heard testimony from Gordon and Thornton. Gordon testified that at the time of the plea hearing, the parties had negotiated for a global resolution, and Gordon believed that absent a plea agreement, the state would pursue an actual life sentence in court file 27-CR-19-5348. According to the record from the evidentiary hearing, during the plea negotiations, the prosecutor emailed Thornton's attorneys and stated the following: "It occurs to me that your client will be eligible in [court file 27-CR-19-5348] for sentencing pursuant to Minn. Stat. § 609.3455, subd. 4(a)(2)(i) or

(ii) [(2016)]. That's a pretty significant risk to take . . . ." Gordon shared that information with Thornton. In addition, Gordon testified that the two uncharged incidents of criminal sexual conduct were also part of the negotiations with the state. Gordon testified that he believed that absent a plea agreement to the two pending court files, the state would seek a life sentence once it charged the two additional offenses. Gordon also testified that he had personal knowledge that the district court judge had durationally departed upward in similar cases and believed that the state would pursue aggravated sentences on the pending charges, just as it had in court file 27-CR-18-18662. Gordon testified that he specifically discussed the uncharged offenses and the potential consequences with Thornton, which included the possibility of very lengthy sentences, in excess of the 288 months contemplated in the plea petition. The record reflects that at some point, Gordon concluded that Thornton was not subject to life imprisonment under section 609.3455, subdivision 4(a)(2), but the district court determined that Thornton had not established when this occurred. Gordon also testified that he "absolutely" discussed conditional release "being a fact of a conviction," with Thornton. Gordon testified that Thornton's primary focus in plea negotiations was not on conditional release but on the potential length of his prison sentence.

In January 2022, the district court issued its order denying Thornton's motion to withdraw his guilty pleas. The district court found Gordon's testimony credible and found that Thornton's testimony was "self-serving and at points, unreasonable and, therefore, not credible." The district court also discussed various potential sentences that included a life sentence under Minnesota Statutes section 609.3455, subdivision 4(a)(2); a life sentence

under subdivision 4(a)(3) (2016); and prison terms of more than 1000 months even without application of subdivision 4(a)(2) or 4(a)(3). In addition, while Thornton testified that the plea petition was altered, the district court disbelieved that testimony, stating that this assertion "is too much and seriously undercuts the credibility of any of [Thornton's] testimony." The district court also disbelieved Thornton's testimony regarding the importance of conditional release to Thornton's decision: "While [Thornton] testified that he would not have accepted the plea offer if he knew he was subject to mandatory lifetime conditional release, this Court does not find him credible."

The district court determined that Thornton's guilty pleas were accurate, voluntary, and intelligent. The district court concluded that Thornton could have faced a life sentence given the uncharged offenses and that Thornton received adequate notice of the lifetime conditional release requirement. Finally, the district court determined that Thornton received effective assistance of counsel. Thornton appeals.

DECISION

Thornton argues that the pleas were involuntary, unintelligent, and the result of ineffective assistance of counsel. He also argues that the imposition of the lifetime period of conditional release violated the plea agreement. We first note the general standards of review that apply and then address each argument in turn.[4]

[4] Thornton filed a pro se supplemental brief, reiterating arguments from the principal brief.

A defendant must be allowed to withdraw a guilty plea if "withdrawal is necessary to correct a manifest injustice." Minn. R. Crim. P. 15.05, subd. 1.[5] A manifest injustice occurs when a plea is not constitutionally valid. *Raleigh*, 778 N.W.2d at 94. "To be constitutionally valid, a guilty plea must be accurate, voluntary, and intelligent." *Id.* The validity of a guilty plea is a question of law that we review de novo. *Id.* "The defendant bears the burden of establishing the facts that support his claim that the guilty plea is invalid." *State v. Mikulak*, 903 N.W.2d 600, 603 (Minn. 2017). We defer to the district court's credibility determinations and review factual findings for clear error. *See State v. Danh*, 516 N.W.2d 539, 544 (Minn. 1994) (reviewing questions of fact regarding validity of a plea for clear error); *State v. Dickerson*, 481 N.W.2d 840, 843 (Minn. 1992) (noting that appellate courts do not make credibility determinations), *aff'd on other grounds sub nom. Minnesota v. Dickerson*, 508 U.S. 366 (1993).

[5] Neither Thornton's principal brief nor his pro se supplemental brief make any argument under the "fair and just" standard. *See* Minn. R. Crim. P. 15.05, subd. 2 (requiring that district courts balance the prejudice to the state against the stated reasons for withdrawal under the "fair and just" standard); *see also, e.g.*, *State v. Raleigh*, 778 N.W.2d 90, 97 (Minn. 2010) (noting that appellate courts review denials of motions to withdraw under the fair and just standard for an abuse of discretion). We note that the district court expressly considered the prejudice that withdrawal would cause to the state. Because Thornton does not raise a challenge under this subdivision, we need not review the district court's conclusions that "the state would suffer significant prejudice if [the district court] allowed [Thornton] to withdraw his guilty pleas and proceed to trial" or that withdrawal "would create an immense hardship on the State, the child victim, and the witnesses."

I. Voluntariness of Thornton's Guilty Pleas

Thornton argues that his guilty pleas were induced by the prosecutor's legally impossible threat of a life sentence. Because Thornton did not establish that the threat of a life sentence overbore his will, we conclude that Thornton entered his pleas voluntarily.

"The voluntariness requirement ensures a defendant is not pleading guilty due to improper pressure or coercion." *Raleigh*, 778 N.W.2d at 96. "[T]he government may not produce a plea through actual or threatened physical harm, or by mental coercion overbearing the will of the defendant." *State v. Ecker*, 524 N.W.2d 712, 719 (Minn. 1994) (quotation omitted). Nor can the state induce a guilty plea based on the promise of an illegal sentence. *State v. Brown*, 606 N.W.2d 670, 674 (Minn. 2000).

Thornton argues that the prosecutor's threat of a life sentence was a legal impossibility that overbore his will. We disagree for two reasons. First, as a legal matter, a life sentence was not an impossibility. In its opposition to Thornton's motion to withdraw and on appeal, the state argues that Thornton could have received a life sentence under subdivision 4(a)(3), although the prosecutor's email initially referenced section 609.3455, subdivision 4(a)(2), during plea negotiations. The state had filed notice of its intent to seek an aggravated sentence in court file 27-CR-18-18662.[6] Had the state been successful, and had the state also obtained convictions in court file 27-CR-19-5348 and the two uncharged offenses, subdivision 4(a)(3) would permit a life sentence.

[6] The parties dispute whether this notice was timely. Because the district court could have determined that the state made a timely notice or that the untimely filing did not prejudice Thornton, a life sentence under subdivision 4(a)(3) and an effective life sentence apart from subdivision 4 remain legal possibilities.

Second, as a factual matter, the district court determined that Gordon did not merely relay the state's intent to seek a life sentence, but instead met for two hours with Thornton and discussed various potential resolutions. Gordon "had significant concerns" after the state's case-in-chief that Thornton "was going to go to prison for a long time." According to the complaint, Thornton faced four separate counts representing four separate incidents in court file 27-CR-18-18662, and each could have been sentenced consecutive to the others. In addition, the state had filed its notice that it intended to seek an aggravated sentence in that court file. Gordon also knew that this judge had departed upward in similar cases and believed that was also a possibility in this case. Given the other pending case and the two uncharged cases, Gordon reasonably believed Thornton faced what was effectively a life sentence. As the district court noted, plea negotiations require criminal defendants to weigh speculative risk and various potential sentences other than life applied for the charges Thornton faced, including prison terms totaling over 1000 months. The uncontested facts show that the threat of a life sentence did not coerce Thornton's decision. He did not decide to plead guilty only because of the threat of a life sentence based on subdivision 4(a)(2). Instead, the facts in this case show that Thornton relied on his attorneys' advice and his own assessment of risk regarding a range of possible sentences.

In sum, because the prosecutor's threat of a life sentence was a legal possibility, and because Thornton did not establish facts sufficient to show the state's threat of a lifetime sentence under this section overbore his will, Thornton's pleas were not coerced by an improper threat. We affirm the district court's denial of Thornton's request to withdraw the guilty pleas on voluntariness grounds.

II. Intelligence of Thornton's Guilty Pleas

Thornton argues that he did not intelligently enter the pleas because he did not understand that he would be subject to conditional release for the rest of his life. Because the lifetime period of conditional release was included in the plea petition and because Thornton discussed conditional release with his attorney, we conclude that Thornton entered intelligent pleas.

"To be intelligent, a guilty plea must represent a knowing and intelligent choice among the alternative courses of action available." *Dikken v. State*, 896 N.W.2d 873, 877 (Minn. 2017) (quotation omitted). "Whether a plea is intelligent depends on what the defendant knew at the time he entered the plea . . . ." *Id.* More specifically, a plea is intelligent when the defendant understands the charges, the rights being waived, and, most importantly here, the consequences of entering the plea. *Id.*; *see also, e.g.*, *Brown v. State*, 449 N.W.2d 180, 182 (Minn. 1989) (concluding that a plea was intelligent because the defendant adequately understood all three aspects of his plea, even though "the interrogation of defendant was not a model interrogation").

In this case, at the time of the guilty plea, Thornton signed a plea petition. The petition states that Thornton had sufficient time to discuss his case with counsel, that his counsel had discussed with him the possible consequences of pleading guilty, and that Thornton had a right to a jury trial. The petition stated, "For . . . most sex offenses, a mandatory period of conditional release will follow any executed prison sentence that is imposed. Violating the terms of this conditional release may increase the time I serve in prison. In this case, the period of conditional release is LIFETIME years." Further,

Thornton agreed during the plea colloquy that he "went through every single item in that petition, line by line" and his lawyer "read it . . . and explained anything [he] didn't understand." Thornton's attorney also testified that he "absolutely" discussed conditional release "being a fact of a conviction," with Thornton. Given this record, Thornton has not established that he did not enter intelligent pleas.

III. Imposition of Conditional Release Term

Thornton also argues that the imposition of a conditional release term violated the plea agreement. We are not persuaded for two reasons.

First, we are aware of no authority that requires a defendant to specifically agree to the applicability of a mandatory period of conditional release. Such periods of conditional release mandated by statute "cannot be waived." *Kubrom v. State*, 863 N.W.2d 88, 92 n.3 (Minn. App. 2015). We decline to adopt a new requirement that defendants subject to periods of conditional release must do more than acknowledge the applicability of the mandatory statutory provisions requiring imposition of periods of conditional release.

Second, Thornton argues that the imposition of the lifetime period of conditional release violated the plea agreement based on a series of cases, but those authorities do not apply here. The cases Thornton refers to all relate to the imposition of a conditional release term as an after-the-fact modification to a previous sentence, and they all involve plea petitions and initial sentencing hearings that failed to include or otherwise mention a mandatory period of conditional release. *See State v. Wukawitz*, 662 N.W.2d 517, 523-25 (Minn. 2003) (allowing for withdrawal of plea when the district court amended the initial sentencing order to impose a period of conditional release that was not included in the plea

petition or mentioned at the initial sentencing hearing); *State v. Jumping Eagle*, 620 N.W.2d 42, 43, 45 (Minn. 2000) (allowing for withdrawal of plea when the district court amended the initial sentencing order to impose a conditional release that was not included in the plea petition and was not imposed at the initial sentencing hearing); *Brown*, 606 N.W.2d at 672-73, 75 (Minn. 2000) (affirming modification of sentence that imposed a period of conditional release that was not included in the plea petition and was not imposed at the initial sentencing hearing because the additional period of conditional release did not extend Brown's sentence beyond the period of time contemplated in the plea petition); *see also State v. Garcia*, 582 N.W.2d 879, 880-82 (Minn. 1998) (holding that mandatory periods of conditional release cannot be waived, but allowing Garcia the option to withdraw his plea because the period of conditional release was imposed at a subsequent hearing and not included in the plea petition or imposed at the initial sentencing hearing).

By contrast, in this case, the plea petition specifically included the lifetime period of conditional release. Thornton discussed the period of conditional release with his attorney prior to pleading guilty, and the district court imposed the period of conditional release at the initial sentencing hearing. Indeed, the supreme court has affirmed the denial of a request to withdraw a plea when the plea petition and ensuing colloquy made no mention of the applicable period of conditional release, but the period of conditional release was noted in the presentence investigation report and the district court imposed the period of conditional release at the initial sentencing hearing. *State v. Rhodes*, 675 N.W.2d 323, 325, 326-327 (Minn. 2004) (distinguishing *Wukawitz* and *Jumping Eagle* because "the conditional release term was not mentioned at the sentencing hearing or included in the

initial sentence" and specifically quoting the portion of *Wukawitz* that limited the holding "to those situations where the original sentence did not include conditional release" (quotation omitted)). Pursuant to *Rhodes*, because the plea petition here contemplated a lifetime period of conditional release and because the district court imposed the period of conditional release in the original sentence, the imposition of this period of conditional release did not violate the plea agreement.

IV. Ineffective assistance of counsel

Finally, Thornton argues that he received ineffective assistance of counsel when Gordon did not adequately explain the implications of a lifetime period of conditional release. We conclude that Thornton has not demonstrated the necessary prejudice to support a claim of ineffective assistance.

A two-part standard applies to claims of ineffective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). A court may address the two prongs "in any order and may dispose of the claim on one prong without analyzing the other." *Schleicher v. State*, 718 N.W.2d 440, 447 (Minn. 2006). First, the individual alleging ineffective assistance must show that his "counsel's representation fell below an objective standard of reasonableness."[7] *Strickland*, 466 U.S. at 687-88. Second, the individual must establish to a reasonable probability that "but for the alleged errors of his counsel, he would

[7] To the extent that portions of Thornton's briefs can be construed as arguing that Gordon provided ineffective assistance of counsel in relaying the state's plea offers, we disagree. Thornton has not established that Gordon's conduct in that regard fell below an objective standard of reasonableness. Gordon duly relayed the state's position—including the comments regarding a life sentence—and provided advice based on his experience regarding the risk of a life sentence and of other lengthy sentences of imprisonment.

not have pleaded guilty." *Ecker*, 524 N.W.2d at 718. In considering this second prong, the appellate court reviews findings of fact for clear error, *see Danh*, 516 N.W.2d at 544, and defers to the district court's credibility determinations without reweighing conflicting testimony, *see Dickerson*, 481 N.W.2d at 843. "Courts should not upset a plea solely because of *post hoc* assertions from a defendant about how he would have pleaded but for his attorney's deficiencies." *Lee v. United States*, 137 S. Ct. 1958, 1967 (2017).

Thornton asserts that but for his attorney's ineffective advice regarding the period of conditional release, he would not have pleaded guilty. The district court, however, determined that Thornton was not credible when he testified that he would not have pleaded guilty: "While [Thornton] testified that he would not have accepted the plea offer if he knew that he was subject to mandatory lifetime conditional release, this Court does not find him credible." The district court also noted that Thornton only decided to plead guilty after the state presented its case, and after Thornton "engaged in prejudicial behavior in front of the jury." In the district court's estimation, Thornton faced a difficult choice: "cut a deal or face a likely straight conviction" on the pending charges. We must defer to these credibility determinations and unchallenged factual findings on appeal. Accordingly, Thornton has not established the second *Strickland* prong.

Affirmed.