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STATE OF MINNESOTA
IN COURT OF APPEALS
A11-550

Tony Terrell Robinson, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed January 17, 2012
Affirmed
Ross, Judge

Ramsey County District Court
File No. 62-CR-08-4669

David W. Merchant, Chief Appellate Public Defender, Leslie J. Rosenberg, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

John Choi, Ramsey County Attorney, Peter R. Marker, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Considered and decided by Kalitowski, Presiding Judge; Minge, Judge; and Ross, Judge.

U N P U B L I S H E D O P I N I O N

ROSS, Judge

In October 2008 Tony Terrell Robinson pleaded guilty to first-degree criminal-sexual conduct after acknowledging his niece had truthfully testified that he repeatedly

sexually abused her over a three-year period beginning when she was ten years old and Robinson was 16. The district court informed Robinson at sentencing that the offense requires lifetime predatory-offender registration. After sentencing, Robinson moved to withdraw his plea as invalid on the ground that he entered it without knowing the duration of his registration obligation. The district court denied the motion. On appeal, Robinson asserts that his plea was invalid and claims ineffective assistance of counsel, arguing that the United States Supreme Court's decision in *Padilla v. Kentucky*, 130 S. Ct. 1473 (2010), which held that constitutionally competent defense counsel must advise a noncitizen client of the risk of deportation following a guilty plea, should be extended to the risk of a lifetime predatory-registration requirement. Because predatory-offender registration is a collateral consequence of a guilty plea, and because we conclude that *Padilla* may not be extended in the manner Robinson urges, we affirm.

FACTS

The state charged Tony Robinson with two counts of first-degree criminal-sexual conduct after Robinson's niece told her mother that, beginning when she was ten years old, Robinson had penetrated her vaginally multiple times over a three-year period, frequently while acting as her babysitter. The case went to the jury on the fourth day of trial. While the jury was deliberating, Robinson entered an *Alford* guilty plea to one of the counts in exchange for the state's promise to seek a guidelines sentence. *See North Carolina v. Alford*, 400 U.S. 25, 91 S. Ct. 160 (1970). When Robinson entered the plea, his counsel explained to him that he would be required to register as a predatory offender, but counsel did not specify the duration of the registration requirement.

At sentencing, the district court imposed a guidelines 91-month prison sentence with five years of supervised release, and it informed Robinson that he must register as a predatory offender for the rest of his life. Counsel for both sides expressed uncertainty about the length of the registration requirement and opined that the duration might be as little as five years. The court refused to accept the Predatory Offender Court Notification Form completed by Robinson after noting that Robinson had altered the form by hand to reflect his belief that the duration of registration would be five years, and it continued the hearing to allow the parties to determine the length of registration. At the rescheduled hearing, counsel for both sides agreed that the governing statute mandates lifetime registration. Robinson refused to sign the notification form, insisting that his counsel had negotiated for a five-year registration period. The court accepted the unsigned form and imposed lifetime registration.

Following sentencing, Robinson petitioned the district court for postconviction relief, seeking permission to withdraw his guilty plea on the basis that it was invalidly entered in reliance on erroneous information about the duration of predatory-offender registration. The district court denied the petition, and this appeal follows.

D E C I S I O N

A district court’s decision to deny postconviction relief is reviewed for an abuse of discretion. *State v. Rhodes*, 675 N.W.2d 323, 326 (Minn. 2004). Generally, the “scope of review is limited to the question of whether sufficient evidence exists to support the postconviction court's findings.” *Perkins v. State*, 559 N.W.2d 678, 685 (Minn. 1997).

I

Robinson argues that he must be allowed to withdraw his guilty plea to avoid a manifest injustice. Once a guilty plea is entered, a defendant has "no absolute right to withdraw a guilty plea." *Id.* But a court must permit a defendant to withdraw a guilty plea if it is necessary to correct a manifest injustice. Minn. R. Crim. P. 15.05, subd. 1. To be constitutionally valid, and to avoid a manifest injustice, a guilty plea must be accurate, voluntary, and intelligent. *Alanis v. State*, 583 N.W.2d 573, 577 (Minn. 1998).

A plea is unintelligent if the defendant does not understand the consequences of pleading guilty. *Id.* Robinson argues that his plea was not constitutionally valid because his counsel failed to advise him about lifetime registration. We are not persuaded. A valid guilty plea requires that a defendant be informed of the direct consequences of the plea, but it does not require that he be informed of all collateral consequences. *Id.* at 578. Direct consequences are those that have "a definite, immediate and automatic effect on the range of a defendant's punishment." *Kaiser v. State*, 641 N.W.2d 900, 904 n.6 (Minn. 2002). By contrast, collateral consequences "are not punishment" but "are civil and regulatory in nature and are imposed in the interest of public safety." *Id.* at 905, 907 (classifying sex-offender registration as collateral consequence). The failure to inform a person of all collateral consequences of the plea is not a manifest injustice. *Alanis*, 583 N.W.2d at 577–78.

Minnesota law establishes that registration as a predatory offender is a collateral consequence of a guilty plea. *Kaiser*, 641 N.W.2d at 907. As such, that Robinson was not notified about the term of his predatory-offender registration, from the perspective of

constitutional validity, "does not make the plea unintelligent, and does not constitute a manifest injustice." *Id.* We also note that the record does not support Robinson's contention that he entered his plea relying on a representation of a reduced registration period. There was no discussion at the plea hearing about the duration of registration, which, in any case, is mandated by statute and not susceptible to reduction through negotiation. And Robinson himself contends that he was influenced to enter the plea after seeing six guilty votes marked by questions sent to the district court by the jury during deliberations and, according to Robinson, he believed the jury was moving toward a unanimous guilty verdict.

II

Robinson argues that his plea was involuntary due to ineffective assistance of counsel. "When an accused is represented by counsel, the voluntariness of the plea depends on whether counsel's advice was within the range of competence demanded of attorneys in criminal cases." *State v. Ecker*, 524 N.W.2d 712, 718 (Minn. 1994) (quotation omitted). We review de novo decisions on ineffective assistance of counsel, which involve mixed questions of law and fact. *State v. Rhodes*, 657 N.W.2d 823, 842 (Minn. 2003). Ineffective assistance of counsel claims require proof of two elements: objective deficiency of counsel and actual prejudice. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064 (1984); *Rhodes*, 657 N.W.2d at 842. If either one of these elements is dispositive, we need not address the other. *Rhodes*, 657 N.W.2d at 842.

The objective standard of reasonableness requires defense counsel to exercise "the customary skills and diligence that a reasonably competent attorney would perform under

the circumstances." *State v. Doppler*, 590 N.W.2d 627, 633 (Minn. 1999) (quotation omitted). To prove actual prejudice, "[i]n cases in which the petitioner pleads guilty, the petitioner must demonstrate a reasonable probability that, but for counsel's ineffective representation, he would not have entered his plea." *Johnson v. State*, 673 N.W.2d 144, 148 (Minn. 2004).

Robinson argues that he received ineffective assistance of counsel because his lawyer failed to advise him that lifetime predatory-offender registration resulted from his guilty plea. The district court appropriately rejected Robinson's postconviction petition to withdraw his plea on the ground that the omission of advice concerning the collateral consequences of a plea—in this case predatory-offender registration—does not invalidate the plea. The collateral nature of the consequence is also fatal to Robinson's ineffective-assistance claim, because in Minnesota, "[t]he distinction between direct consequences and collateral consequences is relevant not only to the requirements of a valid guilty plea but also to the Sixth Amendment right to effective assistance of counsel." *Sames v. State*, 805 N.W.2d 565, 568 (Minn. App. 2011), *review denied* (Minn. Dec. 21, 2011). Under this framework, the collateral consequences of a guilty plea are outside the scope of representation required by the Sixth Amendment such that defense counsel's failure to advise his client of those consequences does not fall below an objective standard of reasonableness. *See id*. ("Minnesota is among the states in which the direct-collateral distinction is used to determine the scope of an attorney's duties to his or her client."); *see also Alanis*, 583 N.W.2d at 578–79 (applying the direct-collateral distinction to an ineffective-assistance claim and concluding, "[T]he failure to so inform [the defendant of

a collateral consequence] could not have fallen below an objective standard of reasonableness as required by *Strickland.*").

Robinson urges that, in considering his ineffective-assistance claim, we should follow *Padilla* by rejecting a strict application of the direct-collateral distinction in favor of a case-by-case analysis of how closely each consequence is related to the underlying conviction. Because the direct-collateral distinction determines the viability of an ineffective-assistance claim predicated on defense counsel's failure to alert the defendant of the consequences of a guilty plea, and because our caselaw holds that predatory-offender registration is a collateral consequence, we reject Robinson's argument that *Padilla*'s holding—that the Sixth Amendment requires defense counsel to advise noncitizen clients of the deportation consequences of a guilty plea—should be extended to his case. *See Padilla*, 130 S. Ct. at 1486. Robinson is correct that *Padilla* rejects the distinction's utility in deciding ineffective-assistance claims. *See Padilla*, 130 S. Ct. at 1481 ("We, however, have never applied a distinction between direct and collateral consequences to define the scope of constitutionally 'reasonable professional assistance' required under *Strickland*."). He is also correct that, like deportation, predatory-offender registration is "intimately related to the criminal process" and that the "automatic result" of predatory-offender registration for certain defendants makes it difficult "to divorce the penalty from the conviction." *Id.* And the law has associated criminal convictions with predatory-offender registration in the same way it "has enmeshed criminal convictions and the penalty of deportation." *Id.*

But *Padilla* unequivocally states that only the "*unique nature of deportation*" justified disregarding the distinction between direct and collateral consequences in that case, and the opinion never discusses, or even mentions, any other relevant consequences of guilty pleas. *Id*. The *Padilla* court "did not clearly state that the direct-collateral distinction should not be applied in cases not involving the risk of deportation. In the absence of such a statement, we are obligated to follow the precedent that binds us on that issue." *Sames*, 805 N.W.2d at 570. That precedent is *Alanis* and other controlling Minnesota caselaw that holds that the direct-collateral distinction determines the scope of an attorney's duties, and *Kaiser*, which held that predatory-offender registration is a collateral consequence of a guilty plea. *Kaiser*, 641 N.W.2d at 907. *Padilla* does not teach that an attorney fails to meet the objective standard of reasonableness by failing to advise a defendant that lifetime predatory-offender registration is a consequence of a guilty plea.

We therefore conclude that Robinson's attorney's representation did not fall below an objective standard of reasonableness despite the attorney's failure to advise Robinson that pleading guilty to first-degree criminal-sexual conduct would require lifetime predatory-offender registration. In light of our conclusion, we need not decide whether Robinson suffered actual prejudice, that is, whether he would not have entered the plea but for his counsel's allegedly ineffective assistance. *See Rhodes*, 657 N.W.2d at 842. (We observe in passing, though, that Robinson has not presented a persuasive case that his plea was entered because of representations by his attorney.)

III

Robinson also challenges the district court's refusing his request for an evidentiary hearing on his postconviction claims. An evidentiary hearing is not necessary if the petition, files, and record "conclusively show that the petitioner is entitled to no relief." Minn. Stat. § 590.04, subd. 1 (2010). Doubts about whether to conduct an evidentiary hearing should be resolved in favor of a hearing. *King v. State*, 649 N.W.2d 149, 156 (Minn. 2002).

We hold that the district court record allowed the court to determine the merits of Robinson's claims without an evidentiary hearing. There was no discussion at the plea hearing about the term of the registration period. The confusion about the possibility that the registration term might be only five years arose at the sentencing hearing. And Robinson never said at either of the two sentencing hearings that he wanted to withdraw his guilty plea. That he refused to sign the registration form does not, as he appears to argue, demonstrate that but for the erroneous advice of his counsel he would not have pleaded guilty.

Robinson contends that an evidentiary hearing is necessary to allow him to prove the point. But the record establishes, and Robinson asserts in his pro se supplemental brief, that he entered the plea not because of his misunderstanding about the registration period, but because of his perception that a guilty verdict was imminent. Robinson maintains that he was "highly pressured into pleading guilty" by the "track record of the [jury's] vote count" and by his perception that the district court was forcing the jury to

render a guilty verdict by instructing it to keep deliberating after jurors believed they had reached an impasse. No hearing was warranted.

IV

Robinson raises six issues in his pro se supplemental brief. None persuades us to reverse.

First, Robinson alleges prosecutorial misconduct on the ground that the state failed to disclose evidence favorable to him. Specifically, he first claims the state failed to disclose "Alex," a potential witness to whom G.E.M. revealed Robinson's charged conduct and who was mentioned in a trial preparation interview. A petitioner who seeks a new trial on the grounds of newly discovered evidence must show: (1) that the evidence was not known to the defendant at the time of trial; (2) that the evidence could not have been discovered before trial through due diligence; (3) that the evidence is not cumulative, impeaching, or doubtful; and (4) that the evidence would probably cause an acquittal or more favorable result. *Rainer v. State*, 566 N.W.2d 692, 695 (Minn. 1997). The district court found that Alex was in fact disclosed to Robinson before trial, so Alex's existence is not new evidence. Robinson also charges that the state failed to disclose that G.E.M.'s mother recanted an allegation of domestic abuse six years earlier in an unrelated case. The case about G.E.M.'s mother had involved Robinson's brother, and it is unlikely that the district court believed that Robinson was unaware of it. In any event, the victim's mother's recantation of unrelated events six years earlier does not fall within the disclosure requirements of Minn. R. Crim. P. 9.01, so there was no violation. We are not persuaded by Robinson's contention that he might not have pleaded guilty

had he known about the recantation, which could be used to impeach the testimony of G.E.M.'s mother and thereby somewhat undermine G.E.M.'s allegations. We have no logical ground to suppose that the attenuous basis for impeachment would have prevented the jury's march toward conviction, which motivated Robinson to plead guilty

Second, Robinson contends that his guilty plea was not accurately made because he was confused about the terms of his conditional release and because when he acknowledged G.E.M.'s testimony was credible he did not specify which part of her testimony he was referring to. But at his plea hearing, Robinson repeatedly acknowledged that he understood the terms of his plea agreement and was repeatedly questioned to confirm that he comprehended the specific duration of his conditional release and the fact that he must register as a predator. His reasons do not demonstrate that the plea was inaccurate.

Third, Robinson contends his plea was coerced because the court instructed the jury to keep deliberating after a juror asked what the penalty would be if a juror just left because of a deadlock. He argues that when he learned the court would tell the jury to continue deliberating as long as the district court judge saw fit, he perceived that the judge was instructing the jury to reach a guilty verdict. He therefore decided to plead guilty rather than to wait for a verdict. He also asserts that the court improperly never asked him during the plea hearing whether he felt pressured. But the plea-hearing transcript demonstrates that the court and both counsel thoroughly examined Robinson to ensure that his plea was voluntary. And the court's instruction to the jury to continue deliberating was not coercive in that it did not instruct the jury to reach a verdict or which

verdict to reach, but only to continue deliberating. *Cf. State v. Petrich*, 494 N.W.2d 298, 300 (Minn. App. 1992) (instruction improper because it told jury that it must reach a unanimous verdict), *review denied* (Minn. Feb. 23, 1993).

Fourth, Robinson argues that he received ineffective assistance of counsel at the plea hearing because his attorney failed to inform him of the five-year conditional release term. The transcript belies the claim. He also contends *the judge* was unconstitutionally ineffective because she failed to ensure that his counsel confirmed that he understood the terms of his sentencing agreement. Again, the transcript contradicts his premise.

Fifth, Robinson argues that he received ineffective assistance of counsel because he was not informed of the elements of his charge, the result being that he did not understand what he was pleading guilty to. But the transcript reveals that Robinson's counsel set out the crime's elements in his presence, and it strains reason to argue, as Robinson does, that when he acknowledged at the plea hearing that G.E.M.'s testimony was credible he did not understand what parts of the testimony were in question, particularly when G.E.M.'s testimony exclusively concerned Robinson's abusing her over a period of four years.

Sixth, Robinson argues that he was entitled to an evidentiary hearing. But as we have discussed, all of Robinson's challenges can be and were resolved as a matter of law, on the record, and no evidentiary hearing is warranted.

Affirmed.