STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0284

Brandon Will Campbell,
petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed October 28, 2013
Affirmed
Cleary, Judge

Ramsey County District Court
File No. 62-K4-07-004348

Michael W. McDonald, McDonald Law Office, Prior Lake, Minnesota; and

Richard P. Ohlenberg, Ohlenberg Law Office, P.C., St. Louis Park, Minnesota (for appellant)

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

John J. Choi, Ramsey County Attorney, Laura Rosenthal, Assistant County Attorney, Shea Thomas (certified student attorney), St. Paul, Minnesota (for respondent)

Considered and decided by Cleary, Presiding Judge; Connolly, Judge; and Larkin, Judge.

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

CLEARY, Judge

Appealing the denial of his petition for postconviction relief, appellant argues that the district court erred by holding that he did not receive ineffective assistance of counsel. He requests that he be given an additional 404 days of custody credit or, in the alternative, a postconviction evidentiary hearing. Because the district court did not err by holding that appellant did not receive ineffective assistance of counsel and did not abuse its discretion by failing to hold an evidentiary hearing, we affirm.

FACTS

In December 2007, appellant Brandon Will Campbell was charged with possession of a firearm by an ineligible person in Ramsey County. That charge was pending when, in 2009, he was extradited to Texas for resolution of criminal matters pending in that state. He was represented by an attorney in Texas, pleaded guilty to the charges in that state, and received an executed prison sentence.

Appellant contends that, at some point in August 2010, he asked his attorney in Minnesota, Barry Voss, to file a form pursuant to the Interstate Agreement on Detainers (IAD form) to allow his ineligible-possession charge to proceed in Ramsey County. He further contends that Attorney Voss told him that he "needed an attorney in Texas to do this." Appellant and the state are in agreement that this information was inaccurate and that Attorney Voss or appellant himself could have prepared an IAD form.

Appellant, himself, completed an IAD form on September 8, 2011. He then returned to Ramsey County and pleaded guilty to the ineligible-possession charge. He

subsequently received a 60-month executed sentence, with credit for time served while in custody in Minnesota.

Appellant petitioned for postconviction relief. He claimed that he received ineffective assistance of counsel when Attorney Voss erroneously told him that an IAD form would need to be filed by a Texas attorney. He requested that he be given additional custody credit of 404 days, representing the time between August 1, 2010 and September 8, 2011. The district court denied appellant's petition without holding a postconviction evidentiary hearing. The district court held that Attorney Voss's representation did not fall below an objective standard of reasonableness because Voss did not commit to filing an IAD form and then fail to do so, but rather declined to prepare an IAD form. The district court further held that appellant was not prejudiced by the misinformation he received because he did not actually rely on it, and, if he had done so, he would have spoken with his Texas attorney about completing an IAD form. This appeal follows.

D E C I S I O N

The denial of postconviction relief based on a claim of ineffective assistance of counsel is reviewed de novo because such a claim involves a mixed question of law and fact. *Hawes v. State*, 826 N.W.2d 775, 782 (Minn. 2013). To show ineffective assistance of counsel, a defendant "must affirmatively prove that his counsel's representation 'fell below an objective standard of reasonableness' and 'that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'" *Gates v. State*, 398 N.W.2d 558, 561 (Minn. 1987) (quoting *Strickland v.*

Washington, 466 U.S. 668, 688, 694, 104 S. Ct. 2052, 2064, 2068 (1984)). "The benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the [process] cannot be relied on as having produced a just result." *Strickland*, 466 U.S. at 686, 104 S. Ct. at 2064. A district court need not address both prongs of the *Strickland* test if one is determinative. *Hawes*, 826 N.W.2d at 783.

The state concedes that, if Attorney Voss told appellant that an IAD form had to be filed by a Texas attorney, this information was inaccurate. Even if providing this misinformation arguably satisfied the first prong of the *Strickland* test in that Attorney Voss's representation fell below an objective standard of reasonableness, appellant has not shown that the second prong of the *Strickland* test has been satisfied. To satisfy the second prong, the error by counsel must have prejudiced the proceeding. *State v. Jones*, 392 N.W.2d 224, 236 (Minn. 1986). "[T]he defendant must show that counsel's error[] actually had an adverse effect in that but for the error[] the result of the proceeding probably would have been different." *Gates*, 398 N.W.2d at 562 (quotation omitted).

Appellant has not shown that he was prejudiced by the inaccurate information given by Attorney Voss. Attorney Voss did not mislead appellant into thinking that he would prepare an IAD form and then fail to complete the task. Rather, Attorney Voss declined to complete the task and told appellant that another attorney would need to do it. Appellant did not actually rely on this information by consulting with his Texas attorney about the completion of an IAD form; if he had done so, the result may have been

beneficial to him. Instead, he waited more than a year before taking action to complete an IAD form. If anything, appellant was essentially prejudiced by his own inaction.

As an alternative to being awarded an additional 404 days of custody credit, appellant asks this court to remand with an instruction to the district court to hold an evidentiary hearing. An appellate court reviews the denial of a postconviction evidentiary hearing for an abuse of discretion. *Doppler v. State*, 771 N.W.2d 867, 871 (Minn. 2009). To receive an evidentiary hearing on a postconviction claim of ineffective assistance of counsel, the petitioner must allege facts that, if proven by a fair preponderance of the evidence, would satisfy both prongs of the *Strickland* test. *Bobo v. State*, 820 N.W.2d 511, 516 (Minn. 2012). The district court is not required to hold an evidentiary hearing if there are no material facts in dispute that must be resolved in order to determine the postconviction claim on its merits. *Powers v. State*, 695 N.W.2d 371, 374 (Minn. 2005).

In ruling on appellant's postconviction petition, the district court accepted as true the facts alleged by appellant. Even accepting these facts as true, appellant has not alleged sufficient facts to satisfy the second prong of the *Strickland* test. As there were no material facts in dispute that needed to be resolved in order to determine appellant's postconviction claim on its merits, the district court did not abuse its discretion by failing to hold an evidentiary hearing.

Affirmed.