STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1525

Michael Shepersky, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed August 26, 2008
Affirmed
Johnson, Judge

Lake County District Court
File Nos. CR-05-219, K8-04-504
St. Louis County District Court
File No. K9-05-600001

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Melanie S. Ford, St. Louis County Attorney, St. Louis County Courthouse, 100 North Fifth Avenue West, Suite 501, Duluth, MN 55802-1298 (for respondent)

Considered and decided by Halbrooks, Presiding Judge; Willis, Judge; and Johnson, Judge.

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

JOHNSON, Judge

In January 2006, Michael Shepersky pleaded guilty to four offenses arising from four separate incidents occurring in St. Louis County and Lake County. In February 2007, Shepersky filed a petition for postconviction relief in which he sought to withdraw his guilty plea. The district court denied the postconviction petition. We conclude that the district court did not abuse its discretion and, therefore, affirm.

FACTS

At the time of his guilty plea, Shepersky was charged with multiple offenses arising from five separate incidents occurring in northeastern Minnesota in late 2004 and early 2005. Shepersky pleaded guilty to four of the charged offenses in a single plea proceeding pursuant to a plea agreement that was intended to resolve all then-pending charges.

A. Offenses of Which Shepersky Pleaded Guilty

The four offenses to which Shepersky pleaded guilty arose from four incidents. First, Shepersky was charged in St. Louis County with second-degree assault, making terroristic threats, and first-degree criminal damage to property for two separate incidents. The complaint alleged that on Christmas Eve in 2004, Shepersky went to the residence of A.T. and threatened her at gunpoint, saying that J.S., who was a friend of A.T., "better show up next time or someone will die or be killed."

Second, Shepersky was charged in Lake County for an incident occurring on Christmas Day in 2004. According to the complaint, Shepersky went to J.S.'s home,

threatened his life, and fired one or more shots from a gun. For this incident, Shepersky was charged with unlawful possession of a firearm, making terroristic threats, and second-degree assault.

Third, Shepersky was charged with assaulting a probation officer on March 28, 2005, one block from the Lake County Courthouse. The complaint alleged that Shepersky bumped the probation officer in the chest and made a threatening statement about meeting him again in the future.

Fourth, Shepersky was charged with first-degree driving while impaired (DWI) on June 18, 2005, in Lake County. The complaint alleged that his alcohol concentration was .19 and that he had three prior DWI convictions.

B. Pre-Trial Proceedings

The district court appointed Steven P. Coz to be Shepersky's attorney with respect to all of the above-described charges. In a March 2005 letter to Shepersky, Coz detailed ongoing plea negotiations in which Coz was seeking to reduce Shepersky's sentence from eight to three years in exchange for a guilty plea. Coz informed Shepersky that, although the state was willing to reduce its request to only six years, the state was likely to bring additional charges and seek an enhanced sentence if Shepersky did not accept the offer. Coz urged Shepersky to consider whether the jury would believe him if the case went to trial.

At a March 28, 2005, review hearing, Shepersky complained to the district court that Coz was not adequately defending him. The district court continued the matter so

that Shepersky could consult with the Chief Public Defender for the district, Fred Friedman.

In a letter to Shepersky dated April 5, 2005, Coz acknowledged that Shepersky was seeking substitute counsel and noted that the general policy of the public defender's office in the district was to not give clients a different public defender simply because they were dissatisfied. Coz also stated that he would continue to "zealously represent" Shepersky but would not tolerate Shepersky's abuse of him or his staff. Shepersky sent an e-mail message to Friedman, stating, "Mr. Coz was refusing to defend me, and . . . he only recommends to me that I make a deal with the state." Friedman responded to Shepersky by declining to make a substitution and assuring Shepersky that Coz would serve him well.

At an April 18, 2005, omnibus hearing, Coz informed the district court that the public defender's office did not intend to provide a new attorney for Shepersky and asked the court to clarify on the record whether he would continue as Shepersky's counsel. Addressing Shepersky, the court stated that, in light of Shepersky's communications with Coz and Friedman, "your choices [are] to try your own cases, to have Mr. Coz represent you, or to hire counsel on your own." The district court then asked Shepersky if he wanted Coz to remain as his attorney; Shepersky answered, "Yes."

C. Plea and Sentencing Hearings

On January 26, 2006, Shepersky entered guilty pleas to all charges pending against him in Lake County and St. Louis County in a "global settlement." Some charges were

resolved by pleas entered pursuant to *North Carolina v. Alford*, 400 U.S. 25, 37-38, 91 S. Ct. 160, 167-68 (1970), and *State v. Goulette*, 258 N.W.2d 758 (Minn. 1977).

On February 1, 2006, two days before his scheduled sentencing hearing, Shepersky informed Coz that he wanted to withdraw his guilty pleas. Coz alerted the district court of Shepersky's wishes. On February 3, 2006, Coz explained to the district court that Shepersky had accused Coz of coercing him into entering the guilty pleas and that he would not meet with Shepersky alone for fear that Shepersky would make further similar accusations. Coz indicated that Friedman agreed to meet with him and Shepersky to determine how Shepersky should proceed. The district court continued the matter for six days. On February 9, 2006, Shepersky met with Coz and Friedman prior to the rescheduled sentencing hearing. At the hearing, the district court explained to Shepersky that he could either proceed with sentencing or withdraw his plea. After being given a few minutes to consider the matter, Shepersky stated that he would proceed with the plea proceedings because he trusted Coz. He also apologized to Coz for falsely accusing him of coercing the plea. Shepersky was sentenced, pursuant to the plea agreement, to 180 months of imprisonment.

D. Postconviction Proceedings

In February 2007, approximately one year after the sentencing hearing, Shepersky filed a postconviction petition in which he sought to withdraw his guilty plea on the ground that it was not voluntarily entered. The district court issued an order denying the petition. Shepersky appeals.

D E C I S I O N

A district court's decision on a postconviction petition will not be disturbed absent an abuse of discretion. *Dukes v. State*, 621 N.W.2d 246, 251 (Minn. 2001). Likewise, a reviewing court will reverse the district court's denial of a request to permit withdrawal of a guilty plea only if the district court abused its discretion. *Barragan v. State*, 583 N.W.2d 571, 572 (Minn. 1998).

I. Request to Withdraw Guilty Plea

A defendant does not have an absolute right to withdraw a guilty plea. *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007); *Alanis v. State*, 583 N.W.2d 573, 577 (Minn. 1998). But rule 15.05 of the Minnesota Rules of Criminal Procedure provides that a district court must permit a defendant to withdraw a guilty plea upon a showing that withdrawal is necessary to correct "manifest injustice." Minn. R. Crim. P. 15.05, subd. 1. Manifest injustice exists when a guilty plea was not "accurate, voluntary, and intelligent." *Perkins v. State*, 559 N.W.2d 678, 688 (Minn. 1997).

> The accuracy requirement protects the defendant from pleading guilty to a more serious offense than he or she could be properly convicted of at trial. The voluntariness requirement insures that the guilty plea is not in response to improper pressures or inducements; and the intelligent requirement insures that the defendant understands the charges, his or her rights under the law, and the consequences of pleading guilty.

Alanis, 583 N.W.2d at 577.

Considering the brief filed by Shepersky's appointed appellate counsel as well as Shepersky's pro se supplemental brief, Shepersky challenges each of the three requirements for a valid guilty plea. We will address each in turn.

A. Voluntariness of Guilty Plea

Through counsel, Shepersky argues that his guilty plea was not voluntary. He makes two arguments to that effect. First, he argues that he was coerced into pleading guilty because a substitute attorney was not appointed. Second, he argues that his guilty plea was induced by a promise of leniency in criminal charges against his wife.

1. Requested Substitution of Counsel

Shepersky argues that substitute counsel should have been appointed at either of two stages of the district court proceedings. First, he argues that he should have been given a new attorney at or after the April 18, 2005, hearing, when it was apparent that the public defender's office did not intend to replace Coz, which prompted the court to inform Shepersky that his options were "to try your own cases, to have Mr. Coz represent you, or to hire counsel on your own." This court already has considered and rejected this argument by Shepersky. On appeal from his conviction on the DWI charge, this court concluded that Shepersky was adequately represented at that stage of district court proceedings and that there were no exceptional circumstances warranting the appointment of substitute counsel. *State v. Shepersky*, No. A06-905, 2007 WL 2302458 *2-*3 (Minn. App. Aug. 14, 2007), *review denied* (Minn. Oct. 16, 2007). Thus, Shepersky is barred from raising the issue again by *State v. Knaffla*, 309 Minn. 246, 252,

243 N.W.2d 737, 741 (1976), and the doctrine of collateral estoppel, *see State v. Lemmer*, 736 N.W.2d 650, 663 (Minn. 2007) (analyzing collateral estoppel in criminal case).

Second, Shepersky argues that he should have been given substitute counsel at the February 9, 2006, sentencing hearing. "'The right to counsel includes a fair opportunity to secure an attorney of choice, but an indigent defendant does not have the unbridled right to be represented by the attorney of his choice.'" *State v. Worthy*, 583 N.W.2d 270, 278 (Minn. 1998) (citing *State v. Gassler*, 505 N.W.2d 62, 70 (Minn. 1993)). An indigent defendant will be granted substitute counsel "only if exceptional circumstances exist and the demand is timely and reasonably made." *Id.* (quoting *State v. Vance*, 254 N.W.2d 353, 358 (Minn. 1977)). The caselaw indicates that circumstances are "exceptional" if they "affect a court-appointed attorney's ability or competence to represent the client." *State v. Gillam*, 629 N.W.2d 440, 449 (Minn. 2001). General dissatisfaction with court-appointed counsel's representation or differences of opinion as to strategy do not constitute "exceptional circumstances." *Id.* at 450; *see also Worthy*, 583 N.W.2d at 279; *State v. Benniefield*, 668 N.W.2d 430, 434-35 (Minn. App. 2003), *aff'd*, 678 N.W.2d 42 (Minn. 2004). In addition, "personal tension" does not entitle a defendant to new counsel. *State v. Voorhees*, 596 N.W.2d 241, 255 (Minn. 1999).

Shepersky contends that there was a complete breakdown in his relationship with Coz and that Coz coerced him into pleading guilty. Those allegations are not supported by the record. At the February 3, 2006, hearing, Coz informed the court that Friedman was willing to meet with him and Shepersky to discuss how to proceed and that "if Mr. Shepersky wanted to withdraw his plea, Mr. Friedman would make arrangements to have

another attorney do that." When questioned by the court, however, Shepersky equivocated about his conversation with Coz, stating:

> Highly likely I used the wrong word, cause coerce seems to be gettin' a whole lot of attention that I didn't mean. I mean, I have some questions, and I have some reservations about certain wording in here that was not the wording that was not talked about in the plea agreement. . . . I'm not asking to withdraw my plea right now. I'm asking to be able to look at the paperwork that [the probation officer] has.

After the matter was continued, Shepersky did meet with Coz and Friedman. At the February 9, 2006, hearing, Shepersky stated, "I'll just leave [the plea] because my counsel, Mr. Coz, I trust in him." Shepersky also apologized to Coz:

> I would like to say . . . to Mr. Coz, my attorney, the way I used the word coerced, I used it as pressured and forced, and I know he's a messenger from [the prosecutor] and . . . [the] time table of what was happening. . . . The morning I signed the plea agreement . . . we got rushed. . . . I do not believe that was [Coz's] fault, and I'm sorry that I used the word coerce in such a manner that he took offense. I do not believe that he has done me wrong . . . by any means whatsoever.

In these postconviction proceedings, Shepersky has not provided evidence that overcomes the statements he made on the record during pre-trial proceedings. Those statements demonstrate that, at the time, Shepersky did not believe that he had been coerced into pleading guilty and that Shepersky generally had confidence in Coz's representation, even though he disagreed with Coz at certain times. The record does not support the conclusion that there existed "exceptional circumstances" requiring substitute counsel. *See Gillam*, 629 N.W.2d at 449-50; *Voorhees*, 596 N.W.2d at 255; *Worthy*, 583 N.W.2d at 278-79; *Benniefield*, 668 N.W.2d at 434-35.

Shepersky cites *Butala v. State*, 664 N.W.2d 333 (Minn. 2003), in which the supreme court stated that substitute counsel is appropriate for plea-withdrawal motions based on allegations of inadequate representation. *Id.* at 341. In *Butala*, the appellant filed a pro se motion to withdraw his guilty plea before sentencing under the "fair and just" standard in Minn. R. Crim. P. 15.05, subd. 2, citing, among other factors, inadequate representation. The district court denied the motion, finding that the appellant's plea had been accurate, voluntary, and intelligent. *Id.* at 340. On appeal, the appellant argued that he should have been given substitute counsel for the motion. The supreme court was satisfied that the lack of counsel did not affect the guilty plea but noted that "the better procedure would have been to afford substitute counsel for purposes of making the motion." *Id.* at 341. *Butala* does not apply here because Shepersky did not file a pro se motion or follow through on his stated intention to move to withdraw his plea. Even if *Butala* did apply, it would not compel reversal because substitution of counsel is not required in every case. As stated above, the record does not reflect the existence of "exceptional circumstances" that required the appointment of substitute counsel. *See Gillam*, 629 N.W.2d at 449-50; *Voorhees*, 596 N.W.2d at 255; *Worthy*, 583 N.W.2d at 278-79; *Benniefield*, 668 N.W.2d at 434-35.

Thus, there is insufficient evidence to conclude that Shepersky's plea agreement was coerced. Coz provided effective counsel to Shepersky, and there were no exceptional circumstances requiring the appointment of substitute counsel.

2. Leniency Toward Shepersky's Wife

Shepersky argues that he should have been permitted to withdraw his guilty plea because the district court failed to adequately inquire as to whether the plea was voluntary in light of the state's promise of leniency to his wife on related charges. The charges against Shepersky's wife arose from an incident on March 28, 2005 (the same day as the review hearing mentioned above) in which Shepersky was arrested for first-degree driving while impaired (DWI) in Lake County. Shepersky later was convicted of those charges after a jury trial, and he was sentenced to 36 months of imprisonment. *See Shepersky*, 2007 WL 2302458 at *2. The county charged Shepersky's wife with aiding and abetting that crime because she allegedly switched seats with Shepersky after their car was pulled over. Shepersky's plea agreement provided that the charges against his wife would be reduced to a misdemeanor, that there would be a stay of adjudication and ultimately a dismissal of the charges, and that the county would return to her one of the two vehicles that were subject to forfeiture.

a. Inquiry into "Package Deal"

Shepersky contends that the district court erred by not making a sufficient inquiry into the voluntariness of the "package deal" plea agreement involving his wife. Shepersky's argument is controlled by two supreme court cases. In *State v. Danh*, 516 N.W.2d 539 (Minn. 1994), the appellant entered into a plea agreement that was linked to, and dependent on, plea agreements with three co-defendants. The "package deal" provided, among other things, for a more lenient sentence for Danh's younger brother. *Id.* at 540. The district court conducted a rule 15.01 inquiry before accepting the plea, but

neither party mentioned the contingent nature of the plea. *Id.* at 541. Danh later moved to withdraw his plea, but the trial court denied the motion. *Id.* On appeal, the supreme court held that such "package deal" agreements, although not per se invalid, are "generally dangerous because of the risk of coercion," particularly in cases involving related third parties, where "there is a risk that a defendant, who would otherwise exercise his or her right to a jury trial, will plead guilty out of a sense of family loyalty." *Id.* at 542. Accordingly, the court held that in order to ensure that package-deal plea agreements are voluntarily made, "the state must fully inform the trial court of the details of the agreements," and the district court must conduct "further inquiries" beyond the standard rule 15.01 inquiry. *Id.* at 542-43. The court therefore remanded the case for an evidentiary hearing on the issue whether Danh's plea was voluntary. *Id.* at 544.

More recently, in *Butala*, the defendant received a letter from prosecutors indicating that the state would not prosecute any members of his immediate family in connection with a homicide investigation if the defendant pleaded guilty to the homicide. 664 N.W.2d at 336. The state's offer never was mentioned during the plea proceedings. *Id.* at 337. The appellant moved to withdraw his plea before sentencing, but the district court denied the motion. *Id.* Two years later, the district court denied the appellant's postconviction petition in which he again requested to withdraw the plea. *Id.* at 338. The supreme court affirmed the denial of postconviction relief, reasoning that the prosecutor had informed the court of the letter when opposing the initial motion to withdraw the guilty plea. *Id.* at 340.

The requirements of both *Danh* and *Butala* have been satisfied in this case. It is undisputed that the terms of the so-called "package plea" involving Shepersky's wife were disclosed to the district court before Shepersky entered his plea. After the package plea was disclosed, the district court inquired into the voluntariness of the plea. The court asked Shepersky whether anyone had promised Shepersky anything to induce his plea, other than what was promised in the plea petition, and whether he had been pressured in any way. Shepersky answered both questions in the negative.

Shepersky contends that the court did not perform the "further inquiry" required by *Danh*, but his argument misconstrues the holding in *Danh*. The supreme court reversed primarily because neither party mentioned during the plea hearing that Danh's plea was intertwined with the pleas of his younger brother and two other co-defendants. *Danh*, 516 N.W.2d at 541. Here, by contrast, the nature of the package plea was clearly explained on the record, twice. Furthermore, the *Danh* court explained that the "further inquiry" includes consideration of the "totality of the circumstances," which includes factors that do not require questioning of the defendant, such as the age of the defendant, "whether a third party has threatened the defendant," whether the leniency to a third party was an "insignificant factor" in the defendant's plea, and whether the charges against the third party were supported by an adequate factual basis and brought in "good faith." *Id.* at 542-43. Shepersky does not argue that the state lacked an adequate factual basis for charging Shepersky's wife or that the charges were not brought in good faith. Shepersky appears to be significantly older than the defendant in *Danh*, who was only 23 at the time of his offense. *See* 516 N.W.2d at 540. And the record indicates that the benefit to

Shepersky's wife was just one benefit among many in the totality of Shepersky's plea deal, which resolved at least 14 separately charged offenses. At the time of his plea, Shepersky was facing the prospect of severe punishment due to the multitude of offenses with which he was charged.

b. Alleged Breach of Agreement

Shepersky also argues that he has not received the benefit of this aspect of his plea agreement because his wife's case remains unresolved. The relevant portion of the plea petition reads as follows:

> [T]he felony level offense of aiding and abetting offense [sic] driving while impaired (169A.78) presently pending against my wife . . . with respect to the March 28, 2005 incident pending against me in file # CR-05-6 will be designated as a misdemeanor level offense for purposes of a plea and the state agrees to a stay of adjudication in that case.
>
> . . . .
>
> In addition, Lake County agrees to return to my wife, Jodi Shepersky, one of the two motor vehicles that are presently subject to forfeiture, it being up to my wife and I to decide which of the two vehicles is to be returned.

At the plea hearing, Shepersky's counsel stated that "if [Ms.] Shepersky honored the sentence and honored the terms of the stay, then there would not be an adjudication." The prosecution later clarified, "she's not bound to accept [the deal]. It's the offer I will make to her attorney. . . . [S]he is free either way to deal with that."

Correspondence between the prosecutor and Shepersky's wife's attorney clearly indicates that the state made the offer that it promised to make. Shepersky's wife sought to negotiate further with respect to visiting Shepersky while he is in prison and with

respect to the vehicles that are subject to forfeiture. Thus, the state fulfilled its promise to offer a particular plea agreement to his wife. *See State v. Williams*, 418 N.W.2d 163, 168 (Minn. 1988) (noting that plea agreement is similar to contract and that lenience of sentence toward accomplice may depend on accomplice's willingness to accept offer).

Thus, the package deal was fully disclosed on the record, as required by *Danh* and *Butala*, and the inquiry conducted by the court was sufficient to determine that the plea was voluntary, and Shepersky was not denied the benefit of his bargain.

B. Accuracy of Guilty Plea

In his pro se supplemental brief, Shepersky argues that his plea was not accurate because there was an insufficient factual basis for his plea. The requirement that a guilty plea be accurate "protects the defendant from pleading guilty to a more serious offense than he or she could be properly convicted of at trial." *Alanis*, 583 N.W.2d at 577. In the context of an *Alford-Goulette* plea, there are two basic requirements. First, the district court must exercise "careful scrutiny of the factual basis for the plea . . . because of the inherent conflict in pleading guilty while maintaining innocence." *Theis*, 742 N.W.2d at 648-49. Second, "the court must be able to determine that the defendant, despite maintaining his innocence, agrees that evidence the State is likely to offer at trial is sufficient to convict." *Id.* at 649.

In *Theis*, the supreme court held that the defendant's *Alford-Goulette* plea was invalid because, with respect to the first requirement, the colloquy did not address any of the facts regarding the charges against him. *Id.* at 650. Regarding the second requirement, the court held that the mere acknowledgement that there was a "risk" that he

would be found guilty was insufficient. *Id.* The court contrasted the plea proceedings there with two prior cases in which a guilty plea was upheld. In *Goulette*, the factual basis "consisted of a recitation by defense counsel, in summary form, of some of the key evidence." *Id.* at 647 (quotation omitted), and in *State v. Ecker*, 524 N.W.2d 712 (Minn. 1994), "the prosecutor questioned the defendant extensively during his guilty plea." *Theis*, 742 N.W.2d at 648 (quotation omitted).

In this case, defense counsel summarized the state's evidence on each of the three charges for which Shepersky was submitting an *Alford-Goulette* plea. Defense counsel then asked Shepersky to acknowledge that there was sufficient evidence to sustain a conviction if the jury believed the state's witnesses and disbelieved his testimony. With respect to each charge, Shepersky acknowledged the evidence against him and that it would be sufficient to sustain a conviction. The only charge for which Shepersky's acknowledgement was ambiguous was a charge for assaulting a probation officer on March 28, 2005, about which he stated, "Yeah. I'm not for sure I believe that, but I've--it's part of the agreement that I'm saying that, yeah." On this count, the factual basis for the charge was laid out in clear detail, including the location of the assault, the manner in which he physically confronted the officer, and the threat that he uttered during the assault. Although Shepersky was less than "sure," his statement adequately acknowledges the sufficiency of the evidence against him. In combination with the detailed recitation of the factual basis underlying the charge, the facts of this case satisfy the *Theis* accuracy test. *See* 742 N.W.2d at 650.

C. Intelligence of Guilty Plea

In his pro se supplemental brief, Shepersky also argues that his plea was not intelligently made because he did not understand all the legal requirements of an *Alford-Goulette* plea. "To be intelligently made, a guilty plea must be entered after a defendant has been informed of and understands the charges and direct consequences of a plea." *State v. Byron*, 683 N.W.2d 317, 322 (Minn. App. 2004), *review denied* (Minn. Sept. 29, 2004). "The purpose of the requirement that the plea be intelligent is to insure that the defendant understands the charges, understands the rights he is waiving by pleading guilty, and understands the consequences of his plea." *State v. Farnsworth*, 738 N.W.2d 364, 372 (Minn. 2007) (quotation omitted). If a defendant had a full opportunity to consult with counsel before entering a plea, the court "may safely presume that counsel informed him adequately concerning the nature and elements of the offense." *State v. Russell*, 306 Minn. 274, 275, 236 N.W.2d 612, 613 (1975).

Here, Shepersky admits that his counsel "told him that with the *Goulette* plea the Judge would accept his guilty plea even though he maintained he was innocent." But Shepersky argues that he was not informed that the state needed to provide a factual basis for the plea. The district court record does not support Shepersky's contentions. First, Shepersky signed the six-page plea petition, which attests that his attorney had "fully advised" him and that he had "sufficient time to discuss" the plea with his attorney. As the court stated in *State v. Simon*, 339 N.W.2d 907 (Minn. 1983), the fact that a guilty plea is counseled "justifies the conclusion that counsel presumably advised defendant of his other rights." *Id.* at 907. Second, at the plea hearing, Shepersky acknowledged that

he had been adequately informed of his rights, that his attorney had gone through the plea petition with him, that his attorney had answered all of his questions, and that the signature on the petition was his. Third, any lack of knowledge by Shepersky concerning the state's obligation to supply a factual basis for the guilty plea is inconsequential because, as we have concluded above, the state did so. Thus, Shepersky's plea was intelligently made.

II. Effectiveness of Counsel

In his pro se supplemental brief, Shepersky argues that the assistance rendered by his trial counsel was constitutionally ineffective. Shepersky did not raise this claim in his petition for postconviction relief, and the district court did not address the issue. Thus, the claim has been waived. *See Vance v. State*, 752 N.W.2d 509, 513 (Minn. 2008); *Azure v. State*, 700 N.W.2d 443, 446-47 (Minn. 2005).

In sum, the district court did not abuse its discretion when it denied Shepersky's postconviction petition.

Affirmed.