STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0572

Jeffrey David Skelton, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed June 2, 2009
Reversed and remanded
Stoneburner, Judge

Hennepin County District Court
File No. 27CR05043149

Jeffrey David Skelton, MCF – Oak Park Heights, 5329 Osgood Avenue North, Stillwater, MN 55082-1117 (pro se appellant)

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Michael O. Freeman, Hennepin County Attorney, Michael K. Walz, Assistant County Attorney, C-2000 Government Center, Minneapolis, MN 55487 (for respondent)

Considered and decided by, Stoneburner, Presiding Judge; Stauber, Judge; and Bjorkman, Judge.

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

STONEBURNER, Judge

Appellant challenges summary denial of his petition for postconviction relief, arguing that he was entitled to an evidentiary hearing on his claim that trial counsel's

failure to discuss a possible mental-illness defense constituted ineffective assistance of counsel and rendered appellant's guilty plea invalid. Appellant also argues that he is entitled to postconviction relief because he is the victim of ultra vires legislative acts and was subject to double jeopardy. Appellant's ultra vires and double jeopardy claims are without merit, but we conclude that appellant is entitled to an evidentiary hearing on his ineffective-assistance-of-counsel claim. Therefore, we reverse and remand for an evidentiary hearing.

FACTS

Appellant Jeffrey David Skelton shot and killed his wife's lover, Michael Delmore. He was charged with two counts of first-degree murder, one count of first-degree burglary, and one count of terroristic threats.

Skelton suffered from a psychotic or delirium episode while he was awaiting trial and was evaluated for competency to stand trial. Based on the results of a psychiatric evaluation performed by a licensed psychologist, Skelton was found competent to stand trial.

In connection with a bail-reduction hearing, Skelton underwent another psychiatric examination by Karen Bruggemeyer, M.D., who informed Skelton's attorney that Skelton had a "paranoid edge" and "gross impaired judgment." Skelton's attorney concluded that this information would not be helpful to the pursuit of reduced bail and did not request a written report from Dr. Bruggemeyer. Skelton subsequently pleaded guilty to second-degree intentional murder in violation of Minn. Stat. § 609.19, subd. 1(1) (2004) and was sentenced to 396 months (33 years) in prison.

In March 2007, Skelton was evaluated by Barbara J. Houk, M.D.[1] for the purpose of stating an opinion on whether Skelton had a physical or mental illness at the time of the shooting and, if so, whether that illness was related to Skelton's actions at the time he killed Delmore. Houk opined that (1) Skelton had a physical brain illness giving rise to a mental illness at the time he shot Delmore and (2) both illnesses are directly related to the shooting.

In August 2007, Skelton petitioned for postconviction relief arguing that his guilty plea was invalid because his attorney failed to inform him of and investigate a possible mental-illness defense. Skelton also argued that the state legislature acted ultra vires in enacting the statutes he was charged under by ignoring "millennia of law" permitting a husband or father to kill the paramour of his spouse or child[2] under limited circumstances, and that charging him with more than one crime "to make him think that he is in more jeopardy tha[n] he is actually in, is . . . double jeopardy" and a "fraud on the court."

The postconviction court dismissed Skelton's petition without a hearing, referring to the Rule 20 evaluation that found Skelton competent to stand trial and stating: "The record is clear that [Skelton] was not mentally ill or suffering under a psychotic condition at the time of the murder or beforehand."

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[1] Houk reviewed Skelton's medical records, talked to collateral sources, and interviewed Skelton. She was retained by Skelton's brother.

[2] Skelton asserts that Delmore taunted him by stating that he was sleeping with Delmore's wife and would soon be sleeping with his daughter.

D E C I S I O N

We review a postconviction court's decision for an abuse of discretion. *Dukes v. State*, 621 N.W.2d 246, 251 (Minn. 2001). We review findings of fact to determine whether the evidence is sufficient to sustain the findings, and we review legal issues and mixed questions of fact and law, including claims of ineffective assistance of counsel, de novo. *Opsahl v. State*, 677 N.W.2d 414, 420 (Minn. 2004); *Butala v. State*, 664 N.W.2d 333, 338 (Minn. 2003).

A petitioner seeking postconviction relief must prove the facts in a petition by a "fair preponderance of the evidence." Minn. Stat. § 590.04, subd. 3 (2008). To meet that burden, the petition "must be supported by more than mere argumentative assertions that lack factual support." *Henderson v. State*, 675 N.W.2d 318, 322 (Minn. 2004). To determine whether an evidentiary hearing is necessary, the district court must ascertain whether the petitioner is entitled to relief on the facts alleged. *Roby v. State*, 531 N.W.2d 482, 483 (Minn. 1995). An evidentiary hearing is not required if the petition, files, and record conclusively show that the petitioner is entitled to no relief. Minn. Stat. § 590.04, subd. 1 (2006); *Patterson v. State*, 670 N.W.2d 439, 441 (Minn. 2003).

I. Validity of plea

To be valid, a guilty plea must be accurate, voluntary, and intelligent. *Perkins v. State*, 559 N.W.2d 678, 688 (Minn. 1997). An invalid plea constitutes a manifest injustice that entitles a defendant to withdraw the plea. *Butala*, 664 N.W.2d at 339; *State v. Danh*, 516 N.W.2d 539, 544 (Minn. 1994). A guilty plea may be rendered invalid by the ineffective assistance of counsel. *State v. Ecker*, 524 N.W.2d 712, 718 (Minn. 1994).

A petitioner asserting a claim of ineffective assistance of counsel has the burden of proof on that claim, *State v. Jackson*, 726 N.W.2d 454, 463 (Minn. 2007), and "there is a strong presumption that counsel's performance fell within a wide range of reasonable assistance." *Bruestle v. State*, 719 N.W.2d 698, 705 (Minn. 2006) (quotation omitted). A party alleging ineffective assistance must show that: (1) the "representation 'fell below an objective standard of reasonableness,'" and (2) "'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 objective standard of reasonableness (first *Strickland*-test factor) is defined as "representation by an attorney exercising the customary skills and diligence that a reasonably competent attorney would perform under similar circumstances." *State v. Gassler*, 505 N.W.2d 62, 70 (Minn. 1993) (quoting *White v. State*, 309 Minn. 476, 481, 248 N.W.2d 281, 285 (1976)). A "reasonable probability" (second *Strickland*-test factor) means "a probability sufficient to undermine confidence in the outcome." *State v. Rhodes*, 657 N.W.2d 823, 842 (Minn. 2003) (quotation omitted). Argumentative assertions for which a petitioner has offered no factual support are insufficient to establish a claim of ineffective assistance of counsel. *McKenzie v. State*, 754 N.W.2d 366, 370 (Minn. 2008); *Leake v. State*, 737 N.W.2d 531, 543 (Minn. 2007). Both *Strickland* factors need not be analyzed if a defendant's claim fails under either one. *State v. Blom*, 682 N.W.2d 578, 624 (Minn. 2004).

Skelton did not produce any affidavit or other evidence with his postconviction petition establishing that a reasonably competent attorney would have investigated a mental-illness defense under similar circumstances. Nonetheless, based on information contained in the pretrial evaluations of Skelton and Houk's affidavit opining that Skelton had a mental illness that affected his behavior at the time of the shooting, we conclude that Skelton has presented sufficient evidence to require an evidentiary hearing on allegations that trial counsel's failure to discuss or investigate a mental-illness defense to the charges constituted ineffective assistance of counsel that rendered his plea invalid.[3] *See* Minn. Stat. § 611.026 (2006) (providing that a defendant may be excused from criminal liability if he committed the crime under a "defect of reason" affecting his ability to understand the nature of the act or that it was wrong). The record does not support the district court's finding that the record clearly establishes that Skelton did not suffer from a mental illness at the time of the shooting: except for Dr. Houk's affidavit, the record is devoid of any information on Skelton's mental state at the time of the shooting. An evidentiary hearing will allow the postconviction court to determine if it was reasonable for Skelton's trial attorney to fail to investigate the defense or discuss the possibility of the defense. If evidence supports a finding that the attorney's actions were reasonable, the inquiry ends there; otherwise, the district court must examine the second

[3] The state does not address Skelton's argument that he may have had a mental-illness defense to the charges. The state's appellate brief focuses exclusively on the fact that Skelton was found competent to stand trial, a finding that Skelton did not challenge in his petition for postconviction relief.

prong of the *Strictland* test to determine if Skelton's plea was intelligent and voluntary in the absence of a discussion or examination of a mental-illness defense.

II. *Ultra vires* acts of legislature and double jeopardy

Skelton's argument that his guilty plea was the product of an *ultra vires* act of the Minnesota legislature is based on his assertion that the legislature lacked authority to enact a statute criminalizing his act of killing his wife's lover. This argument is without merit, and we decline to address it.

Similarly, Skelton's assertion that multiple charges stemming from the shooting violated the double jeopardy clause of the United States Constitution is without sufficient merit to warrant discussion.

Reversed and remanded.