STATE OF MINNESOTA

IN SUPREME COURT

A19-1664

Hennepin County

Jamil Joshua Eason,

Appellant,

vs.

State of Minnesota,

Respondent.

Chutich, J.
Dissenting, Hudson, Thissen, JJ.
Took no part, Moore, J.

Filed: October 28, 2020
Office of Appellate Courts

Brad Colbert, Legal Assistance to Minnesota Prisoners, Saint Paul, Minnesota, for appellant.

Keith Ellison, Attorney General, Saint Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Brittany D. Lawonn, Assistant Hennepin County Attorney, Minneapolis, Minnesota, for respondent.

S Y L L A B U S

1. The district court did not abuse its discretion in denying appellant's postconviction claim that the judge who presided over his trial committed reversible error by not instructing the jury on the lesser-included offenses of first-degree heat of passion manslaughter and second-degree unintentional felony murder.

2. The district court did not abuse its discretion in denying appellant's postconviction claim that the prosecutor committed prosecutorial misconduct when she declined to reoffer a plea agreement that appellant had previously rejected on the record.

3. The district court did not abuse its discretion in denying appellant's postconviction claim that he received ineffective assistance of counsel when neither of his trial attorneys discussed the State's final plea offer with him or gave him an opportunity to accept it.

Affirmed.

O P I N I O N

CHUTICH, Justice.

A Hennepin County jury found appellant Jamil Joshua Eason guilty of first-degree intentional felony murder in connection with the November 2012 death of Jay Arthur Rosio. Eason filed a direct appeal, but voluntarily dismissed his appeal before the State filed its responsive brief. In 2016, Eason filed a pro se petition for postconviction relief and requested appointment of counsel. After the district court denied the request for counsel and the petition, Eason appealed. We concluded that the district court erred in not granting the request to appoint counsel, and remanded the case for appointment of counsel and further postconviction proceedings. *State v. Eason*, 906 N.W.2d 840, 843 (Minn. 2018).

Following remand, appointment of counsel, and a hearing, the case now comes to us on Eason's appeal of the district court's denial of his petition for postconviction relief. Because the district court did not abuse its discretion, we affirm.

FACTS

On November 2, 2012, appellant Jamil Joshua Eason stabbed and strangled Jay Arthur Rosio during a burglary and lit Rosio's home on fire. Minneapolis firefighters responding to the fire found Rosio dead on the basement floor and notified the police after discovering stab wounds. A later investigation discovered that the fire, which came from several sources of accelerant, had been intentionally set.

An autopsy determined that Rosio had died of complex homicidal violence. He suffered 16 blunt force injuries and at least 4 chop wounds to the head, several wounds to the face, 2 or 3 stab wounds to the trunk, at least 13 blunt force injuries to the extremities, and cuts on his hands. Rosio's body showed signs of strangulation as well. In addition, Rosio's heightened carbon monoxide level suggested that he was breathing for a time after the fire was set. Eason was subsequently arrested, charged with second-degree intentional murder, and indicted on first-degree intentional felony murder.

While in jail awaiting trial, Eason confessed his crime to another inmate, R.L. Eason told R.L. that he broke into Rosio's home to steal electronics. Eason told R.L. that, once inside, he heard a noise and went downstairs to investigate. There he encountered Rosio, who was startled and asked Eason what he was doing. Eason told Rosio that he was there to rent a place. In describing what happened next, Eason told R.L. that when Rosio turned away, he "choked the old guy out." As Eason started looking for items to steal in the basement, he tripped over Rosio. Rosio awoke, told Eason to leave, and "went for a

knife."[1] Eason told R.L. that he "snatched the knife" and "went all ham on him," which R.L. interpreted to mean that Eason had "gone crazy on [Rosio]." Eason further confided that in the struggle Eason had cut Rosio on top of the head and stabbed him in the chest. Eason told R.L. that after Rosio stopped moving, Eason gathered items to steal, cleaned off the knife and himself, set the home on fire, and left. After Eason confessed, R.L. contacted police.

Because two of Eason's claims before us concern unsuccessful plea negotiations, we set forth the history of the negotiations in detail. The week before Eason's trial, the prosecutor offered a plea agreement with a sentencing range of between 420 to 480 months based upon a guilty plea to second-degree intentional murder and agreement to two aggravating sentencing factors. Eason declined the offer on the record. The district court then asked Eason whether he understood the plea offer, and if he had had time to speak with his counsel about it. Eason said that he did. The district court further asked Eason "[a]nd do you understand that if you don't accept the offer, the offer is rejected, it's not like just sitting out on the table for you to accept some other time later?" Eason responded, "[y]es sir."

On the second day of jury selection, Eason made a counteroffer of 360–480 months, which the prosecutor discussed with her supervisors and declined. Eason's attorney responded by asking whether the original offer was still available, and the prosecutor informed him that it was not.

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[1] Testimony at trial showed that the knife was actually a 30-inch sword.

Later that day, the prosecutor made a "last and final offer" on the record to allow Eason to plead guilty to second-degree intentional murder for an aggravated sentence of 480 months. The last and final offer also required Eason to waive his right to a hearing under *Blakely v. Washington*, 542 U.S. 296 (2004), and admit to two aggravating factors. Eason was present when the offer was made. The judge responded, "Okay. And, sir, you'll have time to talk with your attorneys about it. We don't need to take the time right now." The court recessed, and Eason conferred with his attorneys.

During the recess, Eason's attorneys did not discuss the last plea offer. Rather, after receiving Eason's consent, Eason's attorneys approached the prosecutor and asked if she would allow Eason to plead guilty to the previously offered 420–480 month sentence. The prosecutor declined Eason's request. Eason's attorney made a record of this conversation and the State's rejection, expressing his frustration and stating that "there is absolutely no reason that [the State] should not leave the original offer of 420 to 480 on the table." Jury selection then continued. No further plea negotiations ensued.

Eason's three-day trial included testimony from firefighters, police officers, and experts from the Bureau of Criminal Apprehension who described the crime scene, Rosio's injuries, and the murder investigation. The jury also heard testimony from two witnesses that, on the night that Rosio was murdered, Eason had gone to a barbershop and sold a laptop and cell phone that he had stolen from Rosio. R.L, the informant, also testified. Eason did not testify and called no witnesses. At the close of the evidence, Eason's attorneys asked the district court to submit jury instructions on the lesser-included offenses of first-degree heat of passion manslaughter and second-degree unintentional felony

murder. The district court denied the request. The jury subsequently found Eason guilty of first-degree intentional felony murder even though it had the opportunity to find him guilty of the lesser-included offense of second-degree intentional murder. The district court sentenced Eason to life in prison with the possibility of supervised release after thirty years.

Eason timely filed a notice of appeal, but then voluntarily dismissed this direct appeal. *See State v. Eason*, 906 N.W.2d 840, 841 (Minn. 2018) (explaining the procedural posture). In 2016, Eason filed a pro se petition for postconviction relief and requested appointment of counsel. *Id.* The district court denied Eason's postconviction petition without holding an evidentiary hearing or appointing counsel. *Id.*

Upon Eason's appeal from this decision, we concluded that Eason's right to counsel had not been fully vindicated. We therefore remanded his case to the district court for appointment of counsel to represent Eason in a first review by postconviction proceeding. *Id.* at 843.

With assistance of counsel, Eason filed a petition for postconviction relief contending that: (1) the judge who presided over his trial committed reversible error by denying his request for lesser-included jury instructions; (2) the prosecutor had abused her prosecutorial discretion in plea negotiations; and (3) he received ineffective assistance of trial counsel during the plea negotiations. The district court denied Eason's claims related to the jury instructions and prosecutorial discretion, but granted an evidentiary hearing to determine whether Eason received ineffective assistance of counsel.

At the postconviction evidentiary hearing, the district court heard testimony from Eason's two trial lawyers and the prosecutor. Eason's defense attorneys each stated that they did not discuss the State's last and final offer with Eason. Eason also testified, stating that he would have been willing to accept the State's last plea offer and to provide a sufficient factual basis to admit guilt.

After assessing the credibility of the witnesses, the district court made findings of fact and reached several conclusions, including that Eason "was aware of the" State's offers. "Throughout the process of plea negotiations, Eason was influenced by others in custody who were, apparently, telling him to not plead." Trial counsel "reasonably believed [Eason] would not accept a plea of 480 months, if asked again." The district court noted that Eason's confession at the last evidentiary hearing "seemed driven more by a sense of buyer's remorse than by a true representation of what he would have done at the time." The district court was "not satisfied that Eason would have pleaded or would have been able to lay an adequate factual basis at the time of trial." Finally, the district court concluded that it was "unlikely the State would have accepted [Eason's] plea."

Accordingly, the district court concluded that Eason's claim of ineffective assistance of trial counsel failed under each prong of the test announced in *Strickland v. Washington*, 466 U.S. 668 (1984). Eason now appeals.

ANALYSIS

We review the district court's denial of Eason's requested postconviction relief for an abuse of discretion. *Davis v. State*, 784 N.W.2d 387, 390 (Minn. 2010). A district court "abuses its discretion when its decision is based on an erroneous view of the law or is

against logic and the facts in the record." *Riley v. State*, 819 N.W.2d 162, 167 (Minn. 2012). In making this determination, we review a district court's factual determinations for clear error, *Scherf v. State*, 788 N.W.2d 504, 507 (Minn. 2010), and review the district court's legal conclusions de novo, *Leake v. State*, 737 N.W.2d 531, 535 (Minn. 2007). Eason alleges that the district court abused its discretion in three ways and seeks a new trial, or in the alternative, requests a remand to allow him to accept the last and final plea offer made by the State at trial. We address each of his arguments in turn.

I.

Eason first contends the district court abused its discretion in denying his postconviction claim that the judge who presided over his trial committed reversible error by not instructing the jury on the lesser-included offenses of first-degree heat of passion manslaughter and second-degree unintentional felony murder.

A defendant is entitled to a lesser-included offense instruction when (1) the lesser offense is included in the charged offense; (2) the evidence provides a rational basis for acquitting the defendant of the offense charged; and (3) the evidence provides a rational basis for convicting the defendant of the lesser-included offense. *State v. Dahlin*, 695 N.W.2d 588, 598 (Minn. 2005). When considering this three-part test, the trial judge must view the evidence in the light most favorable to the party requesting the instruction. *Id.* The judge may not weigh the evidence or make credibility determinations when deciding if a lesser-included offense instruction is warranted. *Id.*

A.

We first turn to Eason's argument that the district court abused its discretion in denying his postconviction claim that the judge who presided over his trial committed reversible error by not instructing the jury on the lesser-included offense of first-degree heat of passion manslaughter. Because Eason's request for a first-degree heat of passion manslaughter instruction is a lesser-included offense of first-degree intentional felony murder, the issue turns on whether the evidence presented at trial, when viewed in a light most favorable to Eason, provided the jury a rational basis to acquit Eason of first-degree intentional felony murder, and convict him of first-degree heat of passion manslaughter. *See State v. Stewart*, 624 N.W.2d 585, 590 (Minn. 2001) (noting that first-degree heat of passion manslaughter is a lesser-included offense of first-degree intentional felony murder).

An intentional killing may be mitigated to first-degree heat of passion manslaughter if (1) the killing was done in the heat of passion, and (2) the passion was provoked by words and acts of another such as would provoke a person of ordinary self-control under like circumstances. *State v. Buchanan*, 431 N.W.2d 542, 549 (Minn. 1988); Minn. Stat. § 609.20(1) (2018) (explaining that a person commits first-degree heat of passion manslaughter when the person "intentionally causes the death of another person in the heat of passion provoked by such words or acts of another as would provoke a person of ordinary self-control under like circumstances."). The first element is subjective and the second is objective. *Buchanan*, 431 N.W.2d at 549. Moreover, the phrase "under like

circumstances" does not "encompass the unique mental characteristics of a particular defendant." *State v. Bird*, 734 N.W.2d 664, 677 (Minn. 2007).

We need not consider the first subjective element here because even when we view the alleged words and acts of Rosio in a light most favorable to Eason, they would not provoke a person of ordinary self-control under like circumstances. *See State v. Hohenwald*, 815 N.W.2d 823, 834 n.5 (Minn. 2012). Our precedent is instructive on this issue.

We have previously determined that the victim's act of shooting the defendant in the head would provoke a person of ordinary self-control into a heat of passion. *State v. Johnson*, 719 N.W.2d 619, 628 (Minn. 2006). By contrast, we have determined in other cases that a victim's act of "reach[ing] for a gun" does not satisfy the elements of a heat-of-passion defense when the defendant was the initial aggressor.[2] *Stiles v. State*, 664 N.W.2d 315, 322 (Minn. 2003). In another case, we concluded that a victim's act of "grabb[ing] a knife" after the defendant "smacked" her was insufficient to provoke a person of ordinary self-control to act in the heat of passion. *State v. Hale*, 453 N.W.2d 704, 706−07 (Minn. 1990); *see also State v. Nystrom*, 596 N.W.2d 256, 262 (Minn. 1999) (holding that a victim's physical gesture challenging the defendant to fight as the defendant rode away on his bike was insufficient to provoke a person of ordinary self-control).

[2] Quoting the district court's order in *Stiles*, we observed that "[t]o suggest that any move by [the victim] to protect himself as [the defendant] pointed a loaded shotgun at him should somehow mitigate this homicide to one of heat-of-passion is as absurd as claiming a right to self-defense." *Stiles*, 664 N.W.2d at 322.

Here, even viewing the evidence in the light most favorable to Eason, we conclude that this case is closer to *Stiles* and *Hale*. Rosio did not say or do anything that would have provoked a person of ordinary self-control into a heat of passion. Like the victims in *Stiles* and *Hale*, Rosio simply reached for a weapon after Eason assaulted him. Consequently, the district court did not abuse its discretion in denying Eason's postconviction claim that the trial judge committed reversible error by not providing the jury an instruction on the lesser-included offense of first-degree heat of passion manslaughter.

B.

We next turn to Eason's argument that the district court abused its discretion in denying his postconviction claim that the judge who presided over his trial committed reversible error by not instructing the jury on the lesser-included offense of second-degree unintentional felony murder. For the reasons that follow, we conclude that the district court did not abuse its discretion because even when the evidence is viewed in a light most favorable to Eason, there was no rational basis for a jury to acquit Eason of first-degree intentional felony murder and to convict him of the lesser-included offense of unintentional felony murder.

First-degree felony murder requires an intent to kill during the commission of a felony; second-degree felony murder does not require such a showing of intent. *State v. Dimmick*, 586 N.W.2d 127, 129 (Minn. 1998). Intent "means that the actor either has a purpose to do the thing or cause the result specified or believes that the act, if successful, will cause that result." Minn. Stat. § 609.02, subd. 9(4) (2018). "Intent to kill may be inferred from the manner of the killing." *State v. Hall*, 722 N.W.2d 472, 477 (Minn. 2006);

see also State v. Harris, 405 N.W.2d 224, 229 (Minn. 1987) (finding intent to kill after considering the severity of injuries to the victim); *State v. Campbell*, 161 N.W.2d 47, 55 (Minn. 1968) (noting that intent to cause death "may be inferred from the manner of shooting the victim").

In *State v. Prtine*, we concluded the defendant was not entitled to an instruction on second-degree unintentional felony murder because the victim's 63 stab wounds were "indicative of an intent to kill." 784 N.W.2d 303, 317 (Minn. 2010). We reached a similar conclusion in *State v. Dimmick*, 586 N.W.2d 127, 129 (Minn. 1998). In *Dimmick*, the victim was cut and stabbed over 35 times while she was nearly prone on the floor, her jugular vein was cut, her spinal column was penetrated, her nose was broken, and she received two large contusions to her head. 586 N.W.2d at 129–30. We concluded there was no rational basis for a jury to acquit Dimmick of the first-degree murder offenses and to convict him of the lesser-included offense of second-degree unintentional felony murder because the "viciousness of the attack on [the victim] went well beyond anything necessary to merely incapacitate her." *Id.* at 130.

Here, even viewing the evidence in the light most favorable to Eason, Rosio was stabbed with a 30-inch blade several times in the trunk, had four "chop" wounds to the head which fractured his skull, and was strangled. Eason also set the home on fire before he left. Like the victim's injuries in *Prtine* and *Dimmick*, Rosio's injuries went well beyond a single blow and were of such a nature and quantity that no reasonable jury could have inferred that Eason did not intend to kill Rosio. Based on this record, we conclude that the district court did not abuse its discretion in denying Eason's postconviction claim that the

judge who presided over his trial committed reversible error by not instructing the jury on the lesser-included offense of second-degree unintentional felony murder.

II.

Eason next alleges that the State committed prosecutorial misconduct, and urges us to remand his case and allow him to accept the State's previously offered plea deal. He asserts that the State suffered no prejudice by his belated decision to reconsider its offer, and notes that he was an unsophisticated defendant who did not grasp the gravity of his situation until jury selection began. The State contends that the district court was correct when it concluded that the State was under no obligation to make or to reopen a plea offer. We agree with the State.

"Neither the constitution nor [Minnesota] Rules of Criminal Procedure give to a criminal defendant an absolute right to have his plea of guilty accepted." *State v. Goulette*, 258 N.W.2d 758, 762 (Minn. 1977). Generally, the decisions of prosecutors in plea bargaining are solely within their discretion. *See State v. Streiff*, 673 N.W.2d 831, 836 (Minn. 2004) (discussing the "division of power" and how "bringing charges and plea bargaining . . . rests almost entirely with the prosecutor"); *State v. Andrews*, 165 N.W.2d 528, 532 n.4 (Minn. 1969) (noting that the prosecutor "has no duty to initiate . . . or make a [plea] bargain"). And "unless the prosecutor abuses his or her discretion or demonstrates improper intent, the judiciary is powerless to interfere with the prosecutor's charging authority." S*tate v. Lee*, 706 N.W.2d 491, 494 (Minn. 2005) (citation omitted) (internal quotation marks omitted).

The American Bar Association Criminal Justice Standards for the Prosecution Function states that the "prosecutor should be open, at every stage of a criminal matter, to discussions with defense counsel concerning disposition of charges by guilty plea or other negotiated disposition." ABA Standards Relating to the Prosecution Function 3–5.6(a) (2017). The standard also counsels that "[t]he prosecutor should not set unreasonably short deadlines, or demand conditions for a disposition, that are so coercive that the voluntariness of a plea or the effectiveness of defense counsel is put into question. A prosecutor may, however, set a reasonable deadline before trial or hearing for acceptance of a disposition offer." *Id.* at 3–5.6(d).

Applying these principles to the history of negotiations here, we conclude that the district court properly rejected Eason's claim of prosecutorial misconduct. The week before trial, after notifying the victim's family, the State extended an offer to Eason to plead guilty to second-degree intentional murder for a sentence of between 420 and 480 months, which he rejected. Before voir dire began, the prosecutor made a record of the offer and her understanding that Eason had declined it. The district court then confirmed that Eason was aware of the offer, had spoken to counsel about it, still declined to accept the offer, and understood that the offer was not "sitting out on the table for you to accept some time later."

Eason made an unsuccessful counteroffer through counsel, which the State rejected. Defense counsel then asked about the earlier deal, and the State said that its initial offer was "off the table." During the second day of jury selection, the State made its final offer of 480 months. Defense counsel, after receiving Eason's consent, again asked the State if

it would allow Eason to plead to the State's original offer. The prosecutor declined, and the trial continued.

Nothing in these negotiations reflects an abuse of discretion by the prosecutor or an improper intent. No case law suggests that a prosecutor is under a duty to reoffer a plea offer that has been rejected, and such a rule would go against basic contract principles. *See generally Puckett v. United States*, 556 U.S. 129, 137 (2009) ("Although the analogy may not hold in all respects, plea bargains are essentially contracts."); Skylar Reese Croy, *When "Ministers of Justice" Violate Rules of Professional Conduct During Plea Bargaining: Contractual Consequences*, 33 Geo. J. Legal Ethics 201, 204 (2020) (noting that scholars and courts have long recognized that plea agreements are unilateral contracts). Moreover, Eason did not move the district court to accept his guilty plea to a reduced charge or attempt to show that it would be a manifest injustice not to accept such a plea. *Cf. Streiff*, 673 N.W.2d at 833, 839 (reversing a district court's acceptance of a guilty plea to a lesser offense because prosecution for the greater offense did not amount to a manifest injustice). Because Eason rejected the plea deal offered to him, and given the broad discretion afforded to a prosecutor during plea negotiations, the State was not required to reoffer the deal. Accordingly, the district court did not err in rejecting Eason's claim of abuse of prosecutorial discretion.

III.

Eason's final claim is that he received ineffective assistance of counsel when neither of his trial attorneys discussed the State's final plea offer with him or gave him an opportunity to accept it. The State, by contrast, asserts that the district court properly found

that the representation of defense counsel was reasonable and that Eason "would not accept a plea to a higher charge, for an already-rejected offer" even if counsel asked him again. After considering the context of the plea negotiations here, we conclude that the district court did not abuse its discretion in denying Eason's claim.

The right to effective assistance of counsel applies during the plea negotiation process. *Missouri v. Frye*, 566 U.S. 134, 140 (2012). "If a plea bargain has been offered, a defendant has the right to effective assistance of counsel in considering whether to accept it." *Lafler v. Cooper*, 566 U.S. 156, 168 (2012). In determining whether a defendant has been denied this right during the plea negotiation process, courts apply the two-part test of *Strickland v. Washington*, 466 U.S. 668, 687–88 (1984). *Frye*, 566 U.S. at 140; *Peltier v. State*, 946 N.W.2d 369, 372 (Minn. 2020).

To show ineffective assistance of counsel, Eason must demonstrate "that '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.' " *Fields v. State*, 733 N.W.2d 465, 468 (Minn. 2007) (quoting *Strickland*, 466 U.S. at 687–88). We may address the prongs in either order, and a claim may be disposed of on one prong without analyzing the other. *Jackson v. State*, 817 N.W.2d 717, 722 (Minn. 2012).

An attorney meets the objectively reasonable standard when the attorney "exercise[s] the customary skills and diligence that a reasonably competent attorney would perform under similar circumstances." *White v. State*, 248 N.W.2d 281, 285 (Minn. 1976).

A "strong presumption" exists "that counsel's performance was reasonable." *Zornes v. State*, 880 N.W.2d 363, 370 (Minn. 2016).

The United States Supreme Court has provided some guidance about what is effective assistance in the context of plea bargaining. In *Frye*, the Supreme Court concluded that defense counsel was ineffective when he did not communicate time-sensitive plea offers to the defendant before they expired. *Frye*, 566 U.S. at 145. In doing so, it set forth a "general rule [that] defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused." *Id.* Noting that defining "the duties and responsibilities of defense counsel . . . is a difficult question" given the nuances of the "art of negotiation," the Court believed it neither "prudent nor practical to try to elaborate or define detailed standards for the proper discharge of defense counsel's participation in the process." *Id.* at 144–45.

The Court did note that "[t]hough the standard for counsel's performance is not determined solely by reference to codified standards of professional practice, these standards can be important guides." *Id.* at 145. The Court then quoted the American Bar Association's recommendation that defense counsel "promptly communicate and explain to the defendant all plea offers made by the prosecuting attorney." *Id.* (quoting ABA Standards for Criminal Justice, Pleas of Guilty 14-3.2(a) (3d ed. 1999)).

We have also considered the effectiveness of counsel in the context of plea negotiations. In *State v. Powell*, Powell, who was then 16 years old, claimed that he never knew about two plea offers because his counsel did not communicate the offers to him. 578 N.W.2d 727, 730 (Minn. 1998). Defense counsel disputed this contention by affidavit,

contending that he had communicated both offers to Powell; he also stated that Powell had adamantly asserted his belief that he was innocent and that witnesses would change their testimony. *Id.* at 730. The prosecutors also affirmed by affidavit that the second offer was communicated, in their presence, by defense counsel to Powell, who rejected it. *Id*.

Under these circumstances, we upheld the district court's conclusion that Powell failed to establish that his counsel was ineffective. *Id.* at 732–33. We noted that the "postconviction court found that the offers were communicated and we conclude[d] that the court did not abuse its discretion in relying on the affidavits of the attorneys involved to establish that the offers were in fact communicated." *Id.* at 732.

Notably, we rejected the dissent's conclusion that counsel's assistance would be ineffective if no further discussion of the second plea offer occurred other than communication of the offer in the presence of prosecutors. *Id.* at 732–33. In requiring no further advice about the second plea, we stressed the importance of the *context* of the trial and rapport between counsel and client, stating: "Because of respondent's insistence of his innocence, belief that the witnesses would change their testimony at trial, and rejection of the first plea offer, counsel could have reasonably concluded that additional discussion would have served no purpose." *Id.* at 732. Under the circumstances present in *Powell*, we did not require defense counsel to do more than ensure that the second plea offer was communicated.

Applying these principles and considering the context of the fluid plea negotiations here, we conclude that Eason cannot show that his counsels' assistance fell below the standard of objective reasonableness. Unlike the defendants in *Frye* and *Powell*, Eason

was aware of every plea offer, and actively participated in the plea negotiation process. The record shows that Eason had extensive conversations with his attorneys before trial and during jury selection about the plea negotiations. He testified at the postconviction hearing that his attorneys spoke to him "intensely" about the State's first plea offer and recommended that he take it.

Defense counsel for Eason confirmed that they had "strongly suggested" and "jointly recommended to him on a number of occasions" that Eason take the first offer, but Eason stated that he did not want to plead guilty. Against advice of counsel, Eason rejected the first offer, and he knew that it would be no longer available when he did so.

Over the next day of jury selection, Eason and his counsel continued to have conversations about the risks of trial and potential benefits that he could receive by pleading guilty and receiving a fixed sentence. Counsel advised Eason that "there is a world of difference between a sentence of years and a sentence where he may never get out of jail." He told Eason about a 19-year-old client who was eligible for parole after serving 17 and a half years but who was still in prison at age 46. According to Eason's counsel, Eason then asked counsel if he could negotiate further; after securing Eason's agreement, counsel then proposed the counteroffer of 360–480 months. Importantly, the initial offer by the State and the counteroffer by Eason each had 480 months as the high number. Defense counsel had advised Eason that, when considering the sentencing range of the first offer, he should know that the judge may well give him the highest number in that range. With this knowledge, Eason sought a wider range of 360–480 months in his counteroffer to the 420–480 months that the State originally proposed. The counteroffer

suggests that Eason had the ability to ask his counsel to continue negotiating and was focused on the lower number in the range.

The record further shows that the State extended the final offer, a flat 480 months in prison, on terms similar to the previous offer, that is, pleading guilty to second-degree intentional murder and waiving *Blakely*. After receiving Eason's permission to do so, defense counsel made another attempt on the record, with Eason present, at reaching a plea agreement that could have potentially cut the length of any sentence imposed by up to five years. Counsel outlined the course of negotiations, noted the negligible time lapse when the State's first offer was on the table and when it was removed, and implored the prosecutor to "sit alone in a dark room for about ten minutes and determine whether or not she really wants to pull that [offer of 420–480 months] off the table . . . ." Upon hearing counsel's impassioned speech, the district court properly noted that it could not "direct anything with regard to plea offers or negotiations." After confirming with the prosecutor that the State did not wish to reconsider its final offer, the district court called for trial proceedings to resume. No further settlement negotiations ensued.

Given the vigorous and thorough nature of defense counsel's advice to Eason and their strenuous advocacy for him during these plea negotiations, as well as the presumption of competence afforded by *Strickland*, we would be hard pressed to conclude that Eason received ineffective assistance of counsel. The dissent attempts to characterize Eason's ongoing conversations and on-the-record advocacy as evidence that Eason's "attitude towards accepting a plea offer varied from meeting to meeting." Rather, the record before us suggests that during the first and second day of jury selection, Eason and his counsel

were engaging in ongoing, open, and honest dialogue about his best course of action, and focused on securing Eason a plea deal with a lower range than was offered by the prosecutor.

To be sure, defense counsel did not explicitly ask Eason if he would accept or reject the State's final offer. While best practices may recommend that a defense attorney discuss each and every offer with a client, we decline, as did the Supreme Court in *Frye*, to adopt a bright-line rule requiring such advice and inquiry, especially when the defendant is fully aware of all offers and has been counseled about a previous similar offer. To hold differently would restrict counsel's ability to conduct tailored conversations with a client. And considering the potential for a perceived power imbalance between counsel and client, such a bright-line rule could lead a client to feel coerced into pleading guilty. *See State v. Kaiser*, 469 N.W.2d 316, 319 (Minn. 1991) (requiring further hearing to determine whether defendant's attorney had coerced him into pleading guilty and whether defendant should be allowed to withdraw plea).

The record here shows that Eason's counsel thoroughly discussed the implications and consequences of the original plea offer with Eason. The final offer for a fixed number of months under the same terms as the State's initial offer—made in Eason's presence—contained no nuance to further explain. This offer came after Eason had already rejected a more favorable plea bargain with that same number as the high range, and had asked his counsel to negotiate a range with a lower bottom number. As defense counsel testified at the postconviction hearing, "You know, he—we rejected the 420 to 480, maybe we thought that he would reject the 480 and without discussion."

Under these circumstances, where Eason knew of both plea offers, was thoroughly counseled about the first offer and rejected it, and defense counsel continued to zealously advocate for him to receive that potentially better offer, the district court correctly concluded that Eason failed to meet his burden of showing that his attorneys' conduct fell below an objective standard of reasonableness. Because we conclude that Eason's claim fails under the first *Strickland* prong, we need not consider whether he demonstrated prejudice under the second prong of the analysis.

CONCLUSION

For the foregoing reasons, we affirm the decision of the district court.

Affirmed.

MOORE, J., not having been a member of this court at the time of submission, took no part in the consideration or decision of this case.

D I S S E N T

HUDSON, Justice (dissenting).

I respectfully dissent because the district court abused its discretion in denying Mr. Eason's postconviction claim for ineffective assistance of trial counsel. A district court abuses its discretion when its decision to deny relief is "against logic and the facts in the record" or "based on an erroneous view of the law." *Riley v. State*, 792 N.W.2d 831, 833 (Minn. 2011). Applying this standard here, I would reverse the order denying relief to Mr. Eason because the record supports his claim for ineffective assistance of counsel and the district court did not properly apply *Strickland*. The appropriate remedy is to remand to the district court for the State to reoffer its last and final plea offer to Mr. Eason.

I.

In a criminal justice system where over ninety percent of criminal cases are resolved through plea bargains, "the negotiation of a plea bargain, rather than the unfolding of a trial, is almost always the critical point for a defendant." *Missouri v. Frye*, 566 U.S. 134, 144 (2012); *see also Padilla v. Kentucky*, 559 U.S. 356, 373 (2010) ("[W]e have long recognized that the negotiation of a plea bargain is a critical phase of litigation for purposes of the Sixth Amendment right to effective assistance of counsel."). The Sixth Amendment requires that defendants have "access to counsel's skill and knowledge" during those negotiations. *Strickland v. Washington*, 466 U.S. 668, 685 (1984); *see also Frye*, 566 U.S. at 143; *Hill v. Lockhart*, 474 U.S. 52, 58–59 (1985). When a defendant claims that counsel failed to render effective assistance during plea negotiations, the court must apply the two-

prong test from *Strickland* to determine whether to grant the defendant postconviction relief. *Frye*, 566 U.S. at 140.

A.

I begin with the first *Strickland* prong, which requires Mr. Eason to show that defense counsel's performance "fell below an objective standard of reasonableness." *Strickland*, 466 U.S. at 687–88. Mr. Eason carried this burden, and the district court abused its discretion when it held otherwise. I reach this conclusion for two reasons. First, the record demonstrates that counsel's performance did not satisfy the objective standard of reasonableness set forth by *Strickland*. Second, the district court improperly scrutinized Mr. Eason's lack of action regarding the State's last and final plea offer and used his inaction as a reason to deny postconviction relief.

1.

The "measure of attorney performance" under the first *Strickland* prong is "reasonableness under prevailing professional norms." *Id.* at 688. I apply this standard using the American Bar Association (ABA) standards as a guide for reasonableness, along with precedent on ineffective assistance of counsel claims. *See id.* ("Prevailing norms of practice as reflected in American Bar Association standards and the like, e.g., ABA Standards for Criminal Justice . . . , are guides to determining what is reasonable . . . .").

ABA Model Rule 1.4, regarding communications between attorney and client, requires lawyers to "explain a matter" to a client "to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." ABA Model Rule 1.4(b); *see also* Minn. R. Prof. Conduct 1.4 (using the same language as the ABA

Model Rule on attorney-client communications). The ABA Criminal Justice Standards further elaborate on the duties of counsel when the representation involves a criminal matter. Standard 4-5.1 requires defense counsel to "advise the client with candor" prior to "significant decision-points" and "act diligently" to counsel the client regarding what must be "considered before final decisions are made." ABA Criminal Justice Standard 4-5.1(b). "After advising the client, defense counsel should aid the client in deciding the best course of action and how best to pursue and implement that course of action." *Id.* at 4.5-1(i). Regarding plea offers, defense counsel must both "promptly communicate" plea offers to clients and "provide advice as outlined" by Standard 4-5.1. *Id.*, 5.1(c).

In this case, the last and final offer from the State was certainly a "significant decision-point" at which Mr. Eason needed the advice of counsel. But Mr. Eason and his defense attorneys testified at the postconviction evidentiary hearing that there was no discussion about the offer. Thus, counsel did not explain the State's final offer to Mr. Eason as the rules of professional responsibility require. Both counsel acknowledged under oath at the evidentiary hearing that their failure to discuss the offer with Mr. Eason was a deviation from their normal standards of practice and likely violated their ethical duties to him as a client.

While I have serious concerns about whether Mr. Eason received representation that satisfies the ethical standards of our profession based of the language of the ABA standards, I also realize that the ABA standards are "only guides" to determine whether counsel's performance was objectively reasonable. *Strickland*, 466 U.S. at 688. I therefore look to

precedent on ineffective assistance of counsel claims related to plea bargaining to determine whether the facts of this particular case justify postconviction relief.

In *Missouri v. Frye*, the Supreme Court held that the Sixth Amendment right to effective assistance of counsel applies to lapsed and rejected plea offers. *See* 566 U.S. at 143–44. The case involved a defendant charged with a felony offense that carried a maximum sentence of 4 years in prison. *Id.* at 138. The State sent a letter to the defendant's attorney, offering two different pleas with the potential to significantly minimize the time spent in jail. *Id.* at 138–39. Defense counsel did not advise the defendant of the offers and they expired. *Id.* at 139. The defendant then entered into a different plea and received a 3-year jail sentence. *Id.* The defendant filed a petition for postconviction relief, and on appeal the Court held that counsel failed to render effective assistance by "allow[ing] the offer to expire without advising the defendant or allowing him to consider it." *Id.* at 145.

Notably, the Court in *Frye* did not cabin its holding regarding ineffective assistance to defense counsel's failure to *communicate* the offer to the defendant. The Court also noted that allowing the offer to expire "without *advising* the defendant" was constitutionally significant. *Id.* (emphasis added). As the Court has recognized, the right to counsel means little if defendants do not have "access to counsel's skill and knowledge." *Strickland*, 466 U.S. at 685. In sum, communication of a plea offer is only one part of effective assistance of counsel. Defendants must also have the benefit of counsel's advice and professional judgment regarding the offer. *Cf. Powell v. Alabama*, 287 U.S. 45, 69 (1932) ("[A defendant] requires the guiding hand of counsel at every step in the proceedings against him."). Under *Frye*, when defense counsel did not advise Mr. Eason

about the State's last and final plea offer, defense counsel did not render the effective assistance the Constitution requires.

I acknowledge that our decision in *State v. Powell*, 578 N.W.2d 727 (Minn. 1998), complicates this analysis. We held in *Powell* that the lack of discussion between attorney and client regarding a plea offer did not constitute ineffective assistance of counsel because "counsel could have reasonabl[y] concluded that additional discussion would have served no purpose." *Id.* at 732. But our decision in *Powell* does not defeat Mr. Eason's claim for relief.[1]

The case involved a 16 year old boy, Kye Powell, convicted of second-degree felony murder after a jury trial. *Id.* at 728–29. Powell filed a petition for postconviction relief and raised an ineffective assistance of counsel claim. *Id.* at 729. He alleged that his attorney did not discuss the terms of two plea offers with him. *Id.* at 730. The district court did not hold an evidentiary hearing, but accepted an affidavit from Powell's attorney. *Id.* The attorney swore in his affidavit that he communicated the offers to Powell, that Powell was "adamant" he was innocent and would not plead guilty, and that Powell believed that witnesses would testify at trial that he was not involved in the killing. *Id.* The district court denied postconviction relief, finding that Powell would not have accepted either plea offer because he believed that witnesses would testify in his favor at trial. *Id.* at 731. We affirmed the district court's ruling, explaining that based on the defendant's "insistence of

[1] I note here that the Supreme Court's decision in *Frye* postdates our decision in *Powell*. It is unclear under *Frye* whether, in a situation where an attorney fails to discuss a plea offer with a client, a court may deny postconviction relief because the attorney could have reasonably concluded that discussing a plea offer would have served no purpose.

his innocence, belief that witnesses would change their testimony at trial, and rejection of the first plea offer, counsel could have reasonabl[y] concluded that additional discussion would have served no purpose."[2] *Id.* at 732.

The description by defense counsel of Eason's mindset leading up to the time of the lapsed plea is markedly different. Defense counsel in *Powell* described a client who never wavered in his belief that he would prevail at trial, and consistently refused to plead guilty. In contrast, Mr. Eason's attorneys described a client whose attitude towards accepting a plea offer varied from meeting to meeting. Counsel explained that they would have conversations about a potential plea bargain with Mr. Eason where they thought they "had made some headway, but then the next time we would meet him he had obviously been influenced by other forces."[3] Eason's other counsel offered a similar description of his mindset. In a situation where a defendant is not consistently adamant in his refusal to plead guilty, the analogy to *Powell* fails.

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[2] Contrary to the district court's statement that "Mr. Eason's counsel was reasonable in concluding that he would not accept a plea," the record shows that Mr. Eason's attorneys reached no such conclusion. To the contrary, his attorneys testified that they do not even remember the State's last and final offer. One of Eason's lawyers described how he was "embarrassed by the fact that on the transcript it reveals that apparently [the State] made an offer of a flat 480."

Furthermore, the question in this case is not whether the attorneys in fact reasonably concluded that Mr. Eason would not accept the plea, but whether they *could have* reached such a conclusion. *See Powell*, 578 N.W.2d at 732. As discussed herein, the record shows that they could not have done so.

[3] Defense counsel made the same observation on the record on the day of the State's last and final plea offer.

Then there is the record, which forecloses the possibility that Mr. Eason's attorneys could have reasonably believed he would reject the State's last and final offer. On July 8, 2013, Mr. Eason rejected the State's offer to plead guilty in exchange for a sentence of 420 to 480 months. On the morning of July 10, Mr. Eason told counsel that he "thinks he ought to take [their] advice" and asked if defense counsel could "do any more negotiating" of a plea deal for him. Counsel then went to the State's attorney, Ms. Russell, and offered for Mr. Eason to plead guilty with a possible sentence of 360 to 480 months in prison. Ms. Russell rejected that offer.[4] Sometime after this exchange, and right before the lunch recess, the record captures Ms. Russell making the State's last and final offer. Then after lunch, the record shows counsel asking Ms. Russell to agree to a plea for 420 to 480 months, which she rejects.

In other words, the record shows that Mr. Eason offered to plead guilty twice on the day of the State's last and final plea offer—one time before the offer, and one time after. Counsel communicated these offers to the State on Mr. Eason's behalf. The record demonstrates that defense counsel knew Mr. Eason was willing to plead guilty in the

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[4] The discussion in the morning between Mr. Eason and defense counsel was off the record, as were the discussions in the morning between counsel and the State. But during the court's afternoon session on July 10, counsel went on the record to "make the chronology clear" regarding the plea discussions between the defense and the State. It was at this point that counsel described his off-the-record conversations that morning with Mr. Eason and the State.

Counsel for the State confirmed that the plea negotiations in the morning of July 10 occurred as described by defense counsel. She testified at the postconviction evidentiary hearing that she remembered the 360 to 480 offer in the morning, which she rejected after a discussion with her supervising attorneys. She also testified that she recalled defense counsel later asking whether the original offer was still on the table, and that she told him it was not.

morning and that he remained willing to do so in the afternoon. Thus, it would have been unreasonable for defense counsel not to discuss the State's last and final offer with Mr. Eason based on a belief that such discussions would be useless because he would refuse to plead guilty. Any difference between the range-of-months offers and the flat offer of 480 months does not change this analysis, because counsel advised Mr. Eason that he was likely to receive a sentence of 480 months even if the plea was to a range of months,[5] and Mr. Eason understood this.[6]

In affirming the district court's decision to deny relief to Mr. Eason, the court cites to a conversation between Mr. Eason and his counsel about one of counsel's former clients, regarding the former client's eligibility for parole. The timing of this discussion further strengthens Mr. Eason's claim for relief, because it is consistent with his testimony that he wanted to plead guilty on July 10 after reconsidering his options.

Taking "all the circumstances" into consideration, I would hold that Mr. Eason met his burden to show that his counsel's representation in connection with the State's last and final plea offer fell below an objective standard of reasonableness. *Strickland*, 466 U.S. at

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[5] Defense counsel testified, "I told him that if you take an offer with a spread you've got to presume that the judge is going to give you the upper-most number."

[6] Defense counsel testified that Mr. Eason understood on the afternoon of July 10 that he could receive a sentence of 480 months if he pleaded guilty with an offer of a possible range of months:

> Q: Okay. So with regard to the 360 to 480 when you made that counteroffer was he willing to accept a sentence of 480? He was understanding that that was possible?
>
> A: I wouldn't have made it if he didn't understand that.

688. I would further hold that our reasoning in *Powell v. State* does not defeat Mr. Eason's claim, because his ambivalence regarding the decision to plead guilty and the timeline of the plea negotiations on July 10 demonstrate that his counsel could not have reasonably concluded that there was no need to discuss the State's last and final offer with him before it lapsed.

The court shies away from adopting a bright line rule that requires defense counsel to discuss each and every plea offer with a client. The court's timidity is confounding and disheartening given the centrality of the plea bargaining process to our criminal justice system and the significant liberty interests at stake for criminal defendants. Put bluntly, plea bargaining determines who goes to jail and for how long. *See Frye*, 566 U.S. at 144. Against this backdrop, it is not too much to require that defense counsel communicate and explain each and every plea offer to the defendant to render the effective assistance mandated by the Constitution, and this court should so hold.

2.

Instead of focusing its discussion of the *Strickland* reasonableness prong solely on whether Mr. Eason's attorneys effectively advised him about the State's last and final offer, the district court repeatedly emphasized how Mr. Eason took no action to accept the offer on his own. Paragraph 25 of the district court's order states, "Mr. Eason also had ample opportunity to accept the offer. He had time during the proceedings and recesses of July 10 to make it clear to his attorneys or the Court he wanted to plea." In paragraph 26, the court observes that Mr. Eason's "ability to accept the offer was not hampered by his attorney's attempt to get a better deal." Then in paragraph 28: "Mr. Eason was sitting there as the

various pros and cons of a plea . . . were discussed." Finally, in paragraph 30: "Mr. Eason had knowledge, understanding, and opportunity to accept the plea offer. He made no effort to communicate his willingness to accept the 480-month deal to anyone. Had Mr. Eason raised his hand, passed a note, spoken up, or lashed out, the facts might turn the other way."

These statements demonstrate that the district court improperly shifted the focus away from the performance of counsel and instead put the spotlight on Mr. Eason's actions. But the proper inquiry of a postconviction court with respect to the first *Strickland* prong is whether counsel provided reasonably effective assistance as the Sixth Amendment requires. The inquiry is not whether the defendant could have effectively advocated for himself in the absence of counsel's assistance. By resting its decision on the *Strickland* reasonableness prong on the actions of Mr. Eason rather than on the performance of his attorneys, the district court based its ruling on an erroneous view of the law.[7]

The error is especially troubling in the case of Mr. Eason. The suggestion that an 18-year old who "virtually didn't go to school" and was "functionally illiterate" should have spoken up in court to accept a plea offer that his attorneys had not discussed with him is remarkable, and contrary to basic principles of Sixth Amendment jurisprudence. Almost 100 years ago, the Supreme Court recognized that even "the intelligent and educated layman has small and sometimes no skill in the science of the law." *Powell v. Alabama*,

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[7] The district court ignored the fact that Mr. Eason watched on July 10 as his attorney implored the State to reoffer the 420 to 480 month deal, and the State declined. It would not have made sense for Mr. Eason to ask his attorneys during trial if he could accept a plea offer after he watched on the second day of jury selection as the State told the district court and his attorney that there would be no more plea offers.

287 U.S. at 69. And "[i]f that be true of men of intelligence, how much more true is it of the ignorant and illiterate, or those of feeble intellect." *Id.* To expect Mr. Eason to have the "knowledge" and "understanding" to advise himself in connection with the State's plea offer is to flip the Sixth Amendment right to counsel on its head. I would therefore hold that the district court abused its discretion with respect to its analysis of the first *Strickland* prong.

B.

I next consider whether Mr. Eason satisfied his burden under the second *Strickland* prong, which requires him to show that the "unreasonable" performance of his attorneys had an "adverse effect" on his defense. *Strickland*, 466 U.S. at 693. Specifically, he must demonstrate a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* As his ineffective assistance of counsel claim involves a lapsed plea offer, he must make two specific showings. First, he must establish that there is a "reasonable probability th[at] [he] would have accepted" the plea offer had he received effective assistance of counsel. *Frye*, 566 U.S. at 148. Second, he must show a "reasonable probability that the prosecution would have adhered to the agreement and that it would have been accepted by the trial court." *Id.* at 150.

1.

To satisfy his burden to show a reasonable probability that he would have accepted the plea, Mr. Eason points to both his own testimony and the testimony of his attorneys. In my view, this testimony establishes a reasonable probability that Mr. Eason would have accepted the state's last and final offer had he received effective assistance of counsel.

At the evidentiary hearing, Mr. Eason explained that he wanted to plead guilty on July 10, 2013 because he saw "everything was really like closing in" and he "really wanted to get everything over and done with." Defense counsel's statements on the day of the State's last and final offer corroborates Mr. Eason's testimony. On the afternoon of July 10, counsel explained that after Mr. Eason saw the court begin to empanel a jury for the trial, "the impact of what he's dealing with began to manifest itself to him."[8] Counsel also confirmed at the evidentiary hearing that Mr. Eason was open to the possibility of a plea throughout the negotiations. When asked about his client's attitude towards a plea bargain, counsel said that Mr. Eason "was cooperative, and he was willing to accept the concept of pleading guilty."

The district court was skeptical of Mr. Eason's testimony at the evidentiary hearing, concluding that it was "driven more by a sense of buyer's remorse than by a true representation of what he would have done at the time." But other parts of the district court's order are in tension with this conclusion. The district court found the testimony of Mr. Eason's defense attorneys "to be credible, as both are experienced trial attorneys who presented internally consistent testimony, corroborated by the record and other testimony." Following this logic, the district court should have credited Mr. Eason's testimony that he

[8] Defense counsel went on to say that Mr. Eason "really does, at this point, seem to understand in a much more complete sense where he stands in relation to this and what the ramifications are."

would have accepted the State's last and final offer, because the statements of his defense attorney corroborate Mr. Eason's testimony on this issue.[9]

Other testimony at the evidentiary hearing likewise supports Mr. Eason's contention that he would have admitted the factual basis for the plea. Two aspects of the testimony at the evidentiary hearing are important on this point.

First, both Eason and his defense counsel testified that he likely would have admitted to the crime as part of a plea bargain. Mr. Eason explained, "I'm pretty sure that if . . . everything was correctly communicated to me and we would have got to that stage, [defense counsel] would have explained to me that I would have to state factual basis, which I would have." Later on in the postconviction evidentiary hearing, defense counsel confirmed Mr. Eason's statement. The State's attorney specifically asked Mr. Friedberg

[9] Federal courts have recognized the significance of evidence corroborating a defendant's postconviction claim that they would have pleaded guilty had they received effective assistance of counsel. *See, e.g.*, *United States v. Day*, 969 F.2d 39, 45–46 (3d Cir. 1992) (reasoning that defense counsel's confirmation of a defendant's "self-serving allegations" could "qualify as sufficient confirming evidence" that a defendant would have accepted a plea if properly counseled); *Lewandowski v. Makel*, 949 F.2d 884, 889 (6th Cir. 1991) (concluding that the "objective evidence" in the record supported the defendant's testimony that he would not have withdrawn his plea had he received effective assistance of counsel); *Benton v. Nagy*, No. CV 15-12855, 2018 WL 6201598, at *11 (E.D. Mich. Nov. 27, 2018) (holding in favor of the defendant on the second *Strickland* prong because the record showed that it was the defendant "who instructed defense counsel to pursue a plea agreement," which confirmed the defendant's testimony that he would have accepted a plea offer); *Wolford v. United States*, 722 F. Supp. 2d 664, 691 (E.D. Va. 2010) (citing to the record of pre-trial proceedings to show that the defendant wanted to plead guilty, which in turn supported her claim that she would have accepted a plea had she received accurate advice from counsel).

whether "not wanting to admit to second-degree murder" was an issue in the plea discussions with his client, and Mr. Friedberg responded "[t]hat wasn't a problem."[10]

Second, Eason waived his Fifth Amendment right to remain silent and testified at the evidentiary hearing about the factual basis for the plea agreement. He testified that he intentionally caused the victim's death, and that it was not an accident. He testified that he attacked the victim in the victim's home. He testified that he did not dispute that the victim was cut 12 to 14 times with a machete. He admitted that he started a fire to try to cover up the crime. These admissions add credibility to Mr. Eason's claim that he would have provided the necessary factual basis had he accepted the State's last and final offer. Even the district court acknowledged at the evidentiary hearing that Mr. Eason's admissions likely satisfied the "zone of privacy" and "particular cruelty" aspects of the plea.[11] For these reasons, I would hold that Mr. Eason established a reasonable probability that he would have accepted the plea and laid the necessary factual basis for the plea.

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[10] This statement by defense counsel is partially corroborated by the prosecutor, who testified that the sticking point in negotiations with defense counsel was not "any substance regarding the plea" but rather the question of "numbers." The State rejected the defense's offer to plead guilty on the morning of July 10 not out of "concern about whether the factual basis could be put in," but because she did not believe a minimum of 360 months in prison "was appropriate."

[11] The district court made the following statement during Mr. Eason's factual basis testimony at the evidentiary hearing:

> [Mr. Eason] has admitted to doing this in the victim's home, which would qualify as zone of privacy. He's admitting to setting fire to the house recognizing the victim was in there and recognizing it would do additional harm to the body and that was not necessary in order to complete the crime. So I think the particular cruelty is satisfied from a factual and legal basis.

2.

I am also satisfied that Eason met his burden under the second *Strickland* prong to show that the State would have adhered to the agreement and the district court would have accepted the plea had his attorneys properly advised him in 2013. As Mr. Eason aptly notes, it is difficult to conclude that the State would not have followed through with the plea bargain when it was the State that made the last and final offer to Mr. Eason. I doubt it is the State's practice to communicate offers to the defense that it has no intention to honor if the defendant fulfills his end of the bargain. The prosecutor may have personally disagreed with the prospect of a plea for Mr. Eason, but she nonetheless made two different offers on the State's behalf for Mr. Eason to plead guilty, and did so under the guidance of her managing attorney.

In its order denying relief, the district court cited Mr. Eason's "references to possible self-defense claims" as a reason why he could not demonstrate that the State and the court would have accepted the plea. Mr. Eason's testimony, however, is unclear on this point. Although Mr. Eason said that he took the machete away from the victim to disarm him, which might imply self-defense, he admitted that he then used the weapon against the victim. He testified that he continued to hit the victim in the head with the machete, before stabbing him and setting his clothes on fire. This testimony is not consistent with a self-defense claim.

And while this is a close issue, the standard under the second *Strickland* prong is "reasonable probability"—not certainty. Based on the record and the testimony of all parties involved at the evidentiary hearing, I conclude there is a reasonable probability that

the State would have adhered to the agreement had defense counsel taken the time in 2013 to advise Mr. Eason and walk him through the plea entry process. *Cf. Cullen v. United States*, 194 F.3d 401, 407 (2d Cir. 1999) (reasoning that a defendant "might well have abandoned his claim of innocence" had he been "properly" counseled regarding the state's plea offer).

As for the district court and whether it would have accepted the plea bargain, the record indicates that the district court believed in 2013 that the case could be resolved without a trial. On July 10, 2013, the day of the State's last and final offer, the district court made the following statement: "Obviously this case is one that can be properly resolved to the satisfaction of both parties and a plea agreement can be reached." If the district court believed at the time that Mr. Eason would not follow through with the factual basis for the agreement, why make such a statement? And although the district court's remark does not definitively establish that it would have accepted the agreement, it does support Mr. Eason's argument that there is a reasonable probability the district court would have accepted his plea in 2013 had he received effective assistance of counsel.

For these reasons, I conclude that Mr. Eason met his burden to show prejudice under the second prong of *Strickland*, and I would therefore hold that the district court abused its discretion in denying him postconviction relief.

II.

I turn finally to the question of the appropriate remedy for ineffective assistance of counsel related to a lapsed plea offer. The Supreme Court considered this question in *Lafler v. Cooper*, 566 U.S. 156 (2012). The Court explained that if a lapsed offer "was for a guilty

plea to a count or counts less serious than the ones for which a defendant was convicted after trial," then "the proper exercise of discretion to remedy the constitutional injury may be to require the prosecution to reoffer the plea proposal." *Id.* at 171; *see also Kimmelman v. Morrison*, 477 U.S. 365, 379 (1986) ("The Sixth Amendment mandates that the State bear the risk of constitutionally deficient assistance of counsel.").

After the State reoffers the plea proposal, "the judge can then exercise discretion in deciding whether to vacate the conviction from trial and accept the plea or leave the conviction undisturbed." *Lafler*, 566 U.S. at 171. This process is consistent with our prior decisions in postconviction relief cases. *See Leake v. State*, 737 N.W.2d 531, 542 (Minn. 2007) ("[W]e hold that if the postconviction court determines that Leake is entitled to relief on this ineffective assistance of appellate counsel claim, Leake may accept the original plea agreement offered by the state and be resentenced in accord with its terms."); *State v. Ray*, 273 N.W.2d 652, 656 (Minn. 1978) ("If defendant can show that he would have been able to take advantage of the negotiations [to plead guilty to aggravated assault with a 10 year prison sentence] . . . and . . . that he would in fact have accepted the offer if his counsel had advised him to do so, then we believe postconviction relief in the form of a reversal of the 20-year burglary sentence, leaving defendant with a 10-year sentence for aggravated assault, would be justified under the unique circumstances of this case.").

The State's last and final plea offer to Mr. Eason was to plead guilty to second-degree intentional murder, waive *Blakely*, and agree to an aggravated sentence of 480 months. Mr. Eason subsequently went to trial and was convicted of first-degree felony murder and sentenced to life with the possibility of release after 30 years. As the lapsed

plea was to a less serious charge than first-degree felony murder, the appropriate remedy is to remand to the district court for the State to reoffer the plea to second-degree intentional murder, at which point the court can exercise its discretion to determine whether to accept the plea.

THISSEN, Justice (dissenting).

I join in the dissent of Justice Hudson.