STATE OF MINNESOTA

IN SUPREME COURT

A19-1685

Pope County Lillehaug, J.

Amanda Lea Peltier,

Appellant,

vs.

Filed: July 15, 2020
Office of Appellate Courts

State of Minnesota,

Respondent.

Robert D. Sicoli, Sicoli Law, Ltd., Saint Paul, Minnesota; and

Sarah M. MacGillis, MacGillis Law, PA, Minneapolis, Minnesota, for appellant.

Keith Ellison, Attorney General, Edwin W. Stockmeyer, Assistant Attorney General, Saint Paul, Minnesota; and

Neil Nelson, Pope County Attorney, Glenwood, Minnesota, for respondent.

S Y L L A B U S

A claim that counsel provided ineffective assistance by failing to advise a client to make an offer to plead guilty to a lesser offense cannot satisfy the second prong of *Strickland* absent a showing that, had the guilty plea been offered, there was a reasonable probability that the State would have accepted it.

Affirmed.

Considered and decided by the court without oral argument

O P I N I O N

LILLEHAUG, Justice.

This postconviction appeal presents one issue: ineffective assistance of counsel. Specifically, appellant Amanda Peltier contends that her counsel was ineffective because they did not advise her to offer to plead guilty to second-degree murder. She was ultimately convicted of first-degree murder. The district court determined that her claim of ineffective assistance of counsel fails under the second prong of *Strickland*, because Peltier made no showing that, even if she had offered to plead guilty to second-degree murder, there was a reasonable probability that the State would have entered into a plea agreement. We agree with the district court and therefore affirm.

FACTS

Amanda Peltier is in prison serving a life sentence for first-degree murder while committing child abuse resulting in the death of four-year-old Eric D.[1] Before Peltier was indicted by a grand jury for first-degree murder, she was charged by complaint with second-degree unintentional murder. This appeal hinges on the events and discussions that occurred during the interval between the complaint and the indictment.

After Peltier was charged with second-degree murder, two public defenders, Scott Belfry and Jan Nordmeyer, were appointed to represent her. In October of 2013, Belfry and Nordmeyer met with Peltier to discuss the possibility that she could be indicted for first-degree murder. At that point, neither Peltier nor the State had made any plea offer.

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[1] A full recitation of the facts is in *State v. Peltier*, 874 N.W.2d 792, 795–97 (Minn. 2016).

Peltier and her counsel discussed whether Peltier wanted to plead guilty to second-degree murder, on the one hand, or face the risk of an indictment for first-degree murder, on the other hand. Peltier was adamant that she did not want to plead guilty to second-degree murder.

Eventually, Peltier did agree to offer a plea of guilty to manslaughter. But that offer was subject to conditions, including that she would enter an *Alford* plea; that is, maintain her innocence, but acknowledge that the State had sufficient evidence to obtain her conviction on a manslaughter charge. *State v. Goulette*, 258 N.W.2d 758, 761 (Minn. 1977); *see also North Carolina v. Alford*, 400 U.S. 25, 37 (1970).

On October 30, 2013, by letter, Belfry conveyed Peltier's offer to Robert Plesha, an assistant attorney general representing the State. In a telephone call, Plesha rejected this offer without making a counteroffer. Plesha told Belfry that he had no authority to make a counteroffer, but that he would present a new offer to his superiors if it met certain minimum terms. This communication was consistent with Plesha's usual practice, which was for the defense to make an offer—meeting Plesha's minimum terms—that he would then present to his superiors.

Plesha's minimum terms for an offer included that Peltier plead guilty to second-degree unintentional murder and, after a sentencing hearing, each side could argue for a durational departure.[2] If Peltier had made an offer satisfying the minimum terms,

[2] At the evidentiary hearing, Plesha testified he took notes on a post-it note about the minimum terms for an offer. He testified that he wrote, "Defendant plead guilty as charged. Defendant can move for a downward durational . . . mitigation factors. State can move for

Plesha testified, he did not know whether the State would have accepted it. The State would have "considered" Peltier's offer to plead guilty, said Plesha, but the State sometimes rejected such offers and proceeded to a grand jury.

After the State rejected Peltier's offer to plead guilty to manslaughter, she met with her counsel. By this time, the State had issued formal notice of its intent to convene a grand jury to obtain an indictment for first-degree murder while committing child abuse. Peltier did not make a new offer. On November 14, 2013, a grand jury indicted Peltier for first- and second-degree murder. Plesha testified that, after the grand jury returned the indictment, he had no discussion with Peltier's counsel about a possible plea agreement.

At trial, the State presented "overwhelming" evidence against Peltier. *Peltier*, 874 N.W.2d at 802. The jury found Peltier guilty of first-degree murder while committing child abuse, second-degree felony murder, and second-degree manslaughter. *Id.* at 795–96. The district court convicted her of first-degree murder while committing child abuse and sentenced her to life in prison with the possibility of supervised release after 30 years. *Id.* at 796.

In her direct appeal, Peltier unsuccessfully raised three issues: that the jury instructions omitted essential elements of the charged offense; that the district court abused its discretion in allowing a state expert to testify that biting a child is a "particularly vicious" form of child abuse; and that the prosecutor engaged in misconduct during closing arguments. *Id.* We rejected all of her arguments and affirmed her conviction. *Id.*

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upward durational, aggravating factors. No dispositional departure. Commit. Defendant waive *Blakely* to the jury. Have sentencing hearing."

Peltier then filed this postconviction petition, her first, alleging that she received ineffective assistance of counsel because her counsel failed to adequately inform her about the strength of the State's case, and failed to recommend that she plead guilty to second-degree murder. After an evidentiary hearing, the district court issued an order denying Peltier relief. The district court concluded that although Peltier had satisfied the first prong of *Strickland*—by demonstrating that her counsel acted objectively unreasonably—she failed to satisfy the second prong of *Strickland*. The district court concluded that there was no evidence that, even if Peltier had offered to plead guilty to second-degree murder, the State would have accepted the offer and entered into a plea agreement. Peltier appealed.

ANALYSIS

We review postconviction decisions for an abuse of discretion. *Davis v. State*, 784 N.W.2d 387, 390 (Minn. 2010). Factual determinations are upheld if they are supported by sufficient evidence, and issues of law are reviewed de novo. *Id.* The only issue we are asked to decide is whether Peltier is entitled to relief for ineffective assistance of counsel under the standard of *Strickland v. Washington*, 466 U.S. 668 (1984).

The *Strickland* test for ineffective assistance of counsel has two prongs. We "may dispose of a claim on one prong without considering the other." *Lussier v. State*, 853 N.W.2d 149, 154 (Minn. 2014); *see e.g.*, *State v. Smith*, 932 N.W.2d 257, 271 (Minn. 2019) ("If one prong is not met, we need not address the other.")

On the first prong, the defendant must show that "counsel's performance fell below an objective standard of reasonableness." *Davis*, 784 N.W.2d at 391 (citing *Strickland*,

466 U.S. at 694). On prong one, the district court found that Peltier's counsel's performance fell below an objective standard of reasonableness. We need not address whether that conclusion was erroneous, because even if we assume that the first prong was met, Peltier's claim fails on the second prong.

On the second prong, the defendant must show that there was a reasonable probability that, but for counsel's errors, "the result of the proceedings would have been different." 784 N.W.2d at 391(citing *Strickland*, 466 U.S. at 694). In the context of plea bargains, the defendant must show a "reasonable probability" that she "would have accepted the plea" (or, here, agreed to plead), "the plea offer would have been presented to the court," and "the court would have accepted its terms." *See Pearson v. State*, 891 N.W.2d 590, 598 (Minn. 2017) (quoting *Lafler v. Cooper*, 566 U.S. 156, 164 (2012)). These showings are required to demonstrate "a reasonable probability that the end result of the criminal process would have been more favorable by reason of a plea to a lesser charge or a sentence of less prison time." *Missouri v. Frye*, 566 U.S. 134, 147 (2012).

Even if we assume that defense counsel's recommendation could have persuaded Peltier to make a qualifying offer, overcoming what her counsel called her "very adamant" reluctance to admit guilt, her claim still fails. She cannot show that any such offer would have been accepted by the State and presented to the court.

As the district court found and concluded, based on the factual chronology, "[e]ven assuming Amanda Peltier wanted to plea[d] straight up in late October, there is no evidence the prosecutor would have allowed it in face of a likely grand jury indictment for 1st Degree Murder." The district court's finding and conclusion is well-supported by the record. In

early October 2013, Plesha advised defense counsel about the potential convening of a grand jury. Plesha further testified that, even if Peltier had offered to plead guilty to second-degree murder, he did not know if the offer would have been accepted by his superiors with a first-degree murder indictment looming. The district court did not err in concluding that Peltier has not shown a reasonable probability that any offer from Peltier would have been accepted by the State and presented to the court.

Finally, Peltier argues that the district court erred by applying the wrong standard to the second prong. To meet the second prong of *Strickland*, the defendant needs to show that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694; *see also Leake v. State*, 767 N.W.2d 5, 10 (Minn. 2009). In other words, "a defendant must show that counsel's errors actually had an adverse effect in that but for the errors the result of the proceeding probably would have been different." *Sanchez-Diaz v. State*, 758 N.W.2d 843, 848 (Minn. 2008).

The district court concluded: "Had the defense strategy been different, would the outcome have changed? No, or at least, not probably so." We read the district court's conclusion—"[n]o, or at least, not probably so"—as a response consistent with *Strickland*'s second prong. In any event, we agree that, here, Peltier has not shown that there was a reasonable probability that the result of the proceeding would have been different because she has not shown a reasonable probability that the State would have accepted a hypothetical offer to plead guilty to second-degree murder.

CONCLUSION

For the foregoing reasons, we affirm the decision of the district court denying Peltier's petition for postconviction relief.

Affirmed.