

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0121**

State of Minnesota,
Respondent,

vs.

John Francis Thury,
Appellant.

**Filed April 21, 2025
Affirmed
Jesson, Judge***

Dakota County District Court
File No. 19HA-CR-22-2497

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Kathryn M. Keena, Dakota County Attorney, Caitlyn M. Prokopowicz, Assistant County Attorney, Hastings, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Greg Scanlan, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Wheelock, Judge; and Jesson, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

JESSON, Judge

Appellant John Francis Thury pleaded guilty to failure to register as a predatory offender. He argues that he is entitled to withdraw his guilty plea because he received ineffective assistance of counsel when his attorney failed to inform him of the consequences that accompany a conviction and incarceration for a registration-violation offense. Because our supreme court precedent establishes that predatory-offender registration is civil and regulatory, and not penal, Thury's trial counsel's failure to advise Thury about the registration requirements before he entered his guilty plea did not render counsel's assistance ineffective. We, therefore, conclude that Thury is not entitled to withdraw his guilty plea and affirm.

FACTS

Thury was required to register as a predatory offender after being convicted of second-degree criminal sexual conduct in November 2020. Almost two years later, Thury was charged with failure to register in violation of Minnesota Statutes section 243.166, subdivision 5(a)(1) (2020). Thury pleaded guilty to the charged offense and, under the terms of the plea agreement, respondent State of Minnesota agreed to seek a 14-month prison sentence in exchange for Thury's guilty plea.¹ The district court subsequently sentenced Thury in accordance with the plea agreement. At no point did Thury's counsel explain to him that his conviction would cause a new period of registration to commence

¹ In addition to the failure-to-register charge, the plea agreement resolved two other pending charges against Thury. Those charges are not relevant to this appeal.

upon his release from prison and that this new registration period would be 15 years instead of ten years.

Thury filed a notice of appeal but later moved to stay the appeal and remand to the district court for postconviction proceedings. After this court granted the motion, Thury filed a postconviction petition seeking to withdraw his guilty plea on the basis that he was not aware that the conviction, combined with a sentence that included incarceration, would increase and restart his registration period. He claimed that his counsel was ineffective because he pleaded guilty without having been informed of the consequences his plea would have on his future registration requirements, making his plea unintelligent.

The district court determined that a defense attorney's failure to advise a defendant about predatory-offender-registration requirements before the defendant enters a guilty plea does not violate a defendant's right to the effective assistance of counsel because the "consequences outlined in . . . the registration statute are not direct consequences of the plea to an offense requiring registration," but are instead collateral consequences of the failure to register. As such, the district court determined that counsel's failure to advise Thury of the registration requirement did not make his plea unintelligent. The district court, therefore, summarily denied Thury's petition for postconviction relief. Thury then moved to dissolve the stay of his appeal and this court granted the motion.

DECISION

Thury challenges the district court's denial of his petition for postconviction relief. We review a district court's decision to deny a petition for postconviction relief for an abuse of discretion. *Riley v. State*, 819 N.W.2d 162, 167 (Minn. 2012). The district court

will not be reversed unless it has “exercised its discretion in an arbitrary or capricious manner, based its ruling on an erroneous view of the law, or made clearly erroneous factual findings.” *Brown v. State*, 863 N.W.2d 781, 786 (Minn. 2015) (quotation omitted).

Under Minnesota law, predatory-offender registration is an automatic requirement for defendants convicted of certain crimes. Minn. Stat. § 243.166, subd. 1b (2020). But the initial registration is far from the end of the statutory requirements. For example, predatory offenders must register their primary and secondary residential addresses; the addresses of all property they own, lease, or rent; the addresses of all locations where they work; the addresses of all schools they attend; and the year, model, make, license plate number, and color of all vehicles they own or regularly drive. Minn. Stat. § 243.166, subd. 4a(a) (2020).² A knowing violation of the registration requirements is a felony. Minn. Stat. § 243.166, subd. 5 (2020). And a conviction for failing to comply with the registration statute will lead to an *additional* five-year period during which the individual must continue to register. *See* Minn. Stat. § 243.166, subd. 6(b) (2020). Further, if an individual required to register is “incarcerated due to a conviction for a new offense or following a revocation of probation, supervised release, or conditional release for any offense,” then that individual must continue to “register until ten years have elapsed since the person was last released from incarceration or until the person’s probation, supervised

² Our supreme court has acknowledged that portions of the registration requirements are “complex.” *Taylor v. State*, 887 N.W.2d 821, 825 (Minn. 2016). For example, the registration statute has rules related to relocation, employment, and other life events. *See* Minn. Stat. § 243.166, subds. 3, 3a (2020). And predatory offenders must disclose their status prior to admission to a health care facility. *Id.*, subd. 4b(b) (2020).

release, or conditional release period expires, whichever occurs later.” Minn. Stat. § 243.166, subd. 6(c) (2020). This provision, as Thury asserts, effectively “restart[s]” the existing registration period.

On appeal, Thury argues that his plea was unintelligent because he was not told that his registration period would be both extended (due to the requirement to add five years to the end of his registration period) and restarted, due to his incarceration.³ In short, he claims he did not understand the *consequences* of his plea. But defense counsel is not required to advise a defendant of every consequence of a guilty plea to make that plea intelligent. *Taylor*, 887 N.W.2d at 823. The question before us, rather, is whether these consequences—the extension and restarting of his registration period—are direct consequences of the plea, as opposed to collateral consequences. *See Kaiser v. State*, 641 N.W.2d 900, 904 (Minn. 2002) (distinguishing between direct and collateral consequences of a guilty plea). Unawareness of collateral consequences does not entitle a defendant to withdraw a plea. *Taylor*, 887 N.W.2d at 823.

The Minnesota Supreme Court addressed whether the statutory duty to register as a predatory offender was a direct or collateral consequence in two cases: *Kaiser* and *Taylor*. In *Kaiser*, the supreme court explained that direct consequences “‘are those which flow definitely, immediately, and automatically from the guilty plea’” and that these consequences must be *punitive* in nature. 641 N.W.2d at 904 (quoting *Alanis v. State*, 583 N.W.2d 573, 578 (Minn. 1998)). In *Taylor*, the supreme court held that predatory

³ To be valid, a guilty plea must be “accurate, voluntary and intelligent.” *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994).

registration in Minnesota is “civil and regulatory, and not penal.” 887 N.W.2d at 826 (quoting *Kaiser*, 641 N.W.2d at 905). As a result, a defense attorney’s failure to advise a defendant about predatory-offender registration requirements does not violate a defendant’s right to the effective assistance of counsel. *Id.*

Thury acknowledges the holdings in *Kaiser* and *Taylor*, but argues at length that “*Taylor* addressed the statutory requirement to impose a period of registration based on convictions for predatory or other serious crimes,” whereas the “issue here” is one of “first impression” because it involves “subdivisions 5(a), 6(b), and 6(c) of the registration statute,” which restart and extend the registration period. He contends that these provisions are “punitive and not merely regulatory, that the results are far more harsh than the requirement to register based on serious offenses, and that a defendant facing these consequences must therefore be informed when a plea will immediately, definitely, and automatically cause these results.” He further points out that his conviction for failure to register, which caused the extension and restarting of his original registration period, is not an offense that requires registration. *See* Minn. Stat. § 243.166, subd. 1b (listing the offenses that require automatic predatory-offender registration).

We are not persuaded. Thury’s argument is an attempt to parse the predatory-registration statute in a manner contemplated by neither *Kaiser* nor *Taylor*. While in these opinions the supreme court addressed the initial registration requirement, what penalty one pays for violating these requirements is integral to the requirement itself. And that is what Thury complains of: the statutory penalties imposed for violating the requirement to register.

The supreme court in *Taylor* made this clear when it addressed the registration requirements as a whole in considering the burden they placed on offenders—and whether that collective burden causes the registration system to cross the line from civil and regulatory to penal in nature. The court laid out a variety of registration requirements, some of which it described as “fairly complex.” *Taylor*, 887 N.W.2d at 825. And it stated that “[p]redatory offenders who fail to comply with any of the requirements . . . could be convicted of a felony and sentenced to prison for up to 5 years.” *Id.* The supreme court further noted that “[t]hese requirements may be onerous, may limit an offender’s choices, and, *if the offender fails to follow the rules, may result in a conviction for a crime and a period of incarceration.*” *Id.* (emphasis added). This language makes clear that, when considering whether the predatory-registration statute was punitive (and thus a direct consequence of a plea), the supreme court considered the statutory requirements as a whole, including the penalties for violating them. We are bound by this precedent.

In sum, because under established precedent the offender-registration requirements are collateral consequences of Thury’s guilty plea, Thury’s trial counsel’s failure to advise Thury about these registration requirements before he entered his guilty plea did not render counsel’s assistance ineffective. *See id.* at 826. Accordingly, the district court did not abuse its discretion in denying Thury’s petition for postconviction relief because Thury is not entitled to withdraw his guilty plea.

Affirmed.