STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0818

State of Minnesota,
Respondent,

vs.

Alfredo Torrez,
Appellant.

Filed May 5, 2025
Affirmed
Reyes, Judge

Polk County District Court
File No. 60-CR-22-1611

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

Greg Widseth, Polk County Attorney, Tanner Hermanson, Assistant County Attorney, Crookston, Minnesota (for respondent)

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

Considered and decided by Reyes, Presiding Judge; Bond, Judge; and Florey, Judge.*

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

NONPRECEDENTIAL OPINION

REYES, Judge

In this direct appeal from his conviction of controlled-substance crimes, appellant argues that (1) he must be permitted to withdraw his guilty pleas because they were both involuntary and unintelligent; (2) he received ineffective assistance of counsel; and (3) the district court erred by imposing separate sentences for each of his convictions because they were part of the same behavioral incident. We affirm.

FACTS

Respondent State of Minnesota charged appellant Alfredo Torrez with four drug-related offenses that occurred in Polk County. The district court denied appellant's request to appoint a Spanish interpreter. On the morning of trial, appellant reached a plea agreement with the state. Under the agreement, appellant would enter *Alford* guilty pleas to first-degree controlled-substance crime—sale (count I) and conspiracy to commit first-degree controlled-substance crime—sale (count IV).[1] The state agreed to dismiss the other two counts and extend to appellant's wife an offer that would resolve her pending cases without jail time. The parties had no agreement on sentencing and left it to the district court's discretion.

Approximately two weeks later, appellant moved to withdraw his guilty pleas because he no longer believed that they were in his best interest. At the hearing on his

[1] "An *Alford* plea is a guilty plea by a defendant who maintains their innocence but pleads guilty because they conclude that the evidence the State is likely to offer at trial is sufficient to convict." *State v. King*, 990 N.W.2d 406, 417 n.5 (Minn. 2023).

motion to withdraw, appellant testified that he believed the prosecutor would give him twenty years but that a jury might give him "a chance." Appellant also mentioned that he forgets "a lot of stuff" and did not know if he was getting dementia. The district court ultimately denied appellant's motion and sentenced him to concurrent sentences of 117 months on count IV and 138 months on count I. This appeal follows.

DECISION

I. The district court did not abuse its discretion when it denied appellant's motion to withdraw his guilty pleas.

Appellant argues that he must be permitted to withdraw his guilty pleas under both the fair-and-just and manifest-injustice standards because the pleas were involuntary and unintelligent. We are not convinced.

A district court has "broad discretion" to permit withdrawal of a defendant's guilty plea, which we review for an abuse of discretion. *State v. Abdisalan*, 661 N.W.2d 691, 693 (Minn. App. 2003). A defendant can withdraw a guilty plea under one of two circumstances. The first is to "correct a manifest injustice." Minn. R. Crim. P. 15.05, subd. 1. The second is "at any time before sentence if it is fair and just to do so." *Id*., subd. 2. Because appellant's brief does not make a withdrawal argument under the fair-and-just standard, we only review his argument under the manifest-injustice standard. *See State v. Butcher*, 563 N.W.2d 776, 780 (Minn. App. 1997) (an inadequately briefed issue is not properly before this court).

Under this standard, a district court must permit a defendant to withdraw their guilty plea at any time if they present "proof to the satisfaction of the court that withdrawal is

necessary to correct a manifest injustice." *Abdisalan*, 661 N.W.2d at 693. "A manifest injustice exists if a guilty plea is invalid," which occurs when a plea is "not accurate, voluntary, or intelligent." *State v. Brown*, 896 N.W.2d 557, 560 (Minn. App. 2017). Appellate courts review de novo whether a guilty plea is valid because it is a question of law and review the district court's factual findings in support of its determination for clear error. *Id*.; *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). "Findings of fact are not clearly erroneous if there is reasonable evidence to support them." *State v. Danh*, 516 N.W.2d 539, 544 (Minn. 1994).

The district court denied appellant's motion to withdraw his guilty pleas under both standards. Under the manifest-injustice standard, the district court determined that appellant's pleas were accurate, voluntary, and intelligent because he "had more than adequate time to discuss with counsel" his options and the implications of the plea agreement, and the record reflected that he "understood the charges, his rights under the law . . . the inducements of the plea agreement/sentencing agreement and the consequences of pleading guilty." Additionally, the district court determined that there was "no evidence" of "any undue pressures upon [appellant]," or that anyone "coerced the [appellant] or otherwise forced [him] to enter the plea agreement/sentencing agreement."

A. Appellant's pleas were intelligent.

Appellant argues that his guilty pleas were unintelligent and thus invalid "because his cognitive deficits prevented him from understanding their consequences and raised doubts about his competence to stand trial." The "cognitive deficits" appellant refers to

are (1) his disability in communication, which required a Spanish-language interpreter[2] and (2) dementia.[3] The single consequence that appellant refers to is "that he had believed that the plea gave him a chance to take care of his wife—not that he would be imprisoned for the rest of his life."

"The intelligence requirement [of a valid guilty plea] ensures that a defendant understands the charges against him, the rights he is waiving, and the consequences of his plea." *Brown*, 896 N.W.2d at 561 (quotations omitted). A defendant "need not know *every* consequence" of their plea for it to be intelligent, but they do need to know the direct consequences, which are "definite, immediate[,] and automatic and are punitive and a part of a defendant's sentence." *Id*. (quotations omitted).

At his plea hearing, appellant pleaded guilty to counts I and IV. He testified that he understood "what's going on here today," that he was pleading guilty to counts I and IV, and, in exchange, the state would dismiss counts II and III. Appellant confirmed that he and defense counsel discussed "all of [his] options on how to proceed," his "legal rights in relation to case processing," and the plea agreement. The district court thoroughly explained the rights appellant was waiving by pleading guilty, and appellant repeatedly

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[2] The record does not support appellant's argument that he was disabled in communication. Appellant has extensive experience with the court system, reads and writes English, was born in Texas, is a U.S. citizen, could "communicate effectively" with his attorney, and understood his plea-hearing proceedings.

[3] Despite several references to dementia in his brief, there is no evidence in the record of appellant having a dementia diagnosis. When appellant mentioned his memory difficulties at trial, the district court asked whether appellant, who was 72 years old, had ever been diagnosed with "Alzheimer's, or any diagnosis like that?" Appellant testified that he had never seen a doctor in his life and did not have a diagnosis but felt confident in his ability to "understand what's going on today, and to go forward with the plea agreement."

responded that he understood. Appellant testified that he was comfortable moving forward with the plea agreement. The prosecutor went through the plea agreement in detail. Appellant confirmed that he understood it and acknowledged that the parties had no agreement on sentencing. Additionally, appellant's familiarity with court proceedings given his prior convictions and sentences cuts against his argument that his pleas were unintelligent. *See State v. Doughman*, 340 N.W.2d 348, 353 (Minn. App. 1983), *rev. denied* (Minn. Mar. 15, 1984).

We conclude that appellant's guilty pleas were intelligent because he was informed of, and agreed that he understood, "the charges against him, the rights he [was] waiving, and the consequences of his plea." *Brown*, 896 N.W.2d at 561 (quotations omitted).

B. Appellant's pleas were voluntary.

Appellant argues that his pleas were involuntary and therefore invalid because he was "coercively forced [] to plead guilty to spare his terminally-ill wife jail time." Part of the plea agreement, which the state fully disclosed to the district court, provided that the state would (1) not seek execution of appellant's wife's probationary sentences; (2) make an offer to appellant's wife to resolve her pending cases without additional jail time; and (3) try to accommodate a contact visit between appellant and his wife before his transport to prison.

The voluntariness requirement "ensures a defendant is not pleading guilty to improper pressure or coercion." *Raleigh*, 778 N.W.2d at 96. Under a "package deal" or contingent-plea agreement, which is an agreement in which "a defendant agrees to plead guilty in exchange for leniency for a third party[,]" a defendant must be permitted to

withdraw his or her guilty plea if "the state fails to fully inform the [district] court of the nature of the plea, or if the [district] court fails to adequately inquire into the voluntariness of the plea at the time of the guilty plea." *Danh*, 516 N.W.2d at 542-43. Voluntariness is analyzed "by considering all of the relevant circumstances." *Id.* at 544 (quotations omitted).

The *Danh* inquiry is more thorough than the typical voluntariness inquiry under Minn. R. Crim. P. 15.01, subd. 1(4)(c).[4] *Id.* at 542. Relevant factors for analyzing whether a contingent-plea agreement was voluntary include: (1) whether the prosecutor had a reasonable and good-faith case against the third party; (2) the strength of the factual basis for the plea; (3) the nature and degree of coerciveness; (4) whether leniency to the third party was a significant factor in the defendant's decision to plead guilty; (5) the defendant's age; (6) whether the defendant or prosecutor initiated the plea negotiations; and (7) whether charges were already filed against the third party. *Id*. at 543.

While the district court did not explicitly state that it was undertaking a separate *Danh* analysis, the record reflects that it engaged in sufficient inquiry with respect to the factors, which supports its ultimate determination that appellant's pleas were voluntary.

The district court noted the evidence the state had against appellant; took judicial notice of appellant's prior cases and convictions; noted that the judge in appellant's case was also the judge in related cases in which defendant's wife and son were defendants and

[4] Appellant argues that "[t]he district court not only ignored the inquiries required in *Danh*, but also it did not even ask the basic questions required by Rule 15.01, subd. 1(4)(c)." Because the *Danh* factors support that appellant's pleas were voluntary, we decline to address his rule 15 argument.

that appellant's case "was combined" with their cases; and noted appellant's age. Additionally, the prosecutor made a clear record of what the plea agreement entailed, including that appellant's wife would be treated with leniency. The record at appellant's plea hearing speaks to all of the *Danh* factors except whether the defendant or the prosecutor initiated plea negotiations, and supports the district court's determination that appellant's pleas were voluntary. *Id.* at 543. We agree with the district court's determination.

II. Appellant did not receive ineffective assistance of counsel from his public defender.

Appellant argues that his public defender provided constitutionally defective assistance of counsel because he (1) undermined appellant's motion to withdraw his guilty pleas and elicited damaging evidence from appellant at the motion hearing and (2) failed to request a competency evaluation of appellant under Minn. R. Crim. P. 20.01. We disagree.

A. Standard of Review

As an initial matter, appellant argues that we should review this claim for structural error. "A structural error occurs when counsel *entirely* fails to subject the prosecution's case to meaningful adversarial testing," entitling a defendant to relief without having to demonstrate prejudice. *Dereje v. State*, 837 N.W.2d 714, 722 (Minn. 2013) (quotations omitted). The "meaningful adversarial testing exception . . . must involve a *complete failure* by counsel and does not apply to counsel's failure to oppose the [s]tate's case at specific points in the proceeding." *Id*. (emphasis added).

Because appellant argues that his public defender failed to oppose the state's case at one "specific point[] in the proceeding," namely, only at the plea-withdrawal hearing, the "meaningful adversarial testing exception" does not apply, and appellant's argument fails. *Id*.

In the alternative, appellant argues that we should review this claim under the two-prong test articulated in *Strickland v. Washington*, 466 U.S. 668, 687 (1984). We agree that this is the appropriate standard of review for appellant's claim. Under the *Strickland* test, an appellant must show (1) that their counsel's performance fell below an objective standard of reasonableness and (2) that a reasonable probability exists that the outcome would have been different but for their counsel's errors. *Andersen v. State*, 830 N.W.2d 1, 10 (Minn. 2013); *see State v. Bobo*, 770 N.W.2d 129, 138 (Minn. 2009) (quotations omitted). If one prong of the test is dispositive, this court need not address both. *Andersen*, 830 N.W.2d at 10.

Counsel acts within an objective standard of reasonableness when they provide the client "with the representation by an attorney exercising the customary skills and diligence that a reasonably competent attorney would perform under similar circumstances." *Bobo*, 770 N.W.2d at 138 (quotations omitted). "[T]here is a strong presumption that counsel's performance was reasonable." *Andersen*, 830 N.W.2d at 10. "Under the prejudice prong, a defendant must show that his counsel's errors so prejudiced the defendant at trial that a different outcome would have resulted but for the error." *Bobo*, 770 N.W.2d at 138 (quotations omitted).

Appellate courts review claims of ineffective assistance of counsel de novo because they "involve mixed questions of law and fact." *Johnson v. State*, 673 N.W.2d 144, 148 (Minn. 2004).

B. Appellant's public defender's performance did not fall below an objective standard of reasonableness at the plea-withdrawal hearing.

Appellant argues that his public defender provided ineffective assistance of counsel when he "plainly elicited evidence that damaged [appellant]'s case" and framed the withdrawal argument as appellant simply changing his mind.

Appellant's public defender, per appellant's request, filed a motion to withdraw appellant's guilty pleas. At the hearing on the motion, appellant's counsel correctly stated that the district court had the discretion to decide whether to permit withdrawal. Defense counsel also stated that he took "no issue" with the state's memorandum opposing withdrawal. Defense counsel then questioned appellant about his motion. Appellant testified that he thought a jury would give him "a chance" at a shorter sentence and confirmed that his request boiled down to him changing his mind. Trial counsel put forth the basis for withdrawal that appellant provided to him. We therefore conclude that appellant's public defender's performance did not fall below an objective standard of reasonableness.

C. Appellant's public defender's performance did not fall below an objective standard of reasonableness when he failed to request a rule 20.01 evaluation.

"[A] defense attorney's failure to challenge a defendant's competence to proceed is deficient representation if a reasonably skilled attorney would have doubted the

defendant's competence under the circumstances." *State v. Epps*, 996 N.W.2d 226, 239 (Minn. App. 2023).

In *State v. Epps*, this court affirmed the district court's decision denying the appellant's motion to withdraw his guilty pleas on the basis that he was incompetent to enter them even when, at a postconviction hearing, he presented testimony from himself, his probation officer, his trial attorney, and a forensic psychologist who previously found him incompetent three times and competent once. *Id*. at 233-34. There, the appellant testified at the guilty-plea and sentencing hearings "that he felt comfortable pleading guilty," that he called the victim in violation of the domestic-abuse no-contact order, and that he understood the rights he was giving up by pleading guilty. *Id*. at 230-32. We concluded that the appellant's conduct "did not provide the attorney with an objective reason to doubt [the appellant]'s competence." *Id*. at 239.

The evidence in *Epps* was significantly more substantial than the evidence before the district court. Appellant's age, his testimony at the plea hearing that he understood what was going on and that he wished to proceed with his guilty pleas, and his ability to communicate effectively with everyone throughout his case, all support that "a reasonably skilled attorney would [not] have doubted" appellant's competence under the circumstances. *Id*. at 239. Appellant's comments about his memory, when considering the totality of the circumstances, is not enough to overcome the strong presumption that trial counsel acted reasonably by not requesting a rule 20.01 evaluation. *See Andersen*, 830 N.W.2d at 10. We conclude that appellant cannot meet the first prong under *Strickland*, and his ineffective-assistance-of-counsel claim fails.

III. The district court did not err when it imposed separate sentences for each of appellant's convictions.

Appellant argues that the district court erred when it imposed separate sentences for each of his convictions because "there was no showing that [they] were not part of the same behavioral incident." Appellant's claim is unavailing.

Minn. Stat. § 609.035, subd. 1, "generally prohibits multiple sentences, even concurrent sentences, for two or more offenses that were committed as part of a single behavioral incident." *State v. Bakken*, 883 N.W.2d 264, 270 (Minn. 2016); *see* Minn. Stat. § 609.035, subd. 1 (2024) ("[I]f a person's conduct constitutes more than one offense under the laws of this state, that person may be punished for only one of the offenses."). Whether multiple offenses "were part of a single behavioral incident is a mixed question of law and fact, so [appellate courts] review the district court's findings of fact for clear error and its application of the law to those facts de novo." *Bakken*, 833 N.W.2d at 270. To determine whether multiple crimes were part of a single behavioral incident, appellate courts consider "(1) whether the offenses occurred at substantially the same time and place[] and (2) whether the conduct was motivated by an effort to obtain a single criminal objective." *Id*. (quotations omitted).

Because appellant entered *Alford* guilty pleas, we consider what evidence the state would have presented at trial to show appellant's guilt on each charge. *See State v. Theis*, 742 N.W.2d 643, 649 (Minn. 2007). On count I, the sale charge, the state would have presented evidence that, on October 6, 2022, law enforcement found six wrapped baggies of methamphetamine at appellant's home in addition to evidence that the

methamphetamine was for sale versus for personal use. The state would have also presented evidence of statements appellant made to law enforcement one week later in which he admitted to receiving the drugs a few days before they were found at his home, how much he paid for them, and his expected profit.

On count IV, the conspiracy charge, the state would have presented testimony that appellant's son was selling methamphetamine; testimony from a witness who dealt directly with appellant "for quite some time" to obtain "substantial quantities of methamphetamine"; and evidence that drugs associated with appellant's family were found on others during various searches.

We conclude that the evidence that the state would have produced at trial shows that the offenses occurred at substantially different times. *See State v. Heath*, 685 N.W.2d 48, 61 (Minn. 2004).

Regarding the "single criminal objective" prong, while "defendants convicted of drug sales may be motivated by the single criminal objective of selling drugs to relieve financial hardship, [the supreme court] has held that the criminal plan of obtaining as much money as possible is too broad an objective to constitute a single criminal goal within the meaning of section 609.035." *State v. Gould*, 562 N.W.2d 518, 521 (Minn. 1997); *see State v. Barthman*, 938 N.W.2d 257, 267 (Minn. 2020).

We conclude that counts I and IV were not part of a single behavioral incident and that the district court properly imposed separate sentences on each conviction.

Affirmed.