STATE OF MINNESOTA
IN COURT OF APPEALS
A06-0755

Ricky Wright, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed May 20, 2008
Affirmed
Minge, Judge

Dakota County District Court
File No. K7-02-2040

Lawrence Hammerling, Chief Appellate Public Defender, Michael W. Kunkel, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

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

James C. Backstrom, Dakota County Attorney, Nicole E. Nee, Assistant County Attorney, Dakota County Judicial Center, 1560 Highway 55, Hastings, MN 55033 (for respondent)

Considered and decided by Connolly, Presiding Judge; Kalitowski, Judge; and Minge, Judge.

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

MINGE, Judge

Appellant challenges the denial of his postconviction petition. The petition sought to set aside his guilty plea on the grounds that (1) the district court impermissibly injected itself in the plea-negotiation process; and (2) appellant had ineffective assistance of counsel. We affirm.

FACTS

On July 3, 2002, appellant Ricky Wright was charged with three counts of criminal sexual conduct in the first degree. Each count alleged that appellant had sexually penetrated his stepdaughter, C.M., who was born on February 26, 1986, and who has a mental age of seven. The counts each had different dates of offense.

Appellant obtained Lee Wolfgram as his counsel. Because Wolfgram was called to active military duty, one of his associates, Bruce Rivers, represented appellant. In preparation for trial, appellant and Rivers met three to four times and discussed the case. On the date that appellant's case was set for trial, he pleaded guilty. Pursuant to the plea agreement, count III was dismissed. Count II was amended to include all of the dates covered by count III, and appellant pleaded guilty to count I and the amended count II. Under the agreement, appellant would receive an 86-month executed sentence with a five-year conditional-release period on count II and a 144-month stayed sentence and up to 20 years probation on count I. On April 1, 2003, the district court accepted the guilty plea and sentenced appellant in accordance with the agreement.

On February 9, 2006, nearly three years after his plea, appellant petitioned for postconviction relief. The district court summarily denied the petition without an evidentiary hearing. On appeal to this court, appellant argued that the district court abused its discretion because his right to counsel had been violated. The state conceded this argument and agreed that the appropriate remedy was remand. This court stayed the appeal and remanded for a hearing on postconviction relief.

At the evidentiary hearing, appellant alleged that he had received ineffective assistance of counsel from Rivers and that the district court had impermissibly involved itself in plea negotiations. Appellant and attorneys Wolfgram and Rivers testified. The postconviction court concluded that appellant's testimony was not credible and denied his postconviction claims. This court vacated its stay of the original appeal and now considers the appeal.

D E C I S I O N

The first issue is whether the district court improperly injected itself into the plea-bargaining process. This court reviews decisions of the postconviction court under an abuse of discretion standard, limiting our review to the question of whether there is sufficient evidence to sustain the findings of the postconviction court. *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994).

The impermissible participation of the district court in plea negotiations is reversible error. *State v. Anyanwu*, 681 N.W.2d 411, 414-15 (Minn. App. 2004); *State v. Vahabi*, 529 N.W.2d 359, 361 (Minn. App. 1995). A district court has discretion to accept or not accept a plea agreement, but "should neither usurp the responsibility of

counsel nor participate in the plea bargaining negotiation itself." *State v. Johnson*, 279 Minn. 209, 215-16, 156 N.W.2d 218, 223 (1968). The district court is not a party to the case. *State v. Spraggins*, 742 N.W.2d 1, 4 (Minn. App. 2007). The proper role of the district court is to determine whether a proffered plea bargain is appropriate and to ensure that a defendant has not been improperly induced to plead guilty to a crime or permitted to bargain for a plea that is excessively lenient. *Johnson*, 279 Minn. at 215-16, 156 N.W.2d at 223. When the district court improperly injects itself into plea negotiations, it removes itself from the role of an "independent examiner" and becomes "one of the parties to the negotiation." *Id*. at 216 n.11, 156 N.W.2d at 223 n.11 (quotations omitted).

This court has reversed district courts that directly negotiate with defendants, or that promise a defendant that he or she will receive a particular sentence in exchange for a guilty plea. *See, e.g., Anyanwu*, 681 N.W.2d at 415 (holding that the district court acted impermissibly when it promised and gave the defendant a particular sentence, over prosecution's objection); *Vahabi*, 529 N.W.2d at 360-61 (holding that the district court impermissibly in effect promised a particular sentence when it promised a noncriminal disposition in return for guilty pleas and restitution paid in full within a year and accepted pleas over prosecutor's objections); *State v. Moe*, 479 N.W.2d 427, 428-30 (Minn. App. 1992) (holding that the district court impermissibly participated in the plea-negotiation process when, over the prosecution's objection, it had an agreement with the defendant to give a downward departure if he cooperated with police).

Here, the record contains numerous indications that the district court participated in the plea-negotiation process. On the plea petition, the terms "prosecutor" and

"prosecuting attorney" are crossed out, and the word "court" is written by hand in their place.

Additionally, the following exchange occurred during the plea hearing and sentencing:

> [PROSECUTOR:] . . . . Other than the plea negotiation, and what the court has indicated the court would do, no one has made any threat or promise to you to try to get you to plead guilty today; is that true?
> [APPELLANT:] That's correct.
>
> . . . .
>
> [PROSECUTOR:] Your honor, it is the State's belief that the court's proposal to execute a portion of these sentences and send the defendant to prison is very appropriate . . . .
>
> . . . .
>
> And the state endorses the court's determination to execute portions of this sentence and have [appellant] serve prison time as a consequence.

Later, addressing the defendant, the district court stated:

> Let me take them one at a time. First of all, one of the counts instead of giving you 144 months it was the position of the county attorney that they would let me get away with the fact of a longer period of probation. . . . The County Attorney felt because I was not giving you the extra 60 months, they would rather have some protection and carry it out to 20 years instead of 12 years.

Taken together, the plea petition and the statements of the prosecutor and the district court give some credence to appellant's claim that the district court abandoned its proper role and became a party to the plea negotiation.

At the postconviction hearing, defense attorney Rivers explained what happened on the day of the plea. According to Rivers, the prosecutor had not made a plea offer before the day of the plea hearing, stating that she intended to seek an upward departure. Rivers testified that, prior to the hearing, he and the district court had a discussion in chambers, during which time the district court indicated that it would consider imposing a downward dispositional departure on count I and an executed sentence on the remaining counts but did not guarantee that departure. After that discussion, Rivers began filling out the plea petition and made the alterations identified above. Rivers testified that he then approached the prosecutor with an eye towards "sweetening the pot," and that they reached the ultimate agreement. On this evidence, the postconviction court found that the original sentencing court did not impermissibly inject itself into the plea-negotiation process.

This case is unlike *Anyanwu*, *Vahabi*, or *Moe*. In each of those cases, the district court promised a particular sentence over the objection of the prosecuting attorney. *Anyanwu*, 681 N.W.2d at 415; *Vahabi*, 529 N.W.2d at 361; *Moe*, 479 N.W.2d at 428-30. Here, the district court suggested the possibility of one stayed sentence and one executed sentence, Rivers then worked out a deal with the prosecution in which each side made concessions and achieved gains, and the parties presented that arrangement to the district court, which accepted the agreement.

Although it appears that the district court came close to abandoning the role of an independent examiner and becoming a party to the negotiation, it was essentially making a suggestion. The prosecutor did not object. There is no indication that the plea resulted

in unfairness to appellant. Indeed, it was attorney Rivers who discussed the departure with the district court, not the prosecutor. Given this situation, we conclude the postconviction court properly denied appellant's challenge to the district court's role in the plea-negotiation process.

II.

The next issue is whether appellant received effective counsel at his plea hearing. A guilty plea is rendered involuntary—and thus invalid—if it is the result of ineffective assistance of counsel. *Hill v. Lockhart*, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985); *State v. Ecker*, 524 N.W.2d 712, 718 (Minn. 1994). To prove ineffective assistance of counsel in the context of a challenge to a guilty plea, the appellant must demonstrate that his or her representation fell below an objective standard of reasonableness and "there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *Lockhart*, 474 U.S. at 59, 106 S. Ct. at 370. We defer to the credibility determinations of a postconviction court. *Opsahl v. State*, 710 N.W.2d 776, 782 (Minn. 2006).

On appeal, appellant argues that three failures or mistakes of his counsel led him to plead guilty. He claims that attorney Rivers: (1) did not adequately discuss presenting a defense with him and failed to undertake an independent investigation of testimony to be offered at trial; (2) falsely told appellant that his wife made a statement that she had seen the abuse and that the statement would be admitted at trial; and (3) falsely assured him that he would not receive an executed sentence if he pleaded guilty. Appellant

testified to each of these matters at his postconviction hearing. Had Rivers acted as alleged, it would undoubtedly have influenced appellant's decision whether to go to trial.

In his testimony at the postconviction hearing, defense attorney Rivers addressed and denied each of appellant's claims. River's testimony is supported by the plea petition, the plea colloquy, and the sentencing transcript. The plea petition calls for appellant to receive an executed 86-month term on count II. At the plea hearing, the district court asked appellant if he understood that his conviction for count II would result in a commitment to the commissioner of corrections for 86 months. Appellant raised no challenge to this characterization of the agreement. Later he added that he entered into the agreement freely and voluntarily, that he was satisfied with Rivers's representation, and that he and Rivers discussed possible defenses. Rivers discussed the evidence against appellant at length on the record. After he was sentenced, the district court gave appellant the opportunity to ask any questions he may have. Appellant then asked specific questions about things that confused him, such as how to pay restitution when he is in prison. Despite extensive discussion of the fact that he would be in prison, appellant never claimed at the time of sentencing that he was surprised. The postconviction court accepted the testimony of Rivers and denied relief.

Based on this record and our deference to credibility determinations of the postconviction court, we conclude that the postconviction court did not abuse its discretion in rejecting appellant's claim that he had inadequate assistance of legal counsel.

Affirmed.