STATE OF MINNESOTA
IN COURT OF APPEALS
A09-117

Dean Alan Curley, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed November 17, 2009
Affirmed
Halbrooks, Judge

Dakota County District Court
File No. 19-K1-04-002037

Mark D. Nyvold, Special Assistant State Public Defender, 332 Minnesota Street, Suite W-1610, St. Paul, MN 55101 (for appellant)

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

James C. Backstrom, Dakota County Attorney, Cheri A. Townsend, Assistant County Attorney, Dakota County Judicial Center, 1560 Highway 55, Hastings, MN 55033 (for respondent)

Considered and decided by Larkin, Presiding Judge; Halbrooks, Judge; and Johnson, Judge.

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

HALBROOKS, Judge

Appellant challenges the denial of his petition for postconviction relief, arguing that he received ineffective assistance of counsel when he waived his right to a jury trial. Specifically, appellant argues that his counsel erred by waiving appellant's right to a speedy disposition and by failing to advise appellant that he had waived this right. Appellant claims that he erroneously waived his right to a jury trial because of these alleged errors. Because we conclude that appellant's claim fails on its merits, we affirm.

FACTS

Appellant Dean Alan Curley was charged with first-degree aggravated robbery and terroristic threats arising out of a June 22, 2004 incident. Appellant was in custody as a result of his guilty pleas to robbery charges in other jurisdictions when he demanded speedy disposition under the Uniform Mandatory Disposition of Detainers Act (UMDDA). Minn. Stat. § 629.292 (2008). The district court received appellant's demand on November 29, 2004. Under the UMDDA, the state had until May 29, 2005, to hold a trial on the charges. *See* Minn. Stat. § 629.292, subd. 3 (2008) (stating that within six months after receipt of a request for disposition, or within such additional time as the district court grants upon a showing of good cause, the indictment must be brought to trial). Appellant was subject to eight other pending criminal charges during this six-month period.

Appellant first appeared in Dakota County on May 12, 2005, where he was represented by public defender Warren Kochis. This was Kochis's first contact with

appellant. The May 12 hearing involved two files: a felony charge that is the subject of this appeal and a gross misdemeanor charge in the City of Lakeville's jurisdiction. At the hearing, Kochis stated that appellant "understands what he's being charged with and his rights and we'd waive any further reading, request an omnibus hearing, waive a speedy requirement and I believe we've selected a date of June 9th at 1:30." The following exchange then occurred:

> PROSECUTOR: Your Honor, with respect to the Lakeville matter, we'd ask for a speedy trial. Mr. Curley made a demand for disposition. That's going to expire later on this month and we'd like an opportunity to give him his disposition that he's asking for.
> THE COURT: What's he asking for?
> PROSECUTOR: He made a demand for disposition of the gross misdemeanor driving after cancellation in prison. We've got to get him tried fairly soon. . . . We received [the demand] November 29th of '04. It's going to expire later on this month. So we'd like the earliest trial date that we can get.
> THE COURT: You've got to have a trial before the 29th?
> . . . .
> MR. KOCHIS: Mr. Curley just informed me that he's going to withdraw that and the time requirements so he can deal with the felony file first.
> THE COURT: Mr. Curley, you understand what they've been telling me, you have a right to have a trial no later than later on this month. Do you understand that?
> APPELLANT: Yes, I do.
> THE COURT: And you're withdrawing that demand?
> APPELLANT: Yes.
> THE COURT: All right. We'll set these for—consolidate them for omnibus hearing, is that correct?
> MR. KOCHIS: Yes, Your Honor. I'll be in touch with you.
> APPELLANT: Okay. Thanks.
> THE COURT: All right. Madame Clerk, you made a notation that he withdrew his request for expedited hearing.

The omnibus hearing was scheduled for June, a date after the six-month time period under the UMDDA had expired. In July, the state moved to extend the time period under the UMDDA on the felony charge, and its motion was granted. On July 26, 2005, appellant entered into a *Lothenbach* proceeding and waived his right to a jury trial.[1] Kochis and the prosecutor both clarified on the record that the issue being preserved for appeal was the "good cause" issue (i.e., whether the state had good cause to move for an extension) or the "timeliness" issue (i.e., whether the state's motion was timely) under the uniform-detainer statute. Appellant was subsequently convicted and sentenced to 111 months.

On direct appeal, appellant argued that the district court should have dismissed with prejudice the complaint against him because the state did not move for an extension for good cause within the six-month time period. *See* Minn. Stat. § 629.292, subd. 3. Alternatively, appellant asserted that if the request was deemed timely, good cause was not shown. The state responded, in part, by claiming that appellant waived his right to a speedy disposition through his counsel at the May 12, 2005 hearing. Appellant asserted that he did not waive his rights under the UMDDA with respect to the felony charge, only with respect to the gross misdemeanor. Appellant argued that although Kochis had "waived a speedy [o]mnibus [h]earing," he did not intend to waive anything else. On direct appeal, appellant's counsel stated:

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[1] *See State v. Lothenbach*, 296 N.W.2d 854, 857–58 (Minn. 1980) (allowing a defendant to stipulate to the state's case, try the case to the court, and preserve any pretrial issues for appeal); *see also* Minn. R. Crim. P. 26.01, subd. 4 (codifying the stipulated-facts procedure from *Lothenbach*).

> It is . . . not clear from the transcript of this hearing, which addressed a separate gross misdemeanor driving offense as well, what appellant thought he was actually waiving and whether he contemplated that it would have any relevance to his detainer issue. Since he used *Lothenbach* explicitly to preserve appeal of the detainer issue, it is evident neither he nor counsel intended to waive anything relevant to that issue.

Finally, appellant's counsel argued that, "[i]f appellant is deemed to have waived his detainer issue during the May 12, 2005 Rule 5 appearance, however, he did not knowingly, intelligently and accurately waive his right to a jury trial."

This court rejected appellant's arguments in an earlier appeal and held that, based on the transcript of the May 12, 2005 hearing, appellant knowingly waived his right to a speedy disposition in the felony matter. *State v. Curley*, No. A06-453, 2007 WL 1247976, at *1 (Minn. App. May 1, 2007), *review denied* (Minn. June 27, 2007). But in addition to concluding that appellant had waived his right to a speedy disposition, we addressed the merits of appellant's claim. We concluded that, based on the scheduling difficulties presented by appellant's multiple then-pending criminal cases in several counties, the district court did not abuse its discretion by finding that the state had good cause for an extension. *Id.* at *3. We also rejected appellant's argument that "he did not make a knowing or voluntary waiver of his right to a jury trial in the *Lothenbach* proceeding because he was unaware he had waived the detainer issue" because "the effect of a waiver is to extinguish any right held by the accused." *Id.*

Appellant petitioned for postconviction relief based on ineffective assistance of counsel. He claimed two errors. First, appellant claimed that he "received ineffective assistance of counsel because he did not knowingly and voluntarily and intelligently

waive his right to have his case tried within UMDDA time limits, because counsel never discussed this with him, or its consequences." Second, he claimed that "counsel did not adequately advise [him] prior to . . . entering into the *Lothenbach* stipulated-facts procedure, that his UMDDA claim, the issue he thought he was preserving by utilizing the *Lothenbach* process, had already been waived." Appellant alleged prejudice on the ground that but for Kochis's advice that he had preserved the UMDDA issue for appeal, appellant would not have entered into the *Lothenbach* proceeding and waived his right to a jury trial.

The postconviction court granted appellant an evidentiary hearing on his petition. At the hearing, Kochis testified that he "did not discuss any waiver of rights under the detainer act" with appellant prior to waiving the "speedy requirement" at the May 12 hearing. Kochis also testified that, at the time of the May 12 hearing, he mistakenly assumed that the six-month time period under the UMDDA had already expired on the felony charge, and therefore he thought that he was waiving appellant's right to a speedy disposition with respect to the omnibus hearing only. Kochis stated that when he subsequently advised appellant to enter into the *Lothenbach* proceeding, he "told [appellant] that he had an excellent issue for appeal on the detainer issue and that that's how we would be proceeding." Appellant testified that he understood that Kochis was waiving appellant's right to a speedy disposition with respect to the gross misdemeanor charge, but did not realize that Kochis was waiving appellant's right to a speedy disposition on the felony charge.

The postconviction court denied appellant's petition, finding that Kochis's performance met an objective standard of reasonableness. Because the postconviction court decided the ineffective-assistance-of-counsel claim on that ground, it did not address whether appellant was prejudiced by Kochis's alleged ineffective assistance nor did it address the state's argument that appellant's claims were barred by *State v. Knaffla*, 309 Minn. 246, 243 N.W.2d 737 (1976). This appeal follows.

D E C I S I O N

Effective assistance of counsel forms a part of the right to a fair trial under the United States and Minnesota Constitutions. Minn. Const. art. I, § 6; *Strickland v. Washington*, 466 U.S. 668, 684–86, 104 S. Ct. 2052, 2063 (1984). To prove a violation of this right, a defendant must show that his counsel's performance "fell below an objective standard of reasonableness" and "that there is a reasonable probability that, but for counsel's unprofessional errors, the result would have been different." *Gates v. State*, 398 N.W.2d 558, 561 (Minn. 1987) (quoting *Strickland*, 466 U.S. at 688, 694, 104 S. Ct. at 2064, 2068). "There is a strong presumption that a counsel's performance falls within the wide range of reasonable professional assistance." *State v. Jones*, 392 N.W.2d 224, 236 (Minn. 1986) (quotation marks omitted). "Generally, we will not review ineffective assistance of counsel claims based on trial strategy. . . . [But we] will examine trial strategy when it implicates fundamental rights." *Sanchez-Diaz v. State*, 758 N.W.2d 843, 848 (Minn. 2008) (citation omitted).

In reviewing a postconviction court's denial of relief, we review issues of law de novo and a postconviction court's findings of fact to determine whether there is

sufficient evidentiary support in the record. *Leake v. State*, 737 N.W.2d 531, 535 (Minn. 2007). "Because claims of ineffective assistance of counsel involve mixed questions of law and fact, our review of decisions by the postconviction court is de novo." *Opsahl v. State*, 677 N.W.2d 414, 420 (Minn. 2004). A court "need not analyze both prongs [of an ineffective-assistance-of-counsel claim] if either one is determinative." *Williams v. State*, 764 N.W.2d 21, 30 (Minn. 2009).

Ineffective-assistance-of-counsel claims must be viewed in light of what was understood at the time. *State v. Rhodes*, 657 N.W.2d 823, 844 (Minn. 2003). Recognizing that "[j]udicial scrutiny of counsel's performance must be highly deferential," the supreme court stated in *Rhodes* that "it is all too tempting for a defendant to second-guess counsel's assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." *Id.* (quotation omitted).

Appellant alleges two errors by Kochis that denied him effective assistance of counsel. First, appellant claims that Kochis's waiver of appellant's rights under the UMDDA was objectively unreasonable because Kochis did not discuss it with appellant beforehand and because Kochis's decision was admittedly based on Kochis's misunderstanding of appellant's case.

Without deciding whether this first alleged error falls outside the wide range of professional assistance, we reject appellant's ineffective-assistance-of-counsel claim because appellant has not alleged any prejudice resulting from the first claimed error.

Although we ultimately determined on direct appeal that Kochis waived appellant's right to assert his UMDDA claim, we also addressed the merits of his claim. We held on direct appeal that the state had good cause to extend the time period under the UMDDA, and therefore appellant lost the appeal on the merits. *Curley*, 2007 WL 1247976, at *2-*3. Because appellant's claim that the state did not have good cause was decided on the merits, he was not prejudiced by Kochis's alleged error, and his claim of ineffective assistance of counsel based on this first error fails.

The second error claimed by appellant is that it was objectively unreasonable for Kochis to recommend waiving a jury trial while preserving for appeal an issue that he had knowingly waived. Although we do not agree with the postconviction court's statement that there is "no evidence" to support this court's conclusion that Kochis knowingly waived appellant's UMDDA claim, we agree that "the only issue . . . is whether [appellant] was given ineffective assistance of counsel." Kochis's actions must be viewed in light of his understanding of the case at the time. *See Rhodes*, 657 N.W.2d at 844.

Both Kochis and appellant apparently believed that Kochis had only waived appellant's right to a speedy omnibus hearing, not his right to a speedy disposition of the felony matter. There is arguably some ambiguity in the transcript of the May 12 hearing as to what was being waived. The fact that we ultimately disagreed with Kochis's interpretation of—and the consequences of—his statements at the May 12 hearing does not mean that Kochis's failure to advise appellant on a different course of action deprived appellant of his constitutional right to effective counsel. When viewed in light of

Kochis's understanding at the time, his advice to appellant to waive his right to a jury trial and proceed with the direct appeal was not objectively unreasonable. Because we conclude that Kochis's advice to waive a jury trial did not fall outside the "wide range of professional assistance," we do not address whether or not appellant was prejudiced by this claimed error.

The state also argues that appellant "knew of the basis of his claim that he received ineffective assistance of counsel at the time of his direct appeal" and that he should not have been allowed to raise the issue again in a subsequent petition for postconviction relief. Because we conclude that appellant's ineffective-assistance-of-counsel claim fails on the merits, we decline to address the issue of whether appellant's claim is barred by *Knaffla.*

The postconviction court properly denied appellant's petition for postconviction relief.

Affirmed.