

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1321**

Jeremy Michael Bilder,
petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed March 16, 2010
Affirmed
Crippen, Judge***

Ramsey County District Court
File No. 62-K0-08-730

Brian Karalus, St. Paul, Minnesota (for appellant)

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Susan Gaertner, Ramsey County Attorney, Mark Nathan Lystig, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Considered and decided by Hudson, Presiding Judge; Connolly, Judge; and
Crippen, Judge.

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

UNPUBLISHED OPINION

CRIPPEN, Judge

Appellant Jeremy Bilder challenges his conviction of fourth-degree criminal sexual conduct and the district court's order summarily denying his motion to withdraw his guilty plea. Appellant argues that he received ineffective assistance of counsel and that he was entitled to withdraw his guilty plea because it was not supported by an adequate factual basis. We affirm.

FACTS

Based on conduct occurring on January 7, 2007, appellant was charged with third- and fourth-degree criminal sexual conduct in violation of Minn. Stat. §§ 609.344, subds. 1(d), 2, .345, subds. 1(d), 2 (2006). In June 2008, pursuant to a plea agreement, appellant pleaded guilty to fourth-degree criminal sexual conduct and the other charge stemming from the incident was dismissed. Following the plea hearing, the district court imposed a 24-month prison sentence but conditionally stayed its execution and placed appellant on probation for a period of 10 years.

In March 2009, appellant petitioned for postconviction relief. In his petition, he argued that he received ineffective assistance of counsel and that he was entitled to withdraw his guilty plea because it was not supported by an adequate factual basis. The district court denied appellant's request for an evidentiary hearing and summarily denied his petition for postconviction relief. The court concluded that an evidentiary hearing was unnecessary because appellant "only makes argumentative assertions unsupported by any factual basis and in direct contradiction with his sworn testimony both at his plea

hearing and sentencing proceeding” and “has not alleged facts sufficient to show he is entitled to relief.”

DECISION

“To be entitled to an evidentiary hearing, a petitioner must ‘allege facts that are sufficient to entitle him or her to the relief requested’ and the allegations must be ‘more than argumentative assertions without factual support.’” *Gustafson v. State*, 754 N.W.2d 343, 348 (Minn. 2008) (quoting *Leake v. State*, 737 N.W.2d 531, 535 (Minn. 2007)); *see also* Minn. Stat. § 590.04, subd. 1 (2008). “An evidentiary hearing is not required unless there are material facts in dispute that must be resolved to determine the postconviction claim on its merits.” *Powers v. State*, 695 N.W.2d 371, 374 (Minn. 2005).

Appellate courts “review a postconviction court’s denial of postconviction relief without a hearing for an abuse of discretion.” *Quick v. State*, 757 N.W.2d 278, 281 (Minn. 2008). “If sufficient evidence exists to support the district court’s finding that relief is not merited, we will not disturb the district court’s decision.” *Nestell v. State*, 758 N.W.2d 610, 612 (Minn. App. 2008) (citing *Stutelberg v. State*, 741 N.W.2d 867, 872 (Minn. 2007)).

The district court did not abuse its discretion by summarily denying appellant’s petition for postconviction relief.

Ineffective Assistance of Counsel

Appellant argues that the district court erred by denying his ineffective assistance of counsel claim without conducting an evidentiary hearing. “To receive an evidentiary hearing on an ineffective assistance of counsel claim, a petitioner must allege facts that

would affirmatively show that his attorney's representation fell below an objective standard of reasonableness, and that but for the errors, the result would have been different." *Leake*, 737 N.W.2d at 536 (quotation omitted) (citing *Strickland v. Washington*, 466 U.S. 668, 688, 694, 104 S. Ct. 2052, 2064, 2068 (1984)). "The petitioner bears the burden of proof on an ineffective assistance of counsel claim, and there is a strong presumption that counsel's performance fell within a wide range of reasonable assistance." *Bruestle v. State*, 719 N.W.2d 698, 705 (Minn. 2006) (quotation omitted). To satisfy this burden, a petitioner "must do more than offer conclusory, argumentative assertions, without factual support." *State v. Turnage*, 729 N.W.2d 593, 599 (Minn. 2007).

With respect to the first prong of the *Strickland* test, appellant argues that his trial counsel's representation was unreasonable because she "failed to discuss defenses and mitigating factors with respect to this matter and told Petitioner that he must plead guilty even though Petitioner always told his lawyer that he was innocent"; more specifically, he argues that counsel failed to advise him "that pursuant to [Minn. Stat. § 634.03 (2006)], a person may not be convicted of a crime on their own confession alone without other evidence that the crime has in fact been committed."

But appellant did not submit any affidavit or other evidence with his petition for postconviction relief to show that a reasonably competent attorney would have discussed Minn. Stat. § 634.03 under similar circumstances. And other than appellant's allegations, there is no evidence that his counsel failed to discuss defenses and mitigating factors with him or that he was forced to plead guilty. Also, appellant's assertions are directly refuted

by his own testimony in the record. At the plea hearing, appellant informed the court that he freely and voluntarily made the decision to plead guilty, and he answered in the affirmative when asked whether he freely and voluntarily signed the plea petition and if he understood its terms. And a relevant part of the plea petition refutes his claims on advice he got from counsel; the petition was accurately summarized by the district court in its order denying postconviction relief as follows:

Paragraph five of the Plea Petition states, among other things, that Petitioner is satisfied that his attorney was fully informed of the facts of his case and that Petitioner and his attorney discussed the possible defenses that he could raise to the charge. Further, in the same paragraph, Petitioner agrees that his attorney has represented Petitioner's interests and fully advised Petitioner. The Plea Petition also confirms that Petitioner understood that if he wished to plead not guilty, he would be entitled to a trial by a jury or judge. Moreover, as part of the Plea Petition, Petitioner agrees that he makes no claim that he is innocent.

The district court did not err by finding that appellant only makes argumentative assertions that are not supported by any factual basis.

In addition, even if this court assumes that appellant could satisfy the first prong of the *Strickland* test, appellant's claim nonetheless fails because he did not state any facts that, "if proven, would affirmatively show that, but for his attorney's alleged ineffective assistance, the result would have been different." *Carey v. State*, 765 N.W.2d 396, 402 (Minn. App. 2009), *review denied* (Minn. Aug. 11, 2009). Where the person alleging ineffective assistance was convicted by a guilty plea, he must allege the reasonable probability that, but for the conduct he challenges, "he would not have pleaded guilty." *Id.*; *see also Johnson v. State*, 673 N.W.2d 144, 148 (Minn. 2004). Appellant has not

asserted that he would not have pleaded guilty in the event he had been given further advice.

Withdrawal of Guilty Plea

Appellant argues that the district court erred by denying his request to withdraw his guilty plea without holding an evidentiary hearing. A defendant does not have an absolute right to withdraw a guilty plea. *State v. Hughes*, 758 N.W.2d 577, 582 (Minn. 2008). After a defendant is sentenced, a defendant may withdraw a guilty plea only by establishing that withdrawal is necessary to correct a “manifest injustice.” Minn. R. Crim. P. 15.05, subd. 1; *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007). Manifest injustice exists when a guilty plea is invalid. *Theis*, 742 N.W.2d at 646. For a guilty plea to be valid, it “must be accurate, voluntary, and intelligent.” *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994).

A guilty plea is accurate only when an adequate factual basis is established. *Id.*; *Beaman v. State*, 301 Minn. 180, 183, 221 N.W.2d 698, 700 (1974). “The factual basis must establish ‘sufficient facts on the record to support a conclusion that defendant’s conduct falls within the charge to which he desires to plead guilty.’” *Munger v. State*, 749 N.W.2d 335, 338 (Minn. 2008) (quoting *State v. Iverson*, 664 N.W.2d 346, 349 (Minn. 2003)).

Appellant alleges that his plea is unsupported by a factual basis because it lacked a showing of “sufficient evidence to support a conviction under the provisions of [Minn. Stat. § 634.03]”; he complains that the only evidence was his confession. But appellant does not dispute that his sworn statements at the plea hearing establish “sufficient facts

on the record to support a conclusion that defendant's conduct falls within the charge to which he desires to plead guilty." *Iverson*, 664 N.W.2d at 349 (quotation omitted).

The record shows an adequate factual basis for appellant's conviction. Contrary to appellant's assertion, the application of Minn. Stat. § 634.03 is limited to situations where a defendant is convicted after a trial and the only evidence that the offense charged has been committed is the defendant's own confession. *See* Minn. Stat. § 634.03; *State v. Brant*, 436 N.W.2d 468, 470-71 (Minn. App. 1989). The district court properly concluded that an evidentiary hearing on this issue was unnecessary because Minn. Stat. § 634.03 "does not apply where Petitioner admits the essential elements of the crime under oath."

Affirmed.