STATE OF MINNESOTA
IN COURT OF APPEALS
A10-2028

Jeffrey David Skelton, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed September 6, 2011
Affirmed
Shumaker, Judge

Hennepin County District Court
File No. 27-CR-05-43149

Jeffrey David Skelton, Bayport, Minnesota (pro se appellant)

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

Michael O. Freeman, Hennepin County Attorney, Michael K. Walz, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Wright, Presiding Judge; Shumaker, Judge; and Larkin, Judge.

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

SHUMAKER, Judge

In this appeal from a denial of postconviction relief, appellant argues (1) the postconviction court erred when it determined appellant received effective assistance of counsel; (2) his guilty plea was invalid; and (3) the evidentiary hearing on remand was

conducted by a biased judge who based his ruling on testimony from an unqualified expert witness. We affirm.

FACTS

Appellant Jeffrey David Skelton shot and killed his wife's lover on June 19, 2005. He was charged with two counts of first-degree murder, Minn. Stat. §§ 609.185(a)(1) and (3) (2004); one count of first-degree burglary, Minn. Stat. § 609.582, subd. 1(c) (2004); and one count of terroristic threats, Minn. Stat. § 609.713, subd. 1 (2004).

While on conditional release awaiting trial, Skelton suffered a psychotic or delirium episode and was evaluated for competency to stand trial. *Skelton v. State*, No. A08-0572, 2009 WL 1515308, at *1 (Minn. App. June 2, 2009). A licensed psychologist performed a rule 20 psychiatric evaluation and found Skelton competent to stand trial.

Karen Bruggemeyer, M.D., conducted another psychiatric examination of Skelton to assist in obtaining reduced bail. Dr. Bruggemeyer informed Skelton's attorney that Skelton had a "paranoid edge" and "gross impaired judgment" and that a mental-illness defense was "absolutely not" worth pursuing. Skelton's attorney did not request a written report from Dr. Bruggemeyer because he concluded that the results of the evaluation would not help Skelton in the pursuit of reduced bail. Skelton's attorney also consulted with James Alsdurf, Ph.D., regarding a mental-illness defense. Dr. Alsdurf opined that there was no likelihood Skelton would succeed at trial with a mental-illness defense.

Skelton and his attorney discussed pursuing a mental-illness defense at trial but Skelton ultimately decided to enter into a plea agreement with the state to avoid the risk of a first-degree murder conviction and life imprisonment. Two months prior to the trial

date, Skelton pleaded guilty to one count of second-degree murder, Minn. Stat. § 609.19, subd. 1(1) (2004), and was sentenced to 396 months (33 years) in prison, pursuant to the plea agreement.

In August 2007, Skelton petitioned for postconviction relief arguing, among other things, that his guilty plea was invalid because his attorney failed to inform him of and investigate a possible mental-illness defense. He attached to his petition a medical report from Barbara J. Houk, M.D., who concluded that Skelton "has a physical illness of the brain and this gives rise to a mental illness," and that the shooting was "directly related to his physical and mental illnesses." The postconviction court dismissed Skelton's petition without a hearing because the rule 20 evaluation showed that he was competent to stand trial and because the record showed that Skelton was not mentally ill or psychotic during or before the murder.

Skelton claimed that he never received notice of the postconviction court's denial of his petition, and he appealed this court's denial of his motion to file a late appeal. The supreme court granted review "in the interests of justice," vacated the dismissal order, and remanded to this court for further proceedings. On June 2, 2009, we affirmed the postconviction court's denial of relief on all issues except Skelton's ineffective-assistance-of-counsel claim. On that issue, we reversed and remanded for an evidentiary hearing because Skelton had "presented sufficient evidence to require an evidentiary hearing on allegations that trial counsel's failure to discuss or investigate a mental-illness defense to the charges constituted ineffective assistance of counsel that rendered his plea invalid." *Skelton*, 2009 WL 1515308, at *1.

The postconviction court held an evidentiary hearing at which it heard testimony from Skelton, his trial counsel, and Dr. Alsdurf. On remand, the postconviction court found that Skelton's attorney had "examined and evaluated a variety of materials concerning [Skelton's] mental state, made personal observations of him, and consulted two highly qualified professionals." The postconviction court concluded that there was no showing of ineffective assistance of counsel. Accordingly, the court denied Skelton's postconviction petition. This appeal followed.

D E C I S I O N

On appeal, Skelton argues the postconviction court erred when it denied his ineffective-assistance-of-counsel claim. He also claims his guilty plea was invalid due to the possible existence of a mental-illness defense. Finally, Skelton contends the evidentiary hearing on remand was conducted by a biased judge who based his ruling on testimony from an unqualified expert witness.

In reviewing a postconviction court's denial of relief, issues of law are reviewed de novo and issues of fact are reviewed for sufficiency of the evidence. *Leake v. State*, 737 N.W.2d 531, 535 (Minn. 2007).

I.

Skelton argues that his attorney provided ineffective legal assistance because he failed to investigate the possibility of a mental-illness defense and failed to discuss this defense with Skelton. Skelton believes that he was mentally ill or deficient at the time of the plea and at the time he shot and killed his wife's lover on June 19, 2005.

In Minnesota, a defendant seeking to establish a mental-illness defense must meet the *M'Naghten* standard codified at Minn. Stat. § 611.026 (2010). *See Bruestle v. State*, 719 N.W.2d 698, 704 (Minn. 2006). The defendant must prove that at the time he committed the charged offense, he "was laboring under such a defect of reason, from a mental illness or deficiency, as not to know the nature of the act, or that it was wrong." *Id.* (brackets omitted).

To succeed on a claim of ineffective assistance of counsel, Skelton must show that (1) his counsel's performance fell below an objective standard of reasonableness and (2) a reasonable probability exists that, but for his counsel's unprofessional errors, the result of the proceeding would have been different. *Gates v. State*, 398 N.W.2d 558, 561 (Minn. 1987); *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064 (1984). A postconviction decision regarding a claim of ineffective assistance of counsel involves mixed questions of fact and law and is reviewed de novo. *Opsahl v. State*, 677 N.W.2d 414, 420 (Minn. 2004).

Deficient Performance

Under the first prong, "a defendant must show by a preponderance of the evidence that his counsel's performance was deficient, i.e., that his counsel's performance fell below an objective standard of reasonableness." *State v. Doppler*, 590 N.W.2d 627, 633 (Minn. 1999) (quotations omitted). In Minnesota, an attorney acts within the objective standard of reasonableness when he provides his client with the representation of an attorney exercising the customary skills and diligence that a reasonably competent attorney would perform under the circumstances. *State v. Gassler*, 505 N.W.2d 62, 70

(Minn. 1993). Trial counsel's performance is presumed reasonable. *Schneider v. State*, 725 N.W.2d 516, 521 (Minn. 2007). This court assesses the reasonableness of counsel's challenged conduct on the facts viewed at the time of counsel's conduct. *State v. Rhodes*, 657 N.W.2d 823, 844 (Minn. 2003).

Skelton claims that his attorney failed to adequately investigate or discuss a mental-illness defense with him because his attorney (1) did not provide Dr. Alsdurf with Skelton's medical report from his psychotic episode in North Dakota; (2) did not tell Dr. Alsdurf about Dr. Bruggemeyer's evaluation; (3) did not give Dr. Alsdurf Skelton's rule 20 competency evaluation; (4) did not tell Dr. Alsdurf about Skelton's Paxil prescription; and (5) did not have Dr. Alsdurf meet Skelton.

At the postconviction evidentiary hearing, Skelton's attorney testified that he consulted with Dr. Alsdurf regarding a potential *M'Naghten* mental-illness defense. It is undisputed that Dr. Alsdurf and Skelton never met. However, Skelton's attorney testified that, contrary to Skelton's contentions, he provided Dr. Alsdurf with documentation and medical records from Skelton's North Dakota episode; information he received from Dr. Bruggemeyer; the rule 20 competency evaluation; and police and investigative reports. Skelton's attorney also testified that he informed Dr. Alsdurf that Skelton was prescribed Paxil, an antidepressant, and discussed with Dr. Alsdurf the potential side effects of discontinuing use of the drug, as Skelton claimed he did before the murder, and whether that would impact his mental-illness defense.

Dr. Alsdurf also testified at the evidentiary hearing, stating that he based his opinion on Skelton's attorney's answers to his various questions about Skelton; a tape-

recorded radio interview with Skelton immediately after the crime; police and investigative reports; and some of Skelton's jail records. Dr. Alsdurf was also told that Skelton was put on suicide watch while in jail. He testified, however, that he did not know about Skelton's psychotic episode in North Dakota; was not aware that Dr. Bruggemeyer had conducted a psychological evaluation or the evaluation's results; did not see Skelton's rule 20 psychological evaluation for competency prior to giving his opinion to Skelton's attorney; and did not review Skelton's medical records. Nonetheless, Dr. Alsdurf testified that nothing in Dr. Bruggemeyer's evaluation of Skelton, or in the rule 20 competency evaluation, would have, in retrospect, changed his opinion.

Skelton testified at the evidentiary hearing that he did not know that his attorney had investigated a mental-illness defense. But he testified that his attorney told him that mental illness was a possible defense, although it was a difficult one to successfully pursue in Minnesota. He testified that he was unaware that two medical professionals, Dr. Bruggemeyer and Dr. Alsdurf, opined that mental illness was not a viable defense for him. Skelton stated that had he known about the conclusions of Dr. Bruggemeyer and Dr. Alsdurf, his decision to enter a guilty plea pursuant to the plea agreement would have been different. The postconviction court tried to clarify this seemingly incongruous response. Skelton ultimately testified that if he "would have had any indication that [he] had a chance for a defense based on a mental health issue, [he] would have pursued it." But both of the mental-health professionals with whom Skelton's attorney had consulted said there was *no* chance of a mental-illness defense. Therefore, by Skelton's own

reasoning, had he known about his attorney's consultations with the two doctors regarding such a defense, he still would not have pursued it because both doctors opined that mental illness was not a viable defense for him.

The record substantiates the postconviction court's finding that Skelton's attorney adequately investigated a mental-illness defense. Skelton's attorney reviewed Skelton's medical records, police reports, psychological evaluations, a competency evaluation, and a phone conversation Skelton had with a radio station about the crime immediately after it occurred. He also relied on information from Skelton and on his own observations of his client. And he consulted with Dr. Bruggemeyer and Dr. Alsdurf, both of whom unequivocally stated there was no basis for a mental-illness defense. The postconviction court concluded that the decision not to pursue a mental-illness defense was also supported by the prosecution's strong evidence of intentional and premeditated murder, including a number of admissions to the crime by Skelton.

Skelton's attorney testified that he discussed with Skelton the possibility of pursuing a *M'Naghten* defense at trial and other possible defenses, including self-defense. And Skelton signed a petition to enter a guilty plea that stated: "My attorney has discussed possible defenses to the crime(s) that I might have." Skelton's attorney testified that he always specifically points out this portion of the plea agreement and that he recalled doing so with Skelton. The evidence confirms that Skelton's attorney discussed with Skelton the possibility of pursuing a *M'Naghten* defense at trial, although as the postconviction court noted, there are discrepancies between Skelton's attorney and Skelton's recollections of the "extent and content of the conversations."

Skelton attempts to support his argument by introducing a report from Dr. Houk, a psychiatrist hired by Skelton's family after he pleaded guilty to second-degree murder. Dr. Houk interviewed Skelton via telephone and concluded that Skelton was mentally ill when he committed the crime and that the murder was "directly related to his physical and mental illnesses."

The postconviction court expressed its skepticism about the legitimacy of the report and its author. For instance, the report is referred to as an affidavit but does not purport to be under oath and is not acknowledged. Nor does it provide Dr. Houk's credentials other than to say she is an M.D., a psychiatrist, a psychotherapist, and a "Diplomat"[1] of "APA," "ASQ." Further, the reliability of the few medical findings included in the report is questionable because Skelton self-reported the head injury that Dr. Houk credits for causing Skelton's mental illness. The majority of the report is unrelated to Skelton's mental health and is marred by frequent tirades against everything from the justice system and the Food and Drug Administration, to the federal government and the healthcare system. The medical report also includes jabs at Skelton's ex-wife ("[her] actions are deplorable" and her behavior was "cruel and amounts to torture"), and Skelton's attorney ("the [l]awyer who arranged the plea of guilty was lazy and it seems to me (sic) malpractice of law"). Most important, the report did not establish that Skelton could have successfully pursued a *M'Naghten* defense at trial and only suggests that the killing was related to mental illness. We agree with the postconviction court that, even if

[1] As the postconviction court points out, it appears Dr. Houk meant she is a "diplomate," which is the correct term for a physician certified as a specialist by a board of examiners. *See* The American Heritage Dictionary 526 (3d ed. 1992).

this report had been made available to Skelton's attorney, it would "not have changed his or any competent lawyer's approach to the case."

Skelton faced two counts of first-degree murder, one count of first-degree burglary, and one count of terroristic threats. The first-degree murder charges carried mandatory life sentences, while the burglary and terroristic threat charges were punishable by up to 20 years and 5 years in prison, respectively. The plea agreement allowed Skelton to plead guilty to second-degree murder and receive a sentence of 33 years in prison, of which he would only serve 22 years. Skelton's attorney investigated and discussed a possible mental-illness defense with him, but Skelton ultimately decided to accept the plea agreement. The evidence supports the postconviction court's conclusion that Skelton's attorney acted within the objective standard of reasonableness because he exercised the customary skills and diligence that a reasonably competent attorney would exercise under the circumstances.

Prejudice

Because Skelton has not demonstrated that his attorney's performance fell below an objective standard of reasonableness, we need not analyze the second prong of the test. *See Rhodes*, 657 N.W.2d at 842 (holding that this court need not evaluate both the performance and prejudice prongs of the test if either one is determinative). Further, in light of the serious charges Skelton faced, the difficulty of succeeding with a *M'Naghten* defense in Minnesota, especially given the facts of this case, and the advantageous plea agreement Skelton's attorney secured for him, a prejudice argument is meritless.

II.

For a guilty plea to be valid, it must be accurate, voluntary, and intelligent. *Perkins v. State*, 559 N.W.2d. 678, 688 (Minn. 1997). When credibility determinations are crucial in determining whether a guilty plea was accurate, voluntary, and intelligent, "a reviewing court will give deference to the primary observations and trustworthiness assessments made by the district court." *State v. Aviles-Alvarez*, 561 N.W.2d 523, 527 (Minn. App. 1997), *review denied* (Minn. June 11, 1997).

Skelton claims his guilty plea was not intelligent and voluntary because he did not know there was a possibility of a mental-illness defense. As discussed above, however, Skelton did know about possible defenses, including the mental-illness defense.

Skelton also argues that his guilty plea was not intelligently made because he was unaware that his attorney had consulted with Dr. Alsdurf. This argument is unpersuasive. Dr. Alsdurf's opinion was that Skelton would not succeed with a mental-illness defense. It is illogical to argue that, had Skelton known that a medical professional believed that a *M'Naghten* defense was not viable, he would have pursued this defense anyway at trial. Rather, this information would have supported, and perhaps did support, Skelton's ultimate decision to accept the plea agreement instead of pursuing the risky *M'Naghten* defense at a trial.

Skelton's argument that his guilty plea was not intelligent because Dr. Houk "said there was an option for [him] to use the *M'Naghten* . . . defense" is similarly without merit. Dr. Houk's report did not establish that *M'Naghten* could be used as a defense, nor does it even suggest that Dr. Houk is familiar with this standard.

The postconviction court questioned Skelton about his understanding of the plea he entered and asked him if he knew what he was doing at the time he accepted the plea agreement. He stated that he did. Skelton also signed a plea petition stating that he had sufficient time to discuss his case with his attorney, that his attorney had fully informed him as to the facts of the case, that his attorney had discussed possible defenses that he might have, and that he was satisfied that his attorney had represented his interests and fully advised him of his rights. Skelton chose to accept the favorable plea agreement obtained by his attorney because he understood that, if the case went to trial, there was a high likelihood he would be convicted of first-degree murder, which carries a mandatory life sentence. The evidence confirms that the postconviction court did not err when it found Skelton knowingly and voluntarily pleaded guilty and accepted the advantageous plea agreement.

III.

Skelton argues that the postconviction court judge was biased because he based his ruling on the testimony of an unqualified expert witness. A judge must have "no actual bias against the defendant or interest in the outcome of his particular case." *Bracy v. Gramley*, 520 U.S. 899, 904-05, 117 S. Ct. 1793, 1797 (1997). Prejudice on the part of the trial judge must be determined on the basis of the record as a whole. *State ex rel. Jones v. Tahash*, 276 Minn. 188, 190, 149 N.W.2d 270, 272 (1967). We begin from the presumption that a judge has discharged his or her judicial duties properly. *McKenzie v. State*, 583 N.W.2d 744, 747 (Minn. 1998). Skelton's allegations are inadequate to overcome this presumption.

First, Skelton contends that the postconviction court judge's bias is evident because he found Dr. Alsdurf more credible than the report from Dr. Houk. The judge, when acting as factfinder, is required to determine credibility, and in doing so, must resolve conflicts in the testimony. In criminal cases, it is well settled that judging the credibility of witnesses and the weight given to their testimony rests within the province of the finder of fact. *State v. Johnson*, 568 N.W.2d 426, 435 (Minn. 1997); *State v. Dickerson*, 481 N.W.2d 840, 843 (Minn. 1992), *aff'd*, 508 U.S. 366, 113 S. Ct. 2130 (1993) (holding that this court shows great deference to a factfinder's determinations of witness credibility). And "adverse rulings by a judge, without more, do not constitute judicial bias." *State v. Mems*, 708 N.W.2d 526, 533 (Minn. 2006). The record supports the judge's conclusion that Dr. Houk's report was not credible and that even if it were, it does not establish that Skelton could have successfully pursued a mental-illness defense. Skelton also takes issue with the fact that the postconviction court's order refers to Dr. Houk as "Houk" once, but uses the "Dr." title when referencing other doctors. This was clearly a typographical error because the order consistently refers to "Dr. Houk" with only one exception.

Next, Skelton contends that the entire fifth page of the postconviction court's order "reeks with bias," and he takes issue with the postconviction court's characterization of Dr. Houk's observations as "hardly rational or coherent." He also argues that this court did not agree with the postconviction court's description of Dr. Houk's report as "an ill-informed advocate's document . . . and a very badly written one at that." This court's previous opinion never addressed the credibility or quality of Dr.

Houk's report, instead finding that its mere existence, and the lack of other evidence that Skelton's attorney had investigated a mental-illness defense, required an evidentiary hearing. Further, it is beyond the province of this court to make factual findings. *See In re Welfare of M.D.O.*, 462 N.W.2d 370, 374-75 (Minn. 1990) (holding that the role of the court of appeals is to correct errors, not to find facts).

Skelton claims that the postconviction judge was biased because he "assumed" Skelton's attorney is one of the best criminal lawyers in Minnesota. The judge did not assume this; Skelton's attorney has been named one of the top criminal defense attorneys in Minnesota by many organizations. Skelton also takes issue with the postconviction court's partial statement that, "[Skelton's attorney's] testimony satisfies me . . . ." This is taken out of context. The postconviction court did not necessarily find all of the attorney's testimony credible. The complete sentence stated:

> [Skelton's attorney's] testimony satisfies me that he fully understood the role of mental illness both in general and in this case, that he evaluated and investigated it preliminarily precisely as an effective defense lawyer should, that he properly explained it (and its difficulties) to [Skelton], and that he arranged a reasonable and prudent plea agreement (knowingly and voluntarily accepted by Mr. Skelton) suitable to the circumstances.

Finally, Skelton claims that the postconviction court, in making its decision, relied on the testimony of Dr. Alsdurf, who, Skelton argues, is an unqualified expert witness. Dr. Alsdurf's credentials were established on the record at the evidentiary hearing to show that Skelton's attorney reasonably relied on his opinion about a mental-illness defense. Dr. Alsdurf's credentials include: a Ph.D. in clinical psychology, a master's

degree in psychology, 12 years working as a senior clinical psychologist with Hennepin County Court Services, and testifying as an expert witness in an estimated 5,000 cases. Dr. Alsdurf described the process he used to come to his opinion that Skelton would not succeed with a mental-illness defense at trial. Further, the postconviction court did not solely rely on Dr. Alsdurf's testimony to determine that Skelton received effective assistance of counsel. The court described at length the reasons for its conclusion, including Skelton's attorney's thorough evaluation and investigation into the mental-illness defense. The postconviction court concluded it was reasonable for Skelton's attorney to rely on the opinions of Dr. Alsdurf and Dr. Bruggemeyer, in addition to the other information available to him, which conclusively showed that pursuit of a mental-illness defense would be futile.

Affirmed.