

State of Minnesota,

Plaintiff,

vs.

Stephen Carl Allwine,

Defendant.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER DENYING DEFENDANT’S REQUEST FOR RECONSIDERATION/TO SET ASIDE ORDER DENYING DEFENDANT’S SECOND PETITION FOR POSTCONVICTION RELIEF

Court File No. 82-CR-17-242

The above-entitled matter before the Douglas B. Meslow, Judge of District Court, in chambers on September 25, 2020, on Defendant’s Motion to Set Aside this Court’s September 21, 2020, Findings of Fact, Conclusions of Law and Order Denying Defendant’s Second Petition for Postconviction Relief. Defendant is represented by Christa J. Groshek, Esq. The State is represented by Nicholas A. Hydukovich, Assistant Washington County Attorney.

FINDINGS OF FACT

1. On September 21, 2020, the Court issued Findings of Fact, Conclusions of Law and Order Denying Petitioner (Defendant)’s Second Petition for Postconviction Relief (“Postconviction Order”).

2. One of the grounds raised for postconviction relief was a claim for ineffective assistance of trial counsel based, in part, on failure to hire experts to rebut and testify against the State’s experts.

3. The Petition was filed on March 2, 2020.¹ The State responded to the Petition on May 4, 2020. On June 1, 2020, Defendant’s attorney filed a letter requesting an additional (30) days to respond to the State’s brief. On June 3, 2020, the Court issued an Order that required

¹ Defendant filed his First Petition for Postconviction Relief on August 1, 2019, the deadline set by the Minnesota Supreme Court for him to file a petition for postconviction relief. Defendant did not file a memorandum of law with his First Petition for Postconviction Relief. The Court and counsel set a briefing schedule for the filing Petitioner’s memorandum of law and the State’s response. Defendant filed his Second Petition for Postconviction Relief on March 2, 2020. Thus, Defendant’s request for postconviction relief had been pending for over a year when the Court issued its Postconviction Order.

Defendant to file a response to the State's brief by June 12, 2020.² Defense counsel filed a response on June 12, 2020, and a letter requesting to continue keep the record open to obtain documentation from Defendant's trial counsel and information from his trial counsel's experts. The State opposed the request to keep the record open. The Court held a phone conference on June 22, 2020, to discuss Defendant's request to continue to keep the record open. The phone conference was held off the record. Defense counsel received trial counsel's "expert file" on June 19, 2020, prior to the phone conference.

4. On July 8, 2020, Defendant filed a Minn. Stat. §611.21 Application and a supplemental *in forma pauperis* affidavit seeking funds to retain the services of an expert.³ Between July 13 and July 23, 2020, the Court's law clerk and counsel exchanged several emails regarding the Court's request that Defendant provide another Supplemental IFP affidavit listing his income at the outset of the prosecution.

5. On August 5, 2020, defense counsel submitted a letter to the Court indicating that they were in the process of obtaining Defendant's Supplemental IFP affidavit and would provide it to the Court when received, which they anticipated would be in two weeks.

6. On September 21, 2020, the Court issued its Postconviction Order. Since the Court has not received Defendant's supplemental IFP affidavit, it had not ruled on Defendant's 611.21 application when it issued its Postconviction Order.

7. The Court concluded in its Postconviction Order that the decision of trial counsel regarding which experts he retained and his decision not to call those experts at trial were protected trial strategy and not ineffective assistance of counsel.

8. On September 25, 2020, Defendant filed a motion to set aside the Court's September 21, 2020, Order on the basis that the Court told counsel at the June 22, 2020 phone conference that it would issue an Order on the 611.21 motion first and then issue an Order on the Petition. Defendant contends that he still needs to obtain experts to solidify his ineffective assistance of counsel claim.

CONCLUSIONS OF LAW

1. "Although the rules of criminal procedure do not specifically authorize motions for reconsideration of **omnibus** rulings, the district court has the inherent authority to consider

² The Court was not required to allow Defendant an opportunity to submit a reply to the State's response. [Minn. Stat. §590.03 provides that after the State files its response to the petition, "no further pleadings are necessary except as the court may order."]

³ Minn. Stat. §611.21 motions are *ex parte*. However, defense counsel discussed the 611.21 application in its motion to set aside, which was served on the County Attorney.

such a motion.” *State v. Papadakis*, 643 N.W.2d 349, 356-57 (Minn. App. 2002)(emphasis added).⁴

2. Minnesota General Rule of Practice 115.11 states in relevant part: “Motions to reconsider are prohibited except by express permission of the court, which will be granted only upon a showing of compelling circumstances.” The Advisory Committee Comment to the Rule, citing *Sullivan v. Spot Weld, Inc.*, 560 N.W.2d 712 (Minn. Ct. App. 1997), indicates that courts are likely to exercise their power to reconsider “only where intervening legal developments have occurred...or where the earlier decision is palpably wrong in some respect.”

3. The Court ruled in the Postconviction Order that trial counsel was not ineffective for failing to hire certain experts. Thus, even if Defendant produced a report from an expert that differed from what was presented at trial, he is not entitled to relief. Accordingly, no intervening legal developments have occurred in this matter and no new facts exist which merit reconsideration of the Court’s Order denying postconviction relief.

4. Because Defendant has not presented any new facts or law to show that intervening legal developments have occurred or that the Court’s decision was palpably wrong in some respect, Defendant’s request is denied.

ORDER

1. Defendant’s Request for Reconsideration of the September 21, 2020 Order is **DENIED.**
2. The court administrator shall serve a copy of this Order on counsel of record.

BY THE COURT:

Dated: _____

Douglas B. Meslow
Judge of District Court

⁴ The Court will consider Defendant’s “motion to set aside” as a motion to reconsider. Although the Rules of Criminal Procedure do not clearly provide for reconsideration of criminal orders other than omnibus motions, the Court will review Defendant’s request for reconsideration.