

IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

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2024 ND 94

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Isaiah Michael Jung,

Petitioner and Appellant

v.

State of North Dakota,

Respondent and Appellee

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No. 20240031

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Appeal from the District Court of Stutsman County, Southeast Judicial District, the Honorable Troy J. LeFevre, Judge.

AFFIRMED.

Opinion of the Court by Bahr, Justice.

Samuel A. Gereszek, Grand Forks, ND, for petitioner and appellant.

Frederick R. Fremgen, State's Attorney, Jamestown, ND, for respondent and appellee.



**Jung v. State**  
**No. 20240031**

**Bahr, Justice.**

[¶1] Isaiah Jung appeals from an order denying his application for postconviction relief. We conclude the district court did not err in holding Jung failed to establish he received ineffective assistance of counsel. We affirm.

**I**

[¶2] In 2022, Jung pled guilty to five counts of gross sexual imposition, class A felonies, based on an agreement with the State that it would dismiss count six, a class AA felony, and count seven, a class C felony. In April 2022, the district court accepted the parties' joint recommendation and sentenced Jung.

[¶3] In March 2023, Jung filed an application for postconviction relief, contending his guilty pleas in the underlying criminal case were based on insufficient evidence and contesting the factual basis of two of the five counts to which he pled guilty. The State answered the application and moved for summary disposition.

[¶4] In August 2023, Jung filed an amended postconviction relief application, asserting his former defense counsel failed to investigate all of his claims and forced him to take a plea offer without giving him adequate time to ensure he understood the ramifications. He alleged that, despite knowing his innocence, he changed his plea to guilty on two counts based on his former counsel's failures. He claimed his former counsel's representation fell below the necessary standard and was ineffective. Jung also objected to the State's motion to dismiss and requested a hearing. The State answered the amended application and again moved for summary disposition, which Jung opposed.

[¶5] After denying the State's summary disposition motion, the district court held an evidentiary hearing in December 2023. In January 2024, the court denied Jung's application.



## II

[¶6] This Court’s standard of review in postconviction proceedings is well established:

A trial court’s findings of fact in a post-conviction proceeding will not be disturbed on appeal unless clearly erroneous under N.D.R.Civ.P. 52(a). A finding is clearly erroneous if it is induced by an erroneous view of the law, if it is not supported by any evidence, or if, although there is some evidence to support it, a reviewing court is left with a definite and firm conviction a mistake has been made. Questions of law are fully reviewable on appeal of a post-conviction proceeding.

*Black Elk v. State*, 2023 ND 150, ¶ 5, 994 N.W.2d 394 (quoting *Hunter v. State*, 2020 ND 224, ¶ 11, 949 N.W.2d 841).

## III

[¶7] Jung argues the district court should not have considered testimony from his former defense counsel because it was privileged communication and protected by attorney-client privilege. However, Jung called his former counsel as a witness at the evidentiary hearing. He also did not object to any of his former counsel’s testimony. Finally, Jung did not raise obvious error in his brief on appeal.

[¶8] “When an issue is not raised in the district court, we may opt to exercise our power to consider the issue under the obvious error standard of review, but we do so cautiously and only in ‘exceptional situations’ to correct ‘serious injustice.’” *State v. Nelson*, 2023 ND 217, ¶ 4, 997 N.W.2d 849 (quoting *State v. Landrus*, 2022 ND 107, ¶ 6, 974 N.W.2d 676). Jung did not claim this issue constitutes “obvious error,” but instead asserted this Court should review it as a matter of “policy.” We decline to address this issue because Jung failed to object to his former defense counsel’s testimony at the district court, did not brief the issue under the obvious error standard of review, and provided no meaningful analysis at argument as to whether this issue constitutes obvious error. *See id.*; *see also State v. Pederson*, 2024 ND 79, ¶ 18 (declining to consider



whether the district court committed obvious error when defendant did not argue the court committed obvious error).

#### IV

[¶9] Jung argues he would likely be granted postconviction relief based on ineffective assistance of counsel. Acknowledging his brief testimony at the hearing did not satisfy his burden of proof, Jung states, “It is arguable that an additional evidentiary hearing allowing [Jung] to provide the full breadth and extent of his allegations may lead to the *Strickland* standard being met.” Although less than clear, we generously interpret Jung’s brief to argue the district court erred when it held Jung failed to prove his claim of ineffective assistance of counsel.

[¶10] “To succeed on a claim for ineffective assistance of counsel, the applicant must show: (1) counsel’s representation fell below an objective standard of reasonableness, and (2) there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Black Elk*, 2023 ND 150, ¶ 16 (quoting *Hunter*, 2020 ND 224, ¶ 10); *see also Strickland v. Washington*, 466 U.S. 668, 687-88 (1984). “To establish the first prong, the applicant must overcome the strong presumption that trial counsel’s representation fell within the wide range of reasonable professional assistance, and courts must consciously attempt to limit the distorting effect of hindsight.” *Black Elk*, at ¶ 16 (cleaned up). “To establish the second prong, the defendant must specify how and where trial counsel was incompetent and the probable different result.” *Id.*

[¶11] “When a defendant pleads guilty on the advice of counsel, the defendant may only attack the voluntary and intelligent character of the guilty plea.” *Black Elk*, at ¶ 16 (quoting *Abdi v. State*, 2021 ND 110, ¶ 10, 961 N.W.2d 303). “The voluntariness of such a guilty plea turns on whether that advice was within the range of competence demanded of attorneys in criminal cases.” *Id.* (quoting *Damron v. State*, 2003 ND 102, ¶ 9, 663 N.W.2d 650).

[¶12] The district court’s findings of fact in its order denying Jung’s application are supported by evidence. The court made specific findings that evidence in



the record contradicts Jung's claim his former defense counsel spent inadequate time investigating his claims that allegedly proved his innocence; there is evidence in the record directly contradicting Jung's claims he was forced to take a plea; and there is sufficient reliable evidence showing his guilty plea was knowing and voluntary. Further, the court specifically found no evidence of substandard performance or advice by his former counsel. As the court stated:

Mr. Jung acknowledged the choice to plead guilty amounted to a selection from a menu of unpleasant choices but that he made the choice to avoid a potential li[f]e sentence on [c]ount 6. This indicates Mr. Jung knew what he was doing when he chose to plead guilty and that the choice did not amount to coercion.

[¶13] The district court's finding Jung did not show his counsel's representation fell below an objective standard of reasonableness was not induced by an erroneous view of the law and is supported by evidence. The court did not clearly err in finding Jung did not show his counsel's representation was below the standard of reasonableness.

V

[¶14] We affirm the district court's order.

[¶15] Jon J. Jensen, C.J.

Daniel J. Crothers

Lisa Fair McEvers

Jerod E. Tufte

Douglas A. Bahr