No. _____

In The Supreme Court of the United States

Dequarn Markeyth Bell, Petitioner**,**

v.

Lisa Stenseth, Warden Rush City Correctional Facility, Minnesota, Respondent.

On Petition For Writ of Certiorari To The Eighth Circuit Court of Appeals

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INDEX TO APPENDIX

Appendix A

United States Court of Appeals
For The Eighth Circuit
Thomas F. Eagleton U.S. Courthouse
111 South 10th Street, Room 24.329
St. Louis, Missouri 63102

Maureen W. Gornik
Acting Clerk of Court

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February 12, 2025

Zachary Allen Longsdorf
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Suite 3
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Inver Grove Heights, MN 55076

RE: 24-3599 Dequarn Bell v. Lisa Stenseth, Warden

Dear Counsel:

Enclosed is a copy of the dispositive order in the referenced appeal. Please note that FRAP 40 of the Federal Rules of Appellate Procedure requires any petition for rehearing to be filed within 14 days after entry of judgment. Counsel-filed petitions must be filed electronically in CM/ECF. Paper copies are not required. This court strictly enforces the 14 day period. Except as provided by Rule 25(a)(2)(iii) of the Federal Rules of Appellate Procedure, **no grace period for mailing is granted** for pro-se-filed petitions. A petition for rehearing or a motion for an extension of time must be filed with the Clerk's office within the 14 day period.

Maureen W. Gornik
Acting Clerk of Court

BNW

Enclosure(s)

cc: Clerk, U.S. District Court, District of Minnesota
Adam E. Petras
Thomas Rolf Ragatz
Edwin William Stockmeyer III

District Court/Agency Case Number(s): 0:23-cv-03881-JWB

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 24-3599

Dequarn Markeyth Bell

Petitioner - Appellant

v.

Lisa Stenseth, Warden Rush City Correctional Facility, Minnesota

Respondent - Appellee

Appeal from U.S. District Court for the District of Minnesota
(0:23-cv-03881-JWB)

JUDGMENT

Before BENTON, KELLY, and KOBES, Circuit Judges.

This appeal comes before the court on appellant's application for a certificate of appealability. The court has carefully reviewed the original file of the district court, and the application for a certificate of appealability is denied. The appeal is dismissed.

February 12, 2025

Order Entered at the Direction of the Court:
Acting Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Maureen W. Gornik

Appendix B

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Dequarn Markeyth Bell,

Petitioner,

v.

Lisa Stenseth, *Warden Rush City Correctional Facility, Minnesota*,

Respondent.

Civ. No. 23-3881 (JWB/ECW)

ORDER ACCEPTING REPORT AND RECOMMENDATION OF MAGISTRATE JUDGE

Zachary A. Longsdorf, Esq., Longsdorf Law Firm, PLC, counsel for Petitioner.

Adam E. Petras, Esq., Hennepin County Attorney's Office; and Edwin William Stockmeyer, III, Esq., and Thomas R. Ragatz, Esq., Office of the Minnesota Attorney General, counsel for Respondent.

Petitioner Dequarn Markeyth Bell filed a habeas petition asserting ineffective assistance of trial counsel, arguing that his trial counsel and the state district court misinformed him about the consequences of his guilty plea. He asserts that accepting his guilty plea as valid violates his due process rights, and thus that the state court's and Minnesota Court of Appeal's decisions upholding the plea are contrary to clearly established federal law.

United States Magistrate Judge Elizabeth Cowan Wright issued a Report and Recommendation ("R&R") on July 29, 2024, recommending the petition be denied. (Doc. No. 10.) Bell timely filed an objection. (Doc. No. 11.)

The portions of the R&R to which Bell objects are reviewed de novo and the recommendations made by the Magistrate Judge may be accepted, rejected, or modified, in whole or in part. 28 U.S.C. § 636(b)(1); D. Minn. LR 72.2(b)(3). Any aspect of the R&R to which no objection is made is reviewed for clear error. *Grinder v. Gammon*, 73 F.3d 793, 795 (8th Cir. 1996).

Bell first objects to the factual determinations the state court made when it denied his motion to withdraw his guilty plea. He challenges the findings that his counsel's testimony was credible, and Bell's testimony was less credible. He also challenges the findings that Bell was induced to enter a plea by hearing the victim's testimony and realizing the risk of a life sentence without parole, and that Bell was not misinformed about the consequences of his guilty plea (meaning he knew he was agreeing to a life sentence with a possibility of parole to be determined after a 30-year minimum sentence).

Bell argues these factual findings are unreasonable, pointing to statements made to him during the plea process and his expressed concerns with serving a sentence longer than 30 years. He claims he was induced to plead guilty based on misinformation, believing he would be released after the 30-year minimum sentence. But the state court, after an evidentiary hearing on Bell's motion to withdraw the guilty plea, considered his claim of being misinformed of the consequences of the guilty plea, assessed the credibility of Bell and his counsel, and ultimately concluded that Bell was not misinformed about the plea's consequences.

In federal habeas proceedings, state court factual determinations are presumed correct when reviewing a state court decision. *Lee v. Gammon*, 222 F.3d 441, 442 (8th

Cir. 2000) (citing 28 U.S.C. § 2254(e)(1)). To rebut this presumption, a petitioner must present clear and convincing evidence that the factual findings are erroneous. *Parker v. Parratt*, 662 F.2d 479, 482 (8th Cir. 1981).

Bell claims he was induced to plead guilty by misinformation. He cites statements from himself and his attorney suggesting that Bell sought assurance that he would not serve more than 30 years, as well as statements made by the state district court that he contends implied that he would be paroled after 30 years. These statements alone are not enough to establish that the state court's conclusions were unreasonable. *See Erwin v. Bowersox*, 892 F.3d 979, 985 (8th Cir. 2018) (stating that "the existence of some contrary evidence in the record does not suffice to show that the state court's factual determination was unreasonable"). Bell requested a plea offer immediately after the victim testified at trial, and both his attorney and the court made clear that the plea agreement only provided a possibility of parole after 30 years—not a guarantee. The state court specifically emphasized:

> . . . I just want to make sure you understand that, as a consequence, the effect of this is that this Court, at sentencing, will sentence you to life in prison with eligibility for supervised release, as determined by the Commissioner of Corrections based on your correctional record, in 30 years. Do you understand that?

(Doc. No. 8-2 at 484.) Bell responded: "Yes." (*Id.*)

Bell's counsel also testified that while Bell wanted assurance of release after 30 years, she informed him, "I could not promise parole because I was not the Department of Corrections" (Doc. No. 8-2 at 505), and that it was not in the trial judge's

"power to grant parole or promise parole, that parole meant parole would be decided by the prison staff." (Doc. No. 8-2 at 506–07.)

The record supports the conclusion that Bell sought and accepted the plea because of the victim's compelling testimony in the trial and the risk it created of Bell receiving a life sentence without the possibility of parole. The record also demonstrates that Bell understood his risk and was repeatedly advised by his counsel and the court that no guarantee of parole could be made.

After reviewing all the information available to Bell before his plea and deferring to the state court's factual and credibility determinations, Bell has not shown by clear and convincing evidence that the state court's findings were erroneous.

Bell also objects to the state court's denial of his motion to withdraw his plea and the appellate court's affirmance, which concluded that any discussion about future parole constituted a collateral consequence of the plea. Bell argues that the validity of his plea hinges on whether misinformation induced it, rather than whether the misinformation related to a collateral consequence. Bell also objects based on not being informed of all the factors the Commissioner considers when determining parole eligibility.

As stated above, the record supports the state court's finding that Bell was not induced to plea because of the state court judge's examples of parole considerations. Instead, Bell chose to plead guilty because of the strong victim testimony at trial and the significant risk of a life sentence without parole if convicted. Without evidence of inducement by misinformation, Bell's reliance on the cases he cites—which the

Magistrate Judge fully addressed and distinguished in the Report and Recommendation—is not persuasive.

Moreover, both the state court and Bell's counsel advised him that his plea would be for an indeterminate sentence with a 30-year minimum, and that release depended on a discretionary decision by the Commissioner. The details of everything the Commissioner considers when making parole decisions need not be discussed before a plea is accepted. *Hill v. Lockhart*, 731 F.2d 568, 570 (8th Cir. 1984) ("The details of parole eligibility are considered collateral rather than direct consequences of a plea, of which a defendant need not be informed before pleading guilty."). Bell's second objection is therefore overruled.

Bell's final objection is to the Magistrate Judge's recommendation to deny a certificate of appealability. A certificate of appealability may be granted only if the petitioner makes a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). To meet this standard, the petitioner must show that a reasonable jurist could find the district court's assessment debatable or incorrect. *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). Here, it is unlikely that any other court would decide Bell's petition differently.

Based on a review of the submissions, considering the applicable law, and for the reasons stated, the Report and Recommendation is accepted and Bell's objections are overruled.

Accordingly, **IT IS HEREBY ORDERED** that:

1. Petitioner's Objections to the Report and Recommendation (Doc. No. 11) are **OVERRULED**;

2. The Report and Recommendation (Doc. No. 10) is **ACCEPTED**;

3. Petitioner's Petition for a Writ of Habeas Corpus (Doc. No. 1) is **DENIED**;

4. Petitioner's request for an evidentiary hearing is **DENIED**;

5. Petitioner's request for a certificate of appealability is **DENIED**;

6. This case is **DISMISSED**.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Date: November 20, 2024

s/ Jerry W. Blackwell
JERRY W. BLACKWELL
United States District Judge

Appendix C

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Dequarn Markeyth Bell, Petitioner, v. Lisa Stenseth, Warden Rush City Correctional Facility, Minnesota, Respondent.	Case No. 23-cv-3881 (JWB/ECW) **REPORT & RECOMMENDATION**

This matter is before the Court on Petitioner Dequarn Markeyth Bell's application for a Writ of Habeas Corpus by a Person in State Custody arising under 28 U.S.C. § 2254 (Dkt. 1). This case has been referred to the undersigned for a report and recommendation pursuant to 28 U.S.C. § 636 and Local Rule 72.1. For the reasons set forth below, this Court recommends that the Petition for Writ of Habeas Corpus (Dkt. 1) be denied with prejudice.

I. BACKGROUND

On January 23, 2020, a grand jury indicted Bell on three counts: first-degree criminal sexual conduct, first-degree assault, and inducement of another to practice prostitution, pursuant to Minn. Stat. §§ 609.342, subd. 1(e)(i), .221, subd. 1, and .322, subd. 1a(1) (2018), respectively. *State v. Bell*, 27-CR-19-22461 (Henn. Cnty. D. Ct.

Indictment) (Index #12).[1] Bell was indicted under Minn. Stat. § 609.3455, subd. 2(a)(1) (2018) as an egregious first-time offender, which provides for a mandatory life sentence without the possibility of release if the "fact finder determines that two or more heinous elements exist." *Id.*, Minn. Stat. § 609.3455, subd. 2(a)(1). The indictment for the criminal sexual conduct charge alleged that in July 2019, Bell used force or coercion to sexually penetrate the victim, which caused the victim personal injury and included two heinous elements under Minn. Stat. § 609.3455, subd. 1(d)(1)-(2) (2018), great bodily harm and torture. *Id.*

The Minnesota Court of Appeals describes the underlying facts relating to Bell's plea as follows.[2]

> The following facts were elicited at a hearing prior to sentencing on Bell's motion to withdraw his plea. From the time that respondent State of Minnesota charged Bell to the start of trial, Bell and his counsel devoted "dozens and dozens of hours" to discussing potential resolutions to the case, including potential plea agreements with the state. Bell was "very involved" in these discussions. Bell understood that the maximum possible consequence if convicted was a life sentence without the possibility of parole. *See* Minn. Stat. § 609.3455, subd. 2(a)(1).
>
> Before trial, the state tendered two offers to Bell. The state offered Bell sentences ranging between 22 1/2 to 30 years in prison in exchange for his plea of guilty to the charges. Bell did not accept either offer, insisted that he did not want to accept a plea agreement, and maintained that he wanted to take his case to trial.
>
> On October 12, 2020, the jury trial began. Victim testified about the physical and sexual assault inflicted by Bell and that Bell forced her to engage in acts

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[1] The records for Bell's underlying Hennepin County case can be located by searching by case number at https://publicaccess.courts.state.mn.us/CaseSearch.

[2] Bell did not identify any errors in the Minnesota Court of Appeals summary of these facts. *See* 28 U.S.C. § 2254(e)(1).

of prostitution. Immediately following victim's testimony, Bell asked counsel to seek another plea offer from the state. The state was hesitant to tender another offer to Bell because the trial had commenced and victim had already testified, but the state ultimately did propose a new plea offer to Bell. The state offered Bell the option to plead guilty to all three counts and admit the great-bodily-harm heinous element in exchange for a life sentence with the possibility of parole, and a minimum term of imprisonment of 30 years.

Bell and his counsel had not previously discussed a sentence involving life with the possibility of parole. Counsel communicated to Bell that, should he accept the agreement, Bell would be incarcerated for 30 years and would then become eligible for parole, subject to the determination of the Minnesota Department of Corrections (the department). Bell stated to counsel that he was "adamant" that he wanted to serve a total of no more than 30 years in prison. Bell requested assurance from counsel that he would be released from prison after 30 years. Counsel indicated that the department would likely grant him parole after completing the minimum sentence, stating that "parole is granted unless there are reasons not to grant, like somebody is starting a riot or somebody kills somebody in prison." But counsel also advised Bell that neither counsel nor anyone else could guarantee that the department would ultimately grant Bell parole. Counsel advised Bell that "[p]arole can be denied. Parole can be granted. But it's up to the Department of Corrections." Bell advised counsel that he would accept the offer from the state. The next morning, counsel and Bell reviewed the guilty-plea petition together. The district court then suspended the jury trial and held a guilty-plea hearing.

At the guilty-plea hearing, the district court informed Bell that he was pleading guilty under Minn. Stat. § 609.3455, subd. 3(a) (2018) (providing for a life sentence with the possibility of parole based on the existence of one heinous element), which the district court described as "life with a possibility of parole," with an in-custody "minimum of 30 years." *See* Minn. Stat. § 609.3455, subd. 5 (2018) (providing that the district court "shall specify a minimum term of imprisonment, based on the sentencing guidelines"). The district court informed Bell that the department would consider his parole eligibility "just like they would for any other prisoner." The district court emphasized that after Bell completed the minimum sentence, the department "will assess your conduct in prison" and "make a decision about whether any infractions have occurred that would extend the period of time that you're in jail." Neither counsel nor the district court informed Bell that the department's parole decision would be based on any factor other than his conduct during his incarceration. Bell then pleaded guilty to the three counts and admitted the one heinous element per the terms offered by the state.

> Bell called counsel immediately after entering the guilty plea, informed counsel that he made the "biggest mistake" by pleading guilty, and stated that he wanted to withdraw the plea. Bell then moved the district court to withdraw the guilty plea based, in part, on the theory that he was misinformed of the consequences of the guilty plea.
>
> In December 2020, the district court conducted an evidentiary hearing on Bell's motion. Bell and counsel each testified to their recollections of Bell's request to initiate plea negotiations after victim's testimony, the state's new offer, their discussions about whether Bell should accept the offer, and what counsel communicated to Bell as to the terms of the sentence. Counsel testified that they thought that the department would likely grant Bell parole, but they could not guarantee that it would. Bell testified that he told counsel that he did not want to accept the agreement without a guarantee that he would be released from prison after serving 30 years total. Bell testified that he would have preferred to finish the trial and let the jury decide his fate without that guarantee.
>
> The district court denied Bell's motion, finding that counsel's testimony was "credible and believable" and that Bell's testimony was "inconsistent ... and less credible." The district court concluded that, among other things, Bell was not misinformed about the consequences of his guilty plea.
>
> After denying the motion, the district court held a sentencing hearing. The district court accepted the state's representation that it should assign three criminal-history points to Bell. The district court proceeded to sentence Bell under the first-degree criminal-sexual-conduct charge to a life-with-the-possibility-of-parole sentence with a minimum term of 30 years' incarceration. The district court then sentenced Bell for the inducement-of-another-to-practice-prostitution charge to a lesser sentence to be served concurrently.

State v. Bell, 971 N.W.2d 92, 98-100 (Minn. Ct. App. 2022), *rev. denied* (Minn. Apr. 27, 2022).

Bell appealed the denial of his motion to withdraw his guilty plea on several grounds. *See id.* His first ground was that the affirmative misadvice of counsel and the district court induced his plea and that this misinformation rendered his plea unintelligent and involuntary, resulting in a manifest injustice. *Id.* at 100. The second ground was that

the parole-eligibility determination is a direct consequence of his guilty plea, that his plea was unintelligent because he did not know of all the factors used in its parole decision-making process, and that his plea was therefore constitutionally invalid. *Id.* at 100-01. The third ground was that his guilty plea was involuntary and therefore constitutionally invalid because the incomplete information regarding the parole decision-making process induced his acceptance of the offer. *Id.* at 103. Bell specifically claimed that his plea was involuntary because (1) the district court made him an unfulfillable promise and (2) he received ineffective assistance of counsel. *Id.* The fourth ground was that he received ineffective assistance of counsel, namely that his counsel told him that "'parole is granted unless there are reasons not to grant, such as starting a riot or killing somebody in prison." *Id.* at 105 (cleaned up).

On that appeal, the Minnesota Court of Appeals concluded that Bell was not entitled to withdraw his guilty plea and rejected his ineffective assistance argument on the grounds that he had not shown prejudice. The court rejected Bell's argument that the alleged affirmative misadvice of counsel and the district court induced his plea and that this misinformation rendered his plea unintelligent and involuntary, resulting in a manifest injustice. *See id*. at 100-06. It also concluded, citing federal caselaw, that the parole-eligibility process was a collateral consequence of the entry of a guilty plea and that a defendant need not be advised of such consequences for the plea to be constitutionally valid. *Id*. at 102-03. The Minnesota Court of Appeals concluded that Bell was not improperly induced to accept the plea by either an unfulfillable promise from the district court or by the ineffective assistance of trial counsel. *Id*. 103-06.

Although the Minnesota Court of Appeals affirmed Bell's conviction, it remanded for resentencing. *Id*. at 110. A resentencing hearing was held on September 23, 2022. (Dkt. 1 at 2.)

Bell filed a petition for review ("PFR") of the Minnesota Court of Appeals' decision to the Minnesota Supreme Court on March 9, 2022 (Dkt. 8-2 at 146), which was denied on April 27, 2022 (*id*. at 182), and judgment was entered on June 1, 2022 (*id*. at 183). Bell did not seek review by the U.S. Supreme Court.

Bell filed the writ of habeas corpus at issue on December 22, 2023. (Dkt. 1). He asserts a single ground, "Petitioner states that he received ineffective assistance of trial counsel where trial counsel, and the district court, misinformed him about the consequences of his guilty plea and that this also violated his due process rights." (*Id.* at 4; *see also id.* at 4-11 (setting forth details of Ground One).) He asserts that the state courts' decision is contrary to clearly established Federal law as determined by the U.S. Supreme Court. (Dkt. 9 at 24; *see also id.* at 14 (arguing that conclusion that guilty plea was valid was "contrary to clearly established federal law").)

II. LEGAL STANDARD

"A federal court's review of habeas corpus petitions filed by state prisoners is governed by 28 U.S.C. § 2254, as amended by the Antiterrorism and Effective Death Penalty Act of 1996 ('AEDPA')." *Crump v. Halvorson*, No. 18-CV-1334 (MJD/ECW), 2019 WL 3431787, at *5 (D. Minn. June 10, 2019), *R. & R. adopted*, No. 18-CV-1334 MJD/ECW, 2019 WL 3429848 (D. Minn. July 30, 2019). A prisoner in state custody may seek relief in federal court by filing an application for a writ of habeas corpus "only

on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a). Habeas relief under § 2254 is warranted in three circumstances: (1) when a state court decision was contrary to clearly established federal law as determined by the U.S. Supreme Court, (2) when a state court decision involved an unreasonable application of clearly established federal law as determined by the U.S. Supreme Court, or (3) when a state court decision "was based on an unreasonable determination of the facts in light of the evidence presented." 28 U.S.C. § 2254(d)(1), (2); *see Lopez v. Smith*, 574 U.S. 1, 2 (2014) (emphasizing that only Supreme Court precedent can be relied on to conclude that a particular constitutional principle is "clearly established"). The Court's review is "limited to the record that was before the state court that adjudicated the claim on the merits." *Cullen v. Pinholster*, 563 U.S. 170, 180-82 (2011).

A federal district court is not allowed to conduct its own de novo review of a prisoner's constitutional claims. *See Yarborough v. Alvarado*, 541 U.S. 652, 665 (2004) ("We cannot grant relief under AEDPA by conducting our own independent inquiry into whether the state court was correct as a de novo matter."). The "AEDPA . . . imposes a highly deferential standard for evaluating state-court rulings, and demands that state-court decisions be given the benefit of the doubt." *Renico v. Lett*, 559 U.S. 766, 773 (2010) (internal citations and quotation marks omitted). Under § 2254(d), a state court decision is "contrary to" the Supreme Court's precedent if it "arrives at a conclusion opposite to that reached by [the Supreme] Court on a question of law," or if it "confronts facts that are materially indistinguishable from a relevant Supreme Court precedent and

arrives at a result opposite to ours." *Williams v. Taylor*, 529 U.S. 362, 405 (2000); *see also Engesser v. Dooley*, 457 F.3d 731, 735-36 (8th Cir. 2006). A state court decision is an "unreasonable application" of Supreme Court precedent if it "identifies the correct governing legal principle from [the Supreme] Court's decisions but unreasonably applies that principle to the facts of the prisoner's case." *Williams*, 529 U.S. at 413. In such situations, the court must "ask whether the state court's application of clearly established federal law was objectively unreasonable." *Id.* at 409. A court may not find a state adjudication to be unreasonable "simply because that court concludes in its independent judgment that the relevant state-court decision applied clearly established federal law erroneously or incorrectly." *Id.* at 411. Under this standard, courts "must deny a writ—even if [they] disagree with the state court's decision—so long as that decision is reasonable in view of all the circumstances." *May v. Iowa*, 251 F.3d 713, 716 (8th Cir. 2001) (citing *Williams*, 529 U.S. at 409-13). "To the extent that 'inferior' federal courts have decided factually similar cases, reference to those decisions is appropriate in assessing the reasonableness of the state court's resolution of the disputed issue." *Atley v. Ault*, 191 F.3d 865, 872 (8th Cir. 1999) (citation omitted).

An application for a writ of habeas corpus will only be granted if "the applicant has exhausted the remedies available in the courts of the state." 28 U.S.C. § 2254(b)(1)(A). In conformance with the principles of comity and federalism, the exhaustion doctrine requires state courts to have a "full and fair opportunity to resolve federal constitutional claims before those claims are presented to the federal courts," *O'Sullivan v. Boerckel*, 526 U.S. 838, 845 (1999), where "the prisoner must 'fairly

present' his claim in each appropriate state court (including a state supreme court with powers of discretionary review), thereby alerting that court to the federal nature of the claim," *Baldwin v. Reese*, 541 U.S. 27, 29 (2004) (citation omitted). Thus, "a prisoner must fairly present his federal constitutional claims to the highest available state court, (in Minnesota, the Minnesota Supreme Court) before seeking relief in federal court." *Fraction v. Minnesota*, 678 F. Supp. 2d 908, 916 (D. Minn. 2008).

In addition, when reviewing a state court decision, a federal habeas court "presumes that the state court's factual determinations are correct." *Lee v. Gammon*, 222 F.3d 441, 442 (8th Cir. 2000) (citing 28 U.S.C. § 2254(e)(1)). This deference applies to factual determinations made by the state trial and appellate courts. *See Sumner v. Mata*, 449 U.S. 539, 547 (1981). The petitioner has "the burden of rebutting the presumption of correctness by clear and convincing evidence." 28 U.S.C. § 2254(e)(1); *Whitehead v. Dormire*, 340 F.3d 532, 539 (8th Cir. 2003). Under 28 U.S.C. § 2254(d), "any claim that was adjudicated on the merits in State court proceedings is entitled to deference by the federal courts." *Worthington v. Roper*, 631 F.3d 487, 495 (8th Cir. 2011) (quotation omitted).

As to Bell's right to the effective assistance of counsel, that right is guaranteed by the Sixth Amendment of the United States Constitution. *Strickland v. Washington*, 466 U.S. 668, 684-86 (1984). This right extends to a defendant's decision whether to plead guilty. *Padilla v. Kentucky*, 559 U.S. 356, 364 (2010). To assess an ineffective-assistance claim, courts apply the two-part *Strickland* test requiring a defendant to demonstrate (1) that counsel's representation fell below an objective standard of

reasonableness, and (2) "prejudice" in the form of a "reasonable probability" that, but for counsel's "unprofessional errors," the defendant would not have pleaded guilty. *Strickland*, 466 U.S. at 687-88, 694. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id*. at 668.

As to Bell's due process argument related to his guilty plea, a "plea is more than an admission of past conduct; it is the defendant's consent that judgment of conviction may be entered without a trial—a waiver of his right to trial before a jury or a judge." *Brady v. United States*, 397 U.S. 742, 748 (1970). "Waivers of constitutional rights not only must be voluntary but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences." *Id.* (footnote omitted). "If a defendant's guilty plea is not equally voluntary and knowing, it has been obtained in violation of due process and is therefore void." *Boykin v. Alabama*, 395 U.S. 238, 243 n.5 (1969). The defendant must be informed of the privilege against compulsory self-incrimination guaranteed by the Fifth Amendment and applicable to the States by reason of the Fourteenth Amendment, his right to trial by jury, and to his right to confront one's accusers. *Id.* at 243. A plea is "knowing" if a defendant receives "real notice of the true nature of the charge against him." *See Bousley v. United States*, 523 U.S. 614, 618 (1998). A plea is voluntary in the constitutional sense if the defendant entered into the plea "fully aware of the direct consequences of the plea," or "unless induced by threats, misrepresentation, or perhaps by promises that are by their nature improper as having no proper relationship to the prosecutor's business." *Id.* at 619 (quoting *Brady*, 397 U.S. at 755) (cleaned up).

A habeas petitioner bears the burden of establishing that his guilty plea was not voluntary and knowing. *See Parke v. Raley*, 506 U.S. 20, 3134 (1992). "Whether a plea of guilty was constitutionally voluntary is a question of federal law, but the state courts' underlying findings of fact are entitled to the presumption of correctness," including as to credibility. *Hunter v. Bowersox*, 172 F.3d 1016, 1022 (8th Cir. 1999) (citing *Marshall v. Longberger*, 459 U.S. 422, 431-32 (1983); *see also* 28 U.S.C. 2254(e)(1) ("In a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination of a factual issue made by a State court shall be presumed to be correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence.").

III. ANALYSIS

A. Timeliness of Bell's § 2254 Petition

As a threshold matter, Respondent Lisa Stenseth, Warden Rush City Correctional Facility, Minnesota, argues that the statute of limitations bars Bell's § 2254 habeas petition. (Dkt. 8 at 18.) Section 2254(d)(1) provides a one-year period of limitation in which a petitioner in custody pursuant to a state court judgment may apply for an application for a writ of habeas corpus. The statute provides in relevant part:

> A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of—
>
> (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

28 U.S.C.A. § 2244(d)(1).

Respondent contends that for Bell, the "date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review" was either July 26, 2022[3] or August 30, 2022[4], 90 days after the Minnesota Supreme Court denied Bell's PFR seeking review of the Minnesota Court of Appeal's decision, during which time Bell could have sought review by the U.S. Supreme Court. Respondent contends that the Minnesota Court of Appeals decision on the issues that Bell now raises in his Petition—violation of due process rights and ineffective assistance of counsel—"became final" as of July 26, 2022 and that date began the one-year limitations period. This would make the Petition untimely because it was filed on December 22, 2023. (*See* Dkt. 1.)

Bell counters that the "date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review" was actually December 22, 2022 because that date is 90 days after the district court resentenced him on September 23, 2022. (Dkt. 9 at 13.) The Court agrees with Bell.

The U.S. Supreme Court has stated that: "Final judgment in a criminal case means sentence. The sentence is the judgment." *Burton v. Stewart*, 549 U.S. 147, 156–57

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[3] Respondent states July 26, 2023 (Dkt. 8 at 18) however, the Court understands this to be a typographical error and concludes, based on Respondent's correct use of 2022 in other parts of the brief (*e.g. id*. at 17, 19), that Respondent meant July 26, 2022.

[4] Respondent argues that the 90-day "clock" for filing a petition for certiorari to the U.S. Supreme Court should begin at the time that the lower court issues its decision (here, the Minnesota Supreme Court's denial of the PFR) rather than when the clerk of court enters judgment. (Dkt. 8 at 18-19 & n.13.) Because the Court finds that timeliness should be evaluated as of the September 23, 2022 date of resentencing, the Court does not address this issue.

(2007) (quoting *Berman v. United States*, 302 U.S. 211, 212 (1937)). Courts in this District and several Circuit Courts of Appeals have concluded that § 2254(d)(1)(A)'s one-year statute of limitations period does not begin to run until the date that the conviction and the sentence become final. *See, e.g.*, *Hahn v. Minnesota*, No. CIV. 12-2154 JRT/JJG, 2013 WL 5230750, at *2 (D. Minn. Sept. 17, 2013) (concluding that although "Hahn has exhausted his direct state court review of the questions he presents in his habeas petition," because his direct appeal regarding sentencing remained pending, the state court judgment underlying his petition was not yet final); *see also Rashad v. Lafler*, 675 F.3d 564, 567-68 (6th Cir. 2012) (concluding that where state appellate courts had affirmed petitioner's conviction but reversed his sentence, judgment against petitioner became final and triggered the one-year period for filing a habeas petition when direct review of the new sentence was completed); *Rashad*, 675 F.3d at 568 (collecting cases holding same in the Fifth, Ninth, Tenth, and Eleventh circuits). The Court agrees with those courts' analysis and finds that the Minnesota Supreme Court's denial of review of the Minnesota Court of Appeals decision which affirmed Bell's conviction but reversed his sentence did not trigger the one-year limitations period, but rather, the limitations period was triggered by the expiration of the time to seek review of Bell's resentencing. Bell was resentenced on September 23, 2022 and 90 days later, December 22, 2022, is the date on which the one-year limitation period began. Bell filed his petition on December 22, 2023, within the one-year window. The Court therefore finds that the Petition was timely filed.

B. Due Process and Assistance of Counsel

In his Petition, Bell seeks relief on one ground, "that he received ineffective assistance of trial counsel where trial counsel, and the district court, misinformed him about the consequences of his guilty plea and that this also violated his due process rights." (Dkt. 1 at 4.) Bell contends that the ineffective assistance of trial counsel and the trial court's alleged misinformation about the consequences of his plea rendered his plea "involuntary and unintelligent." (Dkt. 1 at 11.) According to Bell, the state courts' conclusion that his guilty plea was valid is contrary to clearly established federal law. (Dkt. 9 at 14.)

1. The Parties' Arguments

Bell does not appear to dispute the Minnesota Court of Appeals' conclusion that a parole-eligibility determination is a collateral consequence of a plea. Rather, he argues that "[i]n concluding, under the circumstances presented in this case, that Bell's guilty plea was valid, the state courts reached a conclusion contrary to clearly established federal law." (*Id.*) According to Bell, when "the defendant is misinformed of a consequence rather than simply being unaware of it, the direct/collateral distinction does not govern, and instead whether the plea is valid depends on whether the misinformation induced the plea," where here, the consequence was that "the indeterminate-release sentencing scheme under which a prisoner is not entitled to release after serving the minimum term plus discipline time" applied to Bell, "as opposed to the determinate-release scheme which applies to most prisoners who are entitled to release at that time." (*Id.* at 14-15.) The Court understands this argument to refer to the difference between the

sentencing scheme described at Minn. Stat. § 244.05, subd. 1b, .101, subd. 1[5], where "supervised release is automatically granted after completion of two-thirds of the sentence," *see Bell*, 971 N.W.2d at 101, and the sentencing scheme that governs Bell's life sentence with eligibility for parole, where whether and when a defendant will be released from prison is at the discretion of the Supervised Release Board (of the Commissioner of Corrections at the time of Bell's plea), *see* Minn. Stat. § 244.05, subd. 5 (stating that the Board[6] may grant "supervised release or parole" under certain conditions

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[5] Minn. Stat. § 244.05, subd. 1b provides:

> Except as provided in subdivisions 4, 4a, and 5, every inmate sentenced to prison for a felony offense committed on or after August 1, 1993, shall serve a supervised release term upon completion of the inmate's term of imprisonment and any disciplinary confinement period imposed by the commissioner due to the inmate's violation of any disciplinary rule adopted by the commissioner or refusal to participate in a rehabilitative program required under section 244.03. The amount of time the inmate serves on supervised release is equal to one-third of the inmate's fixed executed sentence, less any disciplinary confinement period imposed by the commissioner and regardless of any earned incentive release credit applied toward the individual's term of imprisonment under section 244.44.

Minn. Stat. § 244.101, subd. 1 provides:

> Except as provided in section 244.05, subdivision 4a, when a felony offender is sentenced to a fixed executed sentence for an offense committed on or after August 1, 1993, the executed sentence consists of two parts: (1) a specified minimum term of imprisonment that is equal to two-thirds of the executed sentence; and (2) a specified maximum supervised release term that is equal to one-third of the executed sentence. The amount of time the inmate actually serves in prison and on supervised release is subject to the provisions of section 244.05, subdivision 1b.

[6] "The Supervised Release Board is established to review eligible cases and make release and final discharge decisions for . . . inmates serving life sentences with the possibility of parole or supervised release under sections 243.05, subdivision 1, and

based on factors including, but not limited to, a community investigation report, a victim impact statement, the inmate's progress in treatment, and the inmate's behavior while incarcerated); *see also* Minn. Stat. § 244.05, subd. 1(b) (transferring the authority to grant discretionary release and final discharge from the Commissioner to the Board as of July 1, 2024).

Bell argues that the "fundamental issue" is that his "plea was induced not with misinformation about a collateral fact, but with misinformation about the most basic premise of the entire plea, which was what Bell said over and over, that he wanted to serve his 30 years and then be done. He was told that would be the case when it is not." *(*Dkt. 9 at 23-24.) Bell argues that "[b]ecause that information came from the trial court and from counsel, Bell's due process rights, and right to the effective assistance of counsel, were violated" and that by "failing to recognize this, the state courts reached a conclusion contrary to clearly established Federal law, as determined by the Supreme Court of the United States." (*Id*.)

Respondent counters that the state district court and court of appeals correctly concluded that Bell's guilty pleas were valid and correctly rejected his claims of ineffective assistance of counsel and due process violations. (Dkt. 8 at 23-24.) Respondent argues that the state court of appeals decision was consistent with clearly established state and federal law, that Bell failed to establish how the Minnesota Court of Appeals' decision was contrary to or an unreasonable application of clearly established

244.05, subdivision 5" (as well as for other categories of inmates). Minn. Stat. § 244.049, subd. 1(a)(1).

federal law, and that Respondent is not aware of any U.S. Supreme Court precedent that undermines the state court's decision on any of Bell's claims. (*Id*. at 27, 30-31, 32-33.)

2. Parole Eligibility as a Collateral Consequence

On appeal to the Minnesota Court of Appeals, one of Bell's arguments was that his guilty plea was unintelligent because he did not know of all the factors the Department of Corrections would use in its parole decision-making process. *Bell*, 971 N.W.2d at 101. In rejecting this argument, the Minnesota Court of Appeals held, as matter of first impression, "that a parole-eligibility determination by the department is a collateral consequence of a guilty plea." *Bell*, 971 N.W.2d at 101.

It is well settled in this Circuit and many other federal circuits that "[t]he details of parole eligibility are considered collateral rather than direct consequences of a plea, of which a defendant need not be informed before pleading guilty." *Hill v. Lockhart*, 731 F.2d 568, 570 (8th Cir.), *on reh'g*, 764 F.2d 1279 (8th Cir. 1984), *aff'd*, 474 U.S. 52 (1985); *see Bustos v. White*, 521 F.3d 321, 325 (4th Cir. 2008) ("[T]he majority of circuits deciding the issue have concluded that parole ineligibility is only a collateral consequence.") (collecting cases). More importantly for the purposes of this analysis, "no Supreme Court precedent establishes that parole ineligibility constitutes a direct, rather than a collateral, consequence of a guilty plea." *Bustos*, 521 F.3d at 325.

Bell does not appear to be challenging the Minnesota Court of Appeals' conclusion that a parole-eligibility determination is a collateral consequence. Rather, he argues that regardless of whether the determination is collateral or direct, he was given misadvice as to "the applicability of the indeterminate-release sentencing scheme under

which a prisoner is not entitled to release after serving the minimum term plus discipline time, as opposed to the determinate-release scheme which applies to most prisoners who are entitled to release at that time," resulting in an invalid plea and ineffective assistance of counsel. (Dkt. 9 at 14-15.) In any event, that decision by the Minnesota Court of Appeals is not contrary to clearly established federal law as established by the U.S. Supreme Court and does not itself give rise to habeas relief.

3. Bell's Reliance on Any Affirmative Misadvice

The Minnesota Court of Appeals addressed whether Bell was induced to enter into his guilty plea by "misadvice" from the district court or his attorney about his parole eligibility or whether he met the "prejudice" prong of *Strickland* based on such misadvice. *Bell*, 971 N.W.2d at 103-04, 106. As to inducement, the Minnesota Court of Appeals explained:

> The district court found as a matter of fact that, following victim's compelling testimony, Bell's risk of being convicted had dramatically increased and that Bell understood that he was at risk of being sentenced to life without the possibility of parole. *See* Minn. Stat. § 609.3455, subd. 2(a)(1). The district court found that, consistent with Bell's actions, the reason that Bell accepted the plea agreement was to "cut his losses" and avoid the risk of a sentence of life without the possibility of parole.
>
> These findings of fact are well-grounded in the record. From the inception of the case, Bell was "very involved" in discussions with counsel regarding potential resolutions to his case. Before trial, Bell had been explicit that he was not interested in accepting a plea agreement and wanted to proceed to trial. Bell understood that the maximum possible sentence for the charged crimes was life without the possibility of parole. *See id.* But Bell reassessed his case after victim completed her testimony and reconsidered his position in accepting a plea agreement. Counsel testified that, upon completion of victim's testimony, Bell communicated to her that "he sensed it might all be over" and that "he ... saw his life disappearing before his eyes and wanted to grasp at anything he could to save himself."

> Counsel asked Bell whether, after victim's testimony, he wanted to attempt to obtain a new plea offer instead of completing the trial. Bell inquired what the terms of such an offer would be. Counsel replied that "it will be a lot of time, but I can try [to obtain a plea agreement], but you need to decide." Bell affirmatively indicated that he wanted counsel to obtain a new plea offer if possible. Counsel followed Bell's directions and obtained a new offer from the state.
>
> As part of discussions about that offer, Bell sought a guarantee that he would be released from prison after completing his minimum sentence. Both counsel and the district court expressly stated that they could not make such a guarantee. Without any assurance that he would be guaranteed release after serving 30 years, and facing a potential life sentence without the possibility of parole, Bell accepted the offer. Bell points to no facts in the record showing that he was induced to accept the state's offer because he believed that he was guaranteed parole after completing the minimum sentence. In short, Bell was not improperly induced to accept the plea agreement.

Bell, 971 N.W.2d at 104. Bell does not challenge the district court's and the Minnesota Court of Appeals' factual findings underpinning the conclusion that "the reason that Bell accepted the plea agreement was to 'cut his losses' and avoid the risk of a sentence of life without the possibility of parole," not a belief that he was guaranteed parole after completing the minimum sentence. Having reviewed the record, the Court sees no evidence undermining those conclusions or the deference due them. *See* 28 U.S.C. § 2254(e)(1).

Similarly, as to prejudice, the Minnesota Court of Appeals found:

> [T]he record indicates, as the district court found, that the compelling testimony from victim coupled with Bell's understanding that his chances of acquittal had dwindled induced Bell's solicitation of the plea offer and his decision to accept that offer. We note that Bell received a significant benefit from the plea agreement, avoiding the mandatory sentence of life without parole if convicted as charged. Bell requested and accepted the state's offer to avoid the potential sentence of life without the possibility of parole. The record does not support Bell's claim that he would not have pleaded guilty

> had he received complete information regarding the department's parole-eligibility process.

Bell, 971 N.W.2d at 106.

Again, Bell identifies no evidence calling these factual determinations into question. The Court gives them the deference due in this habeas proceeding.

4. Bell Cannot Avoid the Collateral Nature of a Parole-Eligibility Determination Based on Affirmative Misadvice Because Any Such Advice Did Not Induce His Plea

Apparently accepting that a parole-eligibility determination is a collateral consequence of a guilty plea, Bell instead makes an affirmative misadvice argument when arguing the state courts' decisions are contrary to federal law. In particular, he contends that when "the defendant is misinformed of a consequence rather than simply being unaware of it, the direct/collateral distinction does not govern, and instead whether the plea is valid depends on whether the misinformation induced the plea." (Dkt. 9 at 15 (citing *State v. Ellis-Strong*, 899 N.W.2d 531, 535-39 (Minn. App. 2017); *Strader v. Garrison*, 611 F.2d 61, 65 (4th Cir. 1979); *James v. Cain*, 56 F.3d 662, 664, 667 (5th Cir. 1995); *Hill v. Lockhart*, 894 F.2d 1009, 1010 (8th Cir. 1990); *Commonwealth v. Pridham*, 394 S.W. 867, 878-81 (Ky. 2012); *Goodall v. United States*, 759 A.2d 1077, 1082 (D.C. 2000)).)

As Bell recognizes, this exception requires the misadvice to have induced the guilty plea. Bell relies on the following statements by the state district court during Bell's plea to show inducement:

> So, at the end of 30 years, the Commissioner of Corrections will assess your conduct in prison and make a decision about whether any infractions have

> occurred that would extend the period of time that you're in jail, just -- or in prison, just like they would for any other prisoner in the respect of -- you know, if you get in a fight, if you get -- if you smuggle contraband, disobeying -- things like that -- while you're in prison -- that period of time. You know, if you were serving two years on a three-year sentence -- can be extended -- the two-year sentence can be extended because you had infractions in prison. That same process will apply.
>
> At the end of 30 years, the Commissioner of Corrections makes a decision about whether the functional equivalent of good time should be revoked. But you will be -- unlike life without parole, you will be eligible for supervised release as of 360 months -- that is, 30 years.

(Dkt. 8-2 at 464-65.) At other points in the plea hearing, the district court stated:

> THE COURT: what you're pleading to carries with it a sentence of life with eligibility for parole in 30 years. Do you understand that?
>
> THE DEFENDANT: Yes.
>
> THE COURT: Do you have any more questions about that?
>
> THE DEFENDANT: No.

(Dkt. 8-2 at 470.) The district court again inquired:

> THE COURT: But I just want to make sure you understand that, as a consequence, the effect of this is that this Court, at sentencing, will sentence you to life in prison with eligibility for supervised release, as determined by the Commissioner of Corrections based on your correctional record, in 30 years. Do you understand that?
>
> THE DEFENDANT: Yes.

(Dkt. 8-2 at 485.)

Based on these statements, Bell argues: "The district court directly and specifically advised Bell that his release date would be determined 'just like' that of non-life prisoners serving determinate sentences and told him the 'same process' would apply to determine his release date as determines the release date of a person serving a 3- year

sentence. All of this was wrong." (Dkt. 9 at 15.) He also argues defense counsel "reinforced" this misinformation, resulting in the ineffective assistance of counsel. (*Id.* at 16.) According to Bell, this constituted "misinformation about the most basic premise of the entire plea," the result of which solely induced Bell's guilty plea. (*Id.* at 23-24.)

However, these arguments ignore the Minnesota Court of Appeals' factual findings underlying its rejection of Bell's argument that the alleged misadvice induced his guilty plea (discussed in Section III.B.3). The district court also concluded, after an evidentiary hearing, that Bell had not been misinformed about the consequences of his guilty plea. (Dkt. 8-2 at 605-07.) At the evidentiary hearing, Bell's trial attorney testified:

> I said it was up to the DOC, that I couldn't promise parole, that the Judge could not promise parole. He was very, very adamant that he wanted me to assure that he would get out at 30 years minus his credit. At that time, he had about a year and two weeks in jail. So, that would make his release date, if he was given parole, 28 years plus, and he wanted me to promise him he would get out then. I told him I could not promise him. I could not promise parole because I was not the Department of Corrections.

(Dkt. 8-2 at 505.)

> I advised him in the way that I just told you I advised him, that I couldn't promise that he would get out, but that he would be offered the possibility of parole after that time and that it would be up to the parole board. In fact, I said something to the effect of, you know, parole is granted unless there are reasons not to grant, like somebody is starting a riot or somebody kills somebody in prison. Parole can be denied. Parole can be granted. But it's up to the Department of Corrections. He really, really, really wanted me to get assurance from Judge Scoggin before he would take the plea. I told him I could not, that that was out of Judge Scoggin's purview. That was not Judge Scoggin's power to grant parole or promise parole, that parole meant parole would be decided by the prison staff. I told him that. He absolutely wanted an assurance, and I told him I'll ask the Judge in the morning to give you

> assurance if that is what you want me to do, but he will not be able to give you promise of parole.

(Dkt. 8-2 at 506-07.)

The district court found the trial attorney's testimony "credible and believable" and Bell's contrary testimony "inconsistent in parts and less credible in this case." (Dkt. 8-2 at 594.)

"The deference owed to the state trial court pursuant to § 2254(e)(1) includes deference to its credibility determinations. A federal court can only grant habeas relief if the state court's credibility determinations were objectively unreasonable based on the record." *Smulls v. Roper*, 535 F.3d 853, 864 (8th Cir. 2008) (citing *Rice v. Collins*, 546 U.S. 333, 338-39 (2006).) Here, Bell does not challenge the state trial court's credibility determinations and nothing in the record suggests they were objectively unreasonable. The Court gives deference to those credibility determinations and the determination that Bell was not misinformed about the consequences of his guilty plea.

The Minnesota Court of Appeals also concluded that the district court's statements about Bell's eligibility for supervised release after serving 30 years were incomplete, but did not "amount[] to an affirmative promise by the district court that the department would exclusively consider his in-prison conduct as a basis for determining parole-eligibility or that good behavior alone would guarantee his release." *Bell*, 971 N.W.2d at 104-05. This was because:

> The district court accurately informed Bell that, upon completion of the minimum term of incarceration, the department would assess Bell's in-prison conduct in determining his parole eligibility. The district court did not inform Bell that his in-prison conduct was the sole basis by which the department

> would make its decision, guarantee that Bell would automatically be entitled to parole with good behavior, or make any affirmative promise to Bell regarding the department's parole-eligibility process.

Id. at 104.

Bell focuses on the "just like" language of the district court to show misadvice. (Dkt. 9 at 15-16.) It is true that the district court did not identify all of the factors that the Board (formerly the Commissioner) considers when deciding whether to grant or deny parole once an inmate sentenced to life with parole becomes eligible for parole. *See* Minn. Stat. § 244.05, subd. 5(i) (listing factors). However, the district court did not promise Bell he would be automatically released after serving 30 years and the district court did state that the Commissioner of Corrections would make the decision as to supervised release.

Again, the Court gives deference to these factual findings in this habeas proceeding, and to the factual findings that no evidence showed Bell was induced to accept the state's offer because he believed that he was guaranteed parole after completing the minimum sentence. *Bell*, 971 N.W.2d at 104. Indeed, the factual findings of the state courts show that (contrary to Bell's argument) the "basic premise" of the plea was that Bell would have the possibility of parole after serving 30 years if he pleaded guilty, whereas he would have no possibility of parole if he were convicted by the jury. *See id.* ("Without any assurance that he would be guaranteed release after serving 30 years, and facing a potential life sentence without the possibility of parole, Bell accepted the offer."); (Dkt. 8-2 at 606-07 (stating that the guilty plea was "driven" by Bell's

"rational and reasonable" assessment that he could be convicted and sentenced to "life without the possibility of parole" after hearing the victim's compelling testimony).)

The findings that Bell was not induced to enter into his guilty plea because he thought he would "serve his 30 years and then be done" render inapplicable the cases cited by Bell when arguing the direct/collateral consequence distinction does not matter. In *Ellis-Strong*, the Minnesota Court of Appeals remanded for an evidentiary hearing to determine if Ellis-Strong relied on the misadvice. 899 N.W.2d at 540-41. The same analysis applies to the other cases cited by Bell. *See, e.g.*, *Strader*, 611 F.2d at 65 (4th Cir. 1979) ("Here, though parole eligibility dates are collateral consequences of the entry of a guilty plea of which a defendant need not be informed if he does not inquire, when he is grossly misinformed about it by his lawyer, **and relies upon that misinformation**, he is deprived of his constitutional right to counsel."); *James*, 56 F.3d at 668 (remanding so the district court could "determine if James has shown that he was prejudiced by ineffective assistance of counsel"); *Hill*, 894 F.2d at 1010 ("We are careful to note that not every instance of a lawyer's failure to inform a client accurately of parole eligibility will reach the level of a constitutional violation. As detailed in the panel opinion, in this case there is a reasonable probability that the result of the plea process would have been different but for the erroneous information."); *Pridham*, 394 S.W.3d at 880 (remanding for evidentiary hearing as to prejudice); *Goodall*, 759 A.2d at 1084 (remanding for evidentiary hearing as to prejudice and whether counsel provided affirmatively erroneous advice).

Again, the district court found that Bell's plea was based on the victim's compelling testimony, which prompted Bell's assessment that he could be convicted and sentenced to life without the possibility of parole, thereby inducing his solicitation of and decision to accept the plea offer—and not based on the allegedly incomplete information regarding the parole-eligibility process. (Dkt. 8-2 at 605-07.) These findings demonstrate that any affirmative misadvice relating to the Commissioner's discretion as to his parole did not induce Bell to enter into his guilty plea. Without inducement, Bell cannot rely on these cases to show that the state courts' determination that his guilty plea was valid is contrary to clearly established federal law.

5. Bell Was Not Prejudiced by Any Affirmative Misadvice

Citing several cases, Bell also suggests that the nature of the alleged misadvice creates prejudice under *Strickland* regardless of whether it induced his plea. (*See* Dkt. 9 at 17-24.) He cites "cases in which defendants were granted relief, or remanded for hearings, where their guilty pleas were induced based on less than full information." (Dkt. 9 at 17.) Given the undisturbed state court findings showing no inducement, and because these cases are distinguishable for other reasons (as discussed below), this law does not show that the state courts' determination that his plea is valid is contrary to clearly established federal law.

For example, in *Dalton v. Battaglia*, the case was remanded for an evidentiary hearing to determine whether a guilty plea was knowing and voluntary where the state court had not advised Dalton that he could receive an extended sentence (and thus the maximum punishment he could receive) at the plea hearing. 402 F.3d 729, 733-34 (7th

Cir. 2005) By the time Dalton filed his federal habeas petition, "there [was] no way for th[e] court or any other court rationally to determine whether Dalton's constitutional right to due process was violated in this way" because "the transcript of Dalton's plea hearing has disappeared and is not available, leaving no official record of the exchange between Dalton, his attorney, and [the district judge] when he pleaded guilty" and the state court records had been destroyed after his state court petition was denied and before the state appellate court reviewed that denial. *Id.* at 734. In *Starns v. Franklin*, the federal court found that an evidentiary hearing was necessary to determine whether the petitioner's plea was involuntary and remanded for that purpose where the petitioner had alleged that he had pleaded guilty based on the belief that his two ten-year sentences would run concurrently and three documents "signed by his attorney, the prosecutor, and the district judge" contained representations that his sentences were concurrent. No. CIV-07-925-HE, 2007 WL 3232190, at *1 (W.D. Okla. Oct. 31, 2007).

In *Jamison v. Klem*, the Third Circuit concluded that state trial court's failure to advise petitioner of a mandatory minimum sentence as a result of pleading guilty was a direct consequence which necessitated the issuance of a conditional writ. 544 F.3d 266, 277 (3d Cir. 2008). As to reliance, the record demonstrated that the petitioner had not been advised of the five-year mandatory minimum, he had previously rejected an offer of four to eight years, and neither the post-conviction review court nor the magistrate judge who recommended granting habeas relief expressed reservations about the petitioner's candor after his testimony. *Id.* Here, the Minnesota Court of Appeals' conclusion that Bell's parole ineligibility is a collateral consequence and the state courts' factual findings

that the details of Bell's parole ineligibility did not induce him to enter the plea make *Jamison* unpersuasive in this context.

In *Dickerson v. Vaughn*, counsel erroneously advised Dickerson that he could appeal a double jeopardy pretrial decision even if he pleaded guilty. 90 F.3d 87, 89 (3d Cir. 1996). On Dickerson's appeal of the denial of post-conviction relief to the Superior Court of Pennsylvania, "the Superior Court found that he 'was prejudiced by relying to his detriment on this erroneous advice' and that the 'plea colloquy did not cure such prejudice'" and, "[a]fter reviewing the hearing testimony and evidence, the [Superior] Court stated that 'there can be no doubt as to the arguable merit of Dickerson's claim.'" *Id.* The Superior Court also "concluded that 'but for' the attorneys' 'faulty advice' on the continued vitality of the double jeopardy claims," Dickerson would not have entered into a plea. *Id.* The Supreme Court of Pennsylvania reversed the Superior Court's orders but did not make any "factual determinations of what advice was given to petitioners or whether they relied on it in entering their pleas." *Id.* Here, the state courts found that Bell did not rely on the alleged misadvice, rendering *Dickerson* inapplicable.

Similarly, in *Moore v. Bryant*, the Seventh Circuit reversed a finding of no prejudice where:

> The testimony by Moore's attorney confirms that the effect of the good-time credit statute on his potential sentence was a key issue in their discussions prior to Moore's decision to plead guilty, and that they discussed the issue at length. The state court made no attempt to reconcile its holding with those statements by Moore or the corroboration by Moore's attorney. Absent some credibility determination, the state court's statement that the record does not show that the misunderstanding in any way affected the voluntariness of his plea is an unreasonable application of the facts to the law.

348 F.3d 238, 242-43 (7th Cir. 2003).

And finally, in *Brown v. McKee*, the federal court found Brown's contention that he understood the plea bargain to include a "cap" of 14 years—that is, that no sentence would exceed that duration and if it did he would be permitted to withdraw his plea—was credible and supported by the testimonial record, including his attorney's testimony that he thought there was a strong likelihood that Brown misunderstood a 14-year cap. 882 F. Supp. 2d 915, 920-24 (E.D. Mich. 2012) (granting habeas relief). Here, the state courts' factual findings weigh against a similar outcome, including because the state courts found Bell entered into the plea to avoid a sentence without the possibility of parole after the victim's compelling testimony.

In sum, the cases Bell relies on to show the state courts' conclusions are contrary to federal law involve either misinformation about a direct consequence of a guilty plea—such as the maximum sentence—or involve a factual determination that prejudice existed or an insufficient record from which a court could determine if prejudice existed. None of those circumstances are present here. The district court made findings as to Bell's reason for entering into the guilty plea and Bell's credibility based on an evidentiary hearing, the Minnesota Court of Appeals accepted those findings, and Bell has not offered clear and convincing evidence to undermine the deference this Court must give those findings. Accordingly, these cases do not support Bell's claim that ineffective assistance of counsel renders his guilty plea invalid.

For the forgoing reasons, Bell cannot establish that his due process rights and his right to the effective assistance of counsel were violated when he pleaded guilty.

Regardless of whether he received affirmative misadvice as to the Commissioner's (now the Board's) discretion over his parole, Bell did not rely on any such misadvice and was not prejudiced by any such misadvice. The state courts' factual findings are clear that Bell took the plea after the victim testified because he understood that his risk of being convicted had dramatically increased and that he was at risk of being sentenced to life without the possibility of parole. Nothing in the record calls these findings into question. The state courts did not reach a decision contrary to clearly established federal law as determined by the U.S. Supreme Court in finding Bell's plea valid. *See* 28 U.S.C. § 2254(d)(1). Consequently, the Court recommends denial of the Petition.

IV. REQUEST FOR A HEARING

Bell seeks an evidentiary hearing at which proof may be offered concerning the allegations in the Petition that Respondent does not admit. (Dkt. 1 at 15.) Ordinarily, a federal court may grant an evidentiary hearing in a habeas matter when there are genuine factual disputes. *See Kendrick v. Carlson*, 995 F.2d 1440, 1446 (8th Cir. 1993). There are no such factual disputes here that would affect the outcome, and therefore the request should be denied.

V. CERTIFICATE OF APPEALABILITY

A § 2254 habeas corpus petitioner cannot appeal an adverse ruling on his petition unless he is granted a Certificate of Appealability ("COA"). *See* 28 U.S.C. § 2253(c)(1); Fed. R. App. P. 22(b)(1). A COA cannot be granted unless the petitioner "has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To make such a showing, "[t]he petitioner must demonstrate that reasonable jurists would

find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see also Flieger v. Delo*, 16 F.3d 878, 882 83 (8th Cir. 1994) (citing *Lozada v. Deeds*, 498 U.S. 430, 432 (1991) (per curiam)). In this case, it is highly unlikely that any other court, including the Eighth Circuit Court of Appeals, would treat the Petition differently than it is being treated here. Bell has not identified, and this Court cannot discern, anything novel, noteworthy, or worrisome about this case that warrants appellate review. It is therefore recommended that Bell should not be granted a COA in this case.

VI. RECOMMENDATION

Based on the foregoing, and on all of the files, records, and proceedings herein, **IT IS RECOMMENDED THAT**:

1. The Petition (Dkt. 1) be **DENIED**;
2. Petitioner Dequarn Markeyth Bell's request for an evidentiary hearing be **DENIED**;
3. That no Certificate of Appealability be issued to Petitioner; and
4. That this action be **DISMISSED**.

Dated: July 29, 2024

s/Elizabeth Cowan Wright
ELIZABETH COWAN WRIGHT
United States Magistrate Judge

NOTICE

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), "a party may file and serve specific written objections to a magistrate judge's proposed finding and recommendations within 14 days after being served a copy" of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. *See* Local Rule 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in Local Rule 72.2(c).

Appendix D

STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0283

State of Minnesota,
Respondent,

vs.

Dequarn Markeyth Bell,
Appellant.

Filed February 7, 2022
Affirmed in part, reversed in part, and remanded
Frisch, Judge

Hennepin County District Court
File No. 27-CR-19-22461

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Sarah J. Vokes, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Adam Lozeau, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Frisch, Presiding Judge; Segal, Chief Judge; and Reyes, Judge.

SYLLABUS

A parole-eligibility determination by the Minnesota Department of Corrections is a collateral consequence of a guilty plea that does not implicate the intelligence of the plea.

OPINION

FRISCH, Judge

Following the denial of appellant's presentence motion to withdraw his guilty plea and the imposition of sentences for criminal sexual conduct and inducement of another to practice prostitution, appellant argues that (1) because the district court and counsel provided an incomplete description of the manner in which the Minnesota Department of Corrections would determine his parole eligibility, his guilty plea was unintelligent and involuntary, and therefore manifestly unjust; and (2) the district court imposed an incorrect and unlawful sentence. We affirm in part, reverse in part, and remand.

FACTS

In January 2020, a grand jury indicted appellant Dequarn Markeyth Bell on three counts: first-degree criminal sexual conduct, first-degree assault, and inducement of another to practice prostitution, pursuant to Minn. Stat. §§ 609.342, subd. 1(e)(i), .221, subd. 1, and .322, subd. 1a(1) (2018), respectively. Bell was indicted as an egregious first-time offender, which provides for a mandatory life sentence without the possibility of parole if the fact-finder determines the existence of two or more heinous elements, pursuant to Minn. Stat. § 609.3455, subd. 2(a)(1) (2018). The indictment for the criminal-sexual-conduct charge included two heinous elements, great bodily harm and torture, pursuant to Minn. Stat. § 609.3455, subd. 1(d)(1)-(2) (2018).

The following facts were elicited at a hearing prior to sentencing on Bell's motion to withdraw his plea. From the time that respondent State of Minnesota charged Bell to the start of trial, Bell and his counsel devoted "dozens and dozens of hours" to discussing

potential resolutions to the case, including potential plea agreements with the state. Bell was "very involved" in these discussions. Bell understood that the maximum possible consequence if convicted was a life sentence without the possibility of parole. *See* Minn. Stat. § 609.3455, subd. 2(a)(1).

Before trial, the state tendered two offers to Bell. The state offered Bell sentences ranging between 22 1/2 to 30 years in prison in exchange for his plea of guilty to the charges. Bell did not accept either offer, insisted that he did not want to accept a plea agreement, and maintained that he wanted to take his case to trial.

On October 12, 2020, the jury trial began. Victim testified about the physical and sexual assault inflicted by Bell and that Bell forced her to engage in acts of prostitution. Immediately following victim's testimony, Bell asked counsel to seek another plea offer from the state. The state was hesitant to tender another offer to Bell because the trial had commenced and victim had already testified, but the state ultimately did propose a new plea offer to Bell. The state offered Bell the option to plead guilty to all three counts and admit the great-bodily-harm heinous element in exchange for a life sentence with the possibility of parole, and a minimum term of imprisonment of 30 years.

Bell and his counsel had not previously discussed a sentence involving life with the possibility of parole. Counsel communicated to Bell that, should he accept the agreement, Bell would be incarcerated for 30 years and would then become eligible for parole, subject to the determination of the Minnesota Department of Corrections (the department). Bell stated to counsel that he was "adamant" that he wanted to serve a total of no more than 30 years in prison. Bell requested assurance from counsel that he would be released from

prison after 30 years. Counsel indicated that the department would likely grant him parole after completing the minimum sentence, stating that "parole is granted unless there are reasons not to grant, like somebody is starting a riot or somebody kills somebody in prison." But counsel also advised Bell that neither counsel nor anyone else could guarantee that the department would ultimately grant Bell parole. Counsel advised Bell that "[p]arole can be denied. Parole can be granted. But it's up to the Department of Corrections." Bell advised counsel that he would accept the offer from the state. The next morning, counsel and Bell reviewed the guilty-plea petition together. The district court then suspended the jury trial and held a guilty-plea hearing.

At the guilty-plea hearing, the district court informed Bell that he was pleading guilty under Minn. Stat. § 609.3455, subd. 3(a) (2018) (providing for a life sentence with the possibility of parole based on the existence of one heinous element), which the district court described as "life with a possibility of parole," with an in-custody "minimum of 30 years." *See* Minn. Stat. § 609.3455, subd. 5 (2018) (providing that the district court "shall specify a minimum term of imprisonment, based on the sentencing guidelines"). The district court informed Bell that the department would consider his parole eligibility "just like they would for any other prisoner." The district court emphasized that after Bell completed the minimum sentence, the department "will assess your conduct in prison" and "make a decision about whether any infractions have occurred that would extend the period of time that you're in jail." Neither counsel nor the district court informed Bell that the department's parole decision would be based on any factor other than his conduct during

his incarceration. Bell then pleaded guilty to the three counts and admitted the one heinous element per the terms offered by the state.

Bell called counsel immediately after entering the guilty plea, informed counsel that he made the "biggest mistake" by pleading guilty, and stated that he wanted to withdraw the plea. Bell then moved the district court to withdraw the guilty plea based, in part, on the theory that he was misinformed of the consequences of the guilty plea.

In December 2020, the district court conducted an evidentiary hearing on Bell's motion. Bell and counsel each testified to their recollections of Bell's request to initiate plea negotiations after victim's testimony, the state's new offer, their discussions about whether Bell should accept the offer, and what counsel communicated to Bell as to the terms of the sentence. Counsel testified that they thought that the department would likely grant Bell parole, but they could not guarantee that it would. Bell testified that he told counsel that he did not want to accept the agreement without a guarantee that he would be released from prison after serving 30 years total. Bell testified that he would have preferred to finish the trial and let the jury decide his fate without that guarantee.

The district court denied Bell's motion, finding that counsel's testimony was "credible and believable" and that Bell's testimony was "inconsistent . . . and less credible." The district court concluded that, among other things, Bell was not misinformed about the consequences of his guilty plea.

After denying the motion, the district court held a sentencing hearing. The district court accepted the state's representation that it should assign three criminal-history points to Bell. The district court proceeded to sentence Bell under the first-degree

criminal-sexual-conduct charge to a life-with-the-possibility-of-parole sentence with a minimum term of 30 years' incarceration. The district court then sentenced Bell for the inducement-of-another-to-practice-prostitution charge to a lesser sentence to be served concurrently.

The district court did not mention on the record that the 30-year in-custody minimum sentence was an upward departure from the recommended duration set forth in the Minnesota Sentencing Guidelines. At the sentencing hearing, the state noted that the lesser count III sentence, which Bell would serve concurrently with the greater count I sentence, was a guidelines sentence. But the state did not indicate that the sentence for count I constituted an upward departure from the guidelines. At no point did the district court comment on whether it was sentencing Bell to an upward departure. And in its sentencing report, the district court expressly set forth that the imposed sentence was not a departure from the sentencing guidelines.

Bell appeals.

ISSUES

I. Was Bell's plea unintelligent or involuntary, resulting in a manifest injustice?

II. Is Bell entitled to resentencing?

ANALYSIS

I. Bell is not entitled to withdraw his guilty plea because no manifest injustice occurred.

Bell argues that the district court and counsel provided an incomplete description of the department's parole decision-making process and therefore "grossly misinformed" him

of that process. We understand Bell's argument on appeal to be that the affirmative misadvice of counsel and the district court induced his plea and that this misinformation rendered his plea unintelligent and involuntary, resulting in a manifest injustice. He therefore argues that he must be allowed to withdraw his guilty plea under Minn. R. Crim. P. 15.05, subd. 1 (providing that a defendant must be allowed to withdraw a guilty plea to correct a manifest injustice).[1]

A manifest injustice occurs when a guilty plea is not constitutionally valid. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). "To be constitutionally valid, a guilty plea must be accurate, voluntary, and intelligent." *Id.* The validity of a guilty plea is a question of law that we review de novo. *Id.* "The defendant bears the burden of establishing the facts that support his claim that the guilty plea is invalid." *State v. Mikulak*, 903 N.W.2d 600, 603 (Minn. 2017).

Although neither the district court nor counsel fully set forth all of the factors which would be used by the department in determining Bell's parole eligibility, we conclude that no manifest injustice occurred because parole-eligibility determinations are collateral consequences that do not affect the intelligence of a guilty plea, and that Bell was not induced to plead guilty based on this incomplete information.

[1] Bell does not waive the manifest-injustice argument by raising it for the first time on appeal. *See Brown v. State*, 449 N.W.2d 180, 182 (Minn. 1989) (explaining that a "defendant is free to simply appeal directly from a judgment of conviction and contend that the record made at the time of the plea was entered is inadequate" to establish that a plea was inaccurate, involuntary, or unintelligent).

A. A parole-eligibility determination is a collateral consequence of a guilty plea.

Bell first argues that the department's parole-eligibility determination is a "direct consequence" of his guilty plea, that his plea was unintelligent because he did not know of all the factors the department would use in its parole decision-making process, and that his plea was therefore constitutionally invalid. We disagree.

"A plea is intelligently made if the defendant understands the charges, understands the rights that are waived by pleading guilty, and understands the consequences of the plea." *Williams v. State*, 760 N.W.2d 8, 15 (Minn. App. 2009) (citing *State v. Farnsworth*, 738 N.W.2d 364, 372 (Minn. 2007)), *rev. denied* (Minn. Apr. 21, 2009). "Counsel, however, is not required to advise the defendant of *every* consequence for the defendant's plea to be intelligent." *Taylor v. State*, 887 N.W.2d 821, 823 (Minn. 2016).

Only "direct consequences" are relevant in assessing the intelligence of a guilty plea. *Alanis v. State*, 583 N.W.2d 573, 578 (Minn. 1998). Direct consequences are those "which flow definitely, immediately, and automatically from the guilty plea, namely, the maximum sentence and any fine to be imposed." *Id.* Collateral consequences, by contrast, are those that do not punish, "serve a substantially different purpose" than to punish, and "are imposed in the interest of public safety." *Kaiser v. State*, 641 N.W.2d 900, 905 (Minn. 2002). Collateral consequences include, for example, the requirement to register as a predatory offender. *Id.* at 907. A defendant's lack of knowledge about the collateral consequences of a guilty plea "does not render the guilty plea unintelligent and entitle a defendant to withdraw it." *Taylor*, 887 N.W.2d at 823.

Minnesota courts have not previously determined whether a parole-eligibility decision by the department is a direct or collateral consequence of a guilty plea. We now hold that a parole-eligibility determination by the department is a collateral consequence of a guilty plea.

We first observe that neither the district court nor counsel fully described the department's process for making a parole decision for an inmate in Bell's position. Unlike most felony crimes for which supervised release is automatically granted after completion of two-thirds of the sentence, Minn. Stat. §§ 244.05, subd. 1b, .101, subd. 1 (2018), parole decisions for life sentences with the possibility of parole are discretionary and require the department to consider additional factors beyond the defendant's in-prison conduct. These considerations include:

> [T]he risk the inmate poses to the community if released, the inmate's progress in treatment, the inmate's behavior while incarcerated, psychological or other diagnostic evaluations of the inmate, the inmate's criminal history, and any other relevant conduct of the inmate while incarcerated or before incarceration.

Minn. Stat. § 244.05, subd. 5(d) (2018). The department must also assess whether the inmate has, if necessary, completed sex-offender, chemical-dependency, or mental-health treatments, as well as the victim's recommendation regarding whether the inmate should receive parole. Minn. Stat. § 244.05, subd. 5(c), (d)(1)(i)-(iii) (2018). Accordingly, the statements by both counsel and the district court indicating that the department's primary consideration in determining Bell's parole eligibility would be his in-prison conduct did not set forth a complete description of the department's parole decision-making process.

Even so, a parole-eligibility decision is by definition uncertain and not a "definite," "immediate," or "automatic" result of a sentence. *Kaiser*, 641 N.W.2d at 904 n.6. The department makes a parole decision only after the inmate has served the minimum term of imprisonment. The department's parole decision does not turn on the sentence imposed or any of the events giving rise to the conviction and sentence. Instead, the department considers the events and circumstances *following* the imposition of the sentence and incarceration of the inmate, including in-prison behavior and, in this case, psychological evaluations, the completion of certain mental-health treatments, and other statutory factors. *See* Minn. Stat. § 244.05, subd. 5(d). A parole decision that is based on factors that necessarily occur *after* the imposition of the sentence cannot be a "definite," "immediate," or "automatic" result of a sentence and therefore is a collateral consequence of the guilty plea. *Kaiser*, 641 N.W.2d at 904 n.6.

Moreover, the purpose of a parole-eligibility decision is to ensure public safety rather than to punish a defendant. *See id.* at 905 (describing collateral consequences as "serv[ing] a substantially different purpose" than to punish, "and are imposed in the interest of public safety"). In assessing a parole decision for an offender with a life sentence, the department must consider the "inmate's progress in treatment," "the risk the inmate poses to the community if released," "and any other relevant conduct of the inmate." Minn. Stat. § 244.05, subd. 5(d). These factors reflect public-safety, not punitive, considerations, underscoring that a parole-eligibility decision is a collateral consequence of a guilty plea.

Finally, we observe that federal jurisdictions have also concluded that parole-eligibility decisions are collateral consequences of a guilty plea. *See State v.*

Ellis-Strong, 899 N.W.2d 531, 538 (Minn. App. 2017) ("[F]ederal caselaw regards parole eligibility as collateral."). In *Hunter v. Fogg*, the Second Circuit noted that Rule 11 of the Federal Rules of Criminal Procedure provided that the defendant "need be informed of only two sentencing consequences: 'the mandatory minimum penalty provided by law, if any, and the maximum possible penalty provided by law.'"[2] 616 F.2d 55, 60 (2d Cir. 1980). The Second Circuit concluded that "the constitutional requirements of a state court guilty plea do not include informing a defendant of the minimum portion of a sentence that a court may require him to serve." *Id.* at 61. The court reasoned that "even if [the defendant] was not aware that the Parole Board would make the decision as to how much of his ten-year sentence he would have to serve in custody before consideration for parole, his plea was not unconstitutionally entered." *Id.* at 62 (footnote omitted).

Moreover, "the majority of circuits deciding the issue have concluded that parole ineligibility is only a collateral consequence." *Bustos v. White*, 521 F.3d 321, 325 (4th Cir. 2008); *see Perkis v. Sirmons*, 201 Fed. Appx. 648, 652 (10th Cir. 2006) ("[P]arole eligibility . . . [is a] collateral consequence[] of a plea and therefore a state court's failure to inform the defendant of th[is] consequence[] does not render a guilty plea unknowing or involuntary."); *Hill v. Lockhart*, 731 F.2d 568, 570 (8th Cir. 1984) ("The details of parole

[2] Rule 11 of the Federal Rules of Criminal Procedure was amended in 2002 to expand the list of sentencing consequences that a defendant must be notified of prior to the district court accepting a guilty plea. *See* Fed. R. Crim. P. 11, advisory comm. notes to 2002 amend. The amended language, which is currently in force, specifies that a defendant must be informed of "any maximum possible penalty, including imprisonment, fine, and term of supervised release" as well as "any mandatory minimum penalty." Fed. R. Crim. P. 11(b)(1)(H)-(I). This language does not alter the conclusion that parole eligibility is a collateral consequence of a guilty plea.

eligibility are considered collateral rather than direct consequences of a plea, of which a defendant need not be informed before pleading guilty."), *aff'd*, 474 U.S. 52 (1985); *see also Cepulonis v. Ponte*, 699 F.2d 573, 577 (1st Cir. 1983) (same).

Like the federal rules, the Minnesota Rules of Criminal Procedure provide only that the district court must inform a defendant of "[t]he maximum penalty the judge could impose" and the minimum sentence, if one is required by statute prior to accepting a guilty plea. Minn. R. Crim. P. 15.01, subd. 1(6)(i)-(j). Although not binding, we find the reasoning of these federal decisions persuasive and conclude that the parole-eligibility process is a collateral consequence of the entry of a guilty plea of which a defendant need not be advised in order for the plea to be constitutionally valid.

Because the department's determination of parole eligibility is a collateral consequence of a guilty plea, any incomplete information that was provided to Bell regarding the factors used by the department to determine such eligibility did not render his guilty plea unintelligent.

B. Bell was not improperly induced to accept the plea agreement.

Bell next argues that his guilty plea was involuntary and therefore constitutionally invalid because the incomplete information regarding the department's parole decision-making process induced his acceptance of the offer. Specifically, Bell asserts that his plea was involuntary because (1) the district court made him an unfulfillable promise and (2) he received ineffective assistance of counsel. We are not persuaded.

A plea is involuntary if the defendant is improperly pressured or induced to accept the plea agreement. *State v. Trott*, 338 N.W.2d 248, 251 (Minn. 1983); *see Brown*, 449

N.W.2d at 182 ("The voluntariness requirement helps [e]nsure that the defendant does not plead guilty because of any improper pressures or inducements."). To assess the voluntariness of a guilty plea, we look to the parties' understanding of the terms of the plea agreement. *State v. Brown*, 606 N.W.2d 670, 674 (Minn. 2000). We determine the voluntariness of a guilty plea by considering all the relevant circumstances. *State v. Danh*, 516 N.W.2d 539, 544 (Minn. 1994). "What the parties agreed to involves an issue of fact to be resolved by the district court." *Brown*, 606 N.W.2d at 674. We review a district court's findings of fact for clear error. *State v. Robledo-Kinney*, 615 N.W.2d 25, 32 (Minn. 2000).

1. Bell was not induced by an unfulfillable promise.

Bell first argues that the guilty plea was involuntary because it was based on an unfulfillable promise by the district court. We disagree.

"A guilty plea cannot be induced by unfulfilled or unfulfillable promises, including a promise of a sentence unauthorized by law." *James v. State*, 699 N.W.2d 723, 729 (Minn. 2005). "When a plea rests in any significant degree on a promise or agreement . . . , so that it can be said to be part of the inducement or consideration, such promise must be fulfilled." *Id.* at 728 (quotation omitted). "Allowing the government to breach a promise that induced a guilty plea violates due process." *Id.* (quotation omitted). A guilty plea induced by an unfulfillable promise draws the voluntariness of the plea into question. *Brown*, 606 N.W.2d at 674. "While the government must be held to the promises it made, it will not be bound to those it did not make." *Id.* (quotation omitted).

Bell's argument fails for two independent reasons: First, any promise regarding the department's parole-evaluation process made by the district court did not induce Bell to accept the plea agreement. Second, the district court did not promise Bell that the department would evaluate his parole exclusively based on his in-prison conduct.

First, Bell was not induced to accept the offer because of the district court's description of the department's parole-eligibility decision-making process. Instead, Bell voluntarily accepted the plea agreement in order to avoid a life sentence without the possibility of parole. The district court found as a matter of fact that, following victim's compelling testimony, Bell's risk of being convicted had dramatically increased and that Bell understood that he was at risk of being sentenced to life without the possibility of parole. *See* Minn. Stat. § 609.3455, subd. 2(a)(1). The district court found that, consistent with Bell's actions, the reason that Bell accepted the plea agreement was to "cut his losses" and avoid the risk of a sentence of life without the possibility of parole.

These findings of fact are well-grounded in the record. From the inception of the case, Bell was "very involved" in discussions with counsel regarding potential resolutions to his case. Before trial, Bell had been explicit that he was not interested in accepting a plea agreement and wanted to proceed to trial. Bell understood that the maximum possible sentence for the charged crimes was life without the possibility of parole. *See id.* But Bell reassessed his case after victim completed her testimony and reconsidered his position in accepting a plea agreement. Counsel testified that, upon completion of victim's testimony, Bell communicated to her that "he sensed it might all be over" and that "he . . . saw his life disappearing before his eyes and wanted to grasp at anything he could to save himself."

Counsel asked Bell whether, after victim's testimony, he wanted to attempt to obtain a new plea offer instead of completing the trial. Bell inquired what the terms of such an offer would be. Counsel replied that "it will be a lot of time, but I can try [to obtain a plea agreement], but you need to decide." Bell affirmatively indicated that he wanted counsel to obtain a new plea offer if possible. Counsel followed Bell's directions and obtained a new offer from the state.

As part of discussions about that offer, Bell sought a guarantee that he would be released from prison after completing his minimum sentence. Both counsel and the district court expressly stated that they could not make such a guarantee. Without any assurance that he would be guaranteed release after serving 30 years, and facing a potential life sentence without the possibility of parole, Bell accepted the offer. Bell points to no facts in the record showing that he was induced to accept the state's offer because he believed that he was guaranteed parole after completing the minimum sentence. In short, Bell was not improperly induced to accept the plea agreement.

Second, and independently, the district court did not make an unfulfillable promise to Bell. The district court accurately informed Bell that, upon completion of the minimum term of incarceration, the department would assess Bell's in-prison conduct in determining his parole eligibility. The district court did not inform Bell that his in-prison conduct was the sole basis by which the department would make its decision, guarantee that Bell would automatically be entitled to parole with good behavior, or make any affirmative promise to Bell regarding the department's parole-eligibility process. Instead, the district court

provided Bell with what is best described as incomplete information regarding the department's parole decision-making process.

While we do not excuse the incomplete explanation provided by the district court as to the parole-eligibility process, we do not conclude that such incomplete information amounts to an affirmative promise by the district court that the department would exclusively consider his in-prison conduct as a basis for determining parole-eligibility or that good behavior alone would guarantee his release.

Our conclusion is consistent with *Kochevar v. State*. There, the defendant pleaded guilty and received an indeterminate prison term. 281 N.W.2d 680, 685 (Minn. 1979). The defendant was "very concerned about the amount of time he might have to serve in prison" and was told by counsel in open court that "if everything went well, that if he had a very clean record . . . , and that if the parole board acted favorably . . . he might be out in as early as two to three years." *Id.* The district court informed the defendant that "the time and duration of your confinement . . . , depends, Mr. Kochevar, upon the way you act and conduct yourself." *Id.* at 688. "I [the district court] am not in any way indicating that your release will be any earlier than the twelve year maximum . . . , but past history and experience leads me to believe that if you do behave well that you might be considered for an early release." *Id.* After the defendant began serving his sentence, a new parole system was implemented which required that the defendant "must serve at least six years of prison time, because of the severity of the crime to which he pled, before he will be considered for parole." *Id.* at 685. Whether the defendant would be released on parole "would be a matter within the discretion of the Corrections authorities." *Id.* at 687. The supreme court

concluded that "no unqualified promise was made to [the defendant]" and that "he should not be allowed to withdraw his plea because an 'unwarranted hope' [of early parole release] has not been realized." *Id.* at 688 (quotation omitted).

Here, like in *Kochevar*, counsel and the district court provided the defendant with incomplete information regarding the department's parole determination. And Bell, like the defendant in *Kochevar*, was not expressly promised that he would receive parole at a specified date or that the department would evaluate its parole decision in a specific manner. Accordingly, because the district court did not make an "unqualified promise" to Bell regarding the department's parole-eligibility process, he is not entitled to withdraw his plea based on an "unwarranted hope." *Id.*

2. Bell was not prejudiced by allegedly ineffective assistance of counsel.

Bell next argues that he received ineffective assistance of counsel and is therefore entitled to withdraw his guilty plea. Bell specifically contends that counsel provided him with ineffective assistance by telling him that "parole is granted unless there are reasons not to grant," such as "starting a riot" or "kill[ing] somebody in prison."

The Sixth Amendment of the United States Constitution guarantees the right to effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 684-86 (1984). This right extends to a defendant's decision to plead guilty. *Padilla v. Kentucky*, 559 U.S. 356, 364 (2010). "A defendant's guilty plea may be constitutionally invalid if the defendant received ineffective assistance of counsel." *Sames v. State*, 805 N.W.2d 565, 567 (Minn. App. 2011), *rev. denied* (Minn. Dec. 21, 2011).

"[T]he voluntariness of the plea depends on whether counsel's advice was within the range of competence demanded of attorneys in criminal cases." *State v. Ecker*, 524 N.W.2d 712, 718 (Minn. 1994). "[A] defendant may bring an ineffective assistance of counsel claim if he was induced to enter a guilty plea by the objectively unreasonable advice of his attorney." *Leake v. State*, 737 N.W.2d 531, 540 (Minn. 2007). We review a claim of ineffective assistance of counsel de novo. *Taylor*, 887 N.W.2d at 823. But we defer to a district court's findings of facts and "will not set them aside" unless they are clearly erroneous. *State v. Anderson*, 784 N.W.2d 320, 334 (Minn. 2010).

We apply the *Strickland* standard to determine whether a criminal defendant received ineffective assistance of counsel in entering a guilty plea. *Campos v. State*, 816 N.W.2d 480, 485 (Minn. 2012). To prevail on an ineffective-assistance claim, Bell must demonstrate (1) that counsel's representation fell below an objective standard of reasonableness, and (2) "prejudice" in the form of a "reasonable probability" that, but for counsel's "unprofessional errors," Bell would not have pleaded guilty. *Strickland*, 466 U.S. at 687-88, 694; *see also Campos*, 816 N.W.2d at 486. "We need not address both the performance and prejudice prongs if one is determinative." *State v. Rhodes*, 657 N.W.2d 823, 842 (Minn. 2003).

Even assuming that counsel's performance fell below an objective standard of reasonableness, we conclude that Bell was not prejudiced by any incomplete advice as to the factors considered by the department in making a parole-eligibility determination.[3] To

[3] Bell argues that counsel's performance was objectively unreasonable because counsel affirmatively misadvised him that the department would determine his parole eligibility

establish prejudice, Bell must show "a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *Campos*, 816 N.W.2d at 486 (quotation omitted). As set forth herein, the record does not support Bell's contention that he would not have pleaded guilty had he understood the full scope of the department's parole decision-making process.

Instead, the record indicates, as the district court found, that the compelling testimony from victim coupled with Bell's understanding that his chances of acquittal had dwindled induced Bell's solicitation of the plea offer and his decision to accept that offer. We note that Bell received a significant benefit from the plea agreement, avoiding the mandatory sentence of life without parole if convicted as charged. Bell requested and accepted the state's offer to avoid the potential sentence of life without the possibility of parole. The record does not support Bell's claim that he would not have pleaded guilty had he received complete information regarding the department's parole-eligibility process.

Accordingly, Bell fails to establish that he was prejudiced by counsel's incomplete advice. Bell's ineffective-assistance-of-counsel claim therefore fails, and he is not entitled to withdraw the guilty plea.[4]

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based on his in-prison conduct. Bell cites to *Ellis-Strong* for the proposition that affirmative misadvice of a collateral consequence can still amount to ineffective assistance of counsel if both prongs of *Strickland* are met. 899 N.W.2d at 539. Because we conclude that Bell does not satisfy the prejudice prong—he was not induced to plead guilty because of this misadvice—we decline to analyze whether counsel's representations were objectively unreasonable.

[4] Bell additionally asserts that the district court erred by denying his motion to withdraw his plea under the fair-and-just standard for plea withdrawal pursuant to Minn. R. Crim. P. 15.05, subd. 2. "We review a district court's decision to deny a withdrawal motion for

II. Bell is entitled to resentencing.

Bell argues that the district court committed three sentencing errors. First, Bell argues that the district court sentenced the two convictions in the incorrect order. Second, Bell argues that the district court sentenced him using an incorrect criminal-history score. Third, Bell claims that the minimum sentence imposed by the district court was an impermissible upward departure from the Minnesota Sentencing Guidelines. We agree with each of Bell's arguments.

A. The district court sentenced Bell in the incorrect order.

Bell argues, and the state agrees, that the district court erred by imposing sentences in the wrong order. "Multiple offenses sentenced at the same time before the same court must be sentenced in the order in which they occurred." Minn. Sent. Guidelines 2.B.1.e (2018). Where the district court errs by incorrectly imposing a sentence, we remand for resentencing. Minn. Stat. § 244.11, subd. 2(b) (2018); *see State v. Jerry*, 864 N.W.2d 365, 369-70 (Minn. App. 2015), *rev. denied* (Minn. Sept. 15, 2015).

The district court did not sentence Bell for the crimes in the order in which they occurred. The district court first imposed a sentence for count I (criminal sexual conduct)

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abuse of discretion, reversing only in the rare case." *Raleigh*, 778 N.W.2d at 97 (quotation omitted). "Under the fair-and-just standard, a court considers the reasons a defendant offers to support withdrawal of a guilty plea and the prejudice to the state should withdrawal be permitted." *State v. Townsend*, 872 N.W.2d 758, 764 (Minn. App. 2015). The district court found that the state "would suffer significant prejudice" based on wasted resources and by forcing victim to endure the trauma of testifying again. The district court additionally found that Bell's rationales did not justify withdrawal because counsel "explicitly . . . told Defendant that there was no guarantee about when Defendant would get out [of prison]." The district court did not abuse its discretion by denying Bell's motion under the fair-and-just standard.

and then imposed a sentence for count III (inducement to prostitution). However, both Bell and the state agree that count III occurred first in time and should have been sentenced first. The district court acknowledged as much at the sentencing hearing, but nevertheless sentenced Bell in the wrong order. On remand, the district court must resentence Bell in the correct order.

B. The district court sentenced Bell using an incorrect criminal-history score.

Bell next argues, and the state also agrees, that the district court erred by sentencing Bell with an incorrect criminal-history score. A sentence based on an incorrect criminal-history score is correctable at any time. *State v. Maurstad*, 733 N.W.2d 141, 147 (Minn. 2007); *see* Minn. R. Crim. P. 27.03, subd. 9 ("The court may at any time correct a sentence not authorized by law."). The proper calculation of a defendant's criminal-history score is a question of law that we review de novo. *State v. Scovel*, 916 N.W.2d 550, 554 (Minn. 2018).

First, the state concedes that the district court erred by attributing two and one-half prior felony points for Bell's past convictions. Bell's criminal history includes three prior felony convictions: second-degree riot, violation of a no-contact order, and domestic assault. Although the state calculated these prior convictions as two and one-half felony points, Bell's domestic-assault charge was sentenced as a gross misdemeanor rather than

as a felony and thus should not have contributed to his felony score.[5] Therefore, Bell should have been sentenced with one and one-half felony points.[6]

Second, the district court must reduce Bell's custody-status points on resentencing based on changes to the sentencing guidelines in 2019. At sentencing, the district court assigned one custody-status point to Bell for committing the underlying offenses while on probation for a gross-misdemeanor offense. However, the 2019 amendments to the Minnesota Sentencing Guidelines provide that only one-half criminal-history point should be assigned for crimes committed during gross-misdemeanor probation supervision. Minn. Sent. Guidelines 2.B.2.a (Supp. 2019). Although Bell's offense occurred prior to the enactment of the 2019 amendments, Bell was not sentenced until after the amendments became effective. He is therefore entitled to the application of this subsequent modification. *State v. Robinette*, 964 N.W.2d 143, 145, 151 (Minn. 2021).

C. The district court erred by unlawfully imposing an upward-departure minimum sentence.

Bell next argues that the 30-year minimum term of imprisonment is an upward departure from the Minnesota Sentencing Guidelines and that the district court erred by

[5] The pre-sentence investigation (PSI) and the sentencing worksheet both correctly indicated that Bell's domestic-assault charge was sentenced as a gross misdemeanor, but the district court and the state expressed uncertainty at the sentencing hearing as to the accuracy of the PSI. The state asserted, incorrectly, that the PSI was wrong and that Bell had three prior felony points. The district court accepted the state's argument.

[6] The sentencing guidelines provide that, when calculating the total prior felony points, "if the sum of the weights results in a partial point, the point value must be rounded down to the nearest whole number." Minn. Sent. Guidelines 2.B.1.i (2018). Thus, Bell's prior felony points must be rounded down from one and one-half to one.

imposing such a sentence without setting forth a basis for departing from the guidelines on the record. We agree.

"Sentencing is within the discretion of the trial court absent an abuse of discretion." *State v. Warren*, 592 N.W.2d 440, 451 (Minn. 1999). Although the legislature enjoys the power to fix the limits of punishment for convicted criminals, "the imposition of a sentence in a particular case within those limits is a judicial function." *State v. Misquadace*, 644 N.W.2d 65, 68 (Minn. 2002). We recognize "the broad discretion of the trial court in sentencing matters" and are generally "loath to interfere." *State v. Law*, 620 N.W.2d 562, 564 (Minn. App. 2000), *rev. denied* (Minn. Dec. 20, 2000). But the district court does not enjoy "a limitless grant of power." *Warren*, 592 N.W.2d at 451.

Although guidelines' sentences "are presumed to be appropriate for the crimes to which they apply," a district court "may depart from the presumptive disposition." Minn. Sent. Guidelines 2.D.1 (2018). "A departure is not controlled by the Guidelines, but rather, is an exercise of judicial discretion constrained by statute or case law." *Id.* When a district court departs from the sentencing guidelines, it "shall make written findings of fact as to the reasons for departure." Minn. Stat. § 244.10, subd. 2 (2018); *see Williams v. State*, 361 N.W.2d 840, 844 (Minn. 1985). If a district court imposes an upward departure but fails to place its rationale for the departure on the record, "no departure will be allowed." *State v. Geller*, 665 N.W.2d 514, 517 (Minn. 2003); *see also Misquadace*, 644 N.W.2d at 72 ("[A]ll departures from the Minnesota Sentencing Guidelines must be supported by substantial and compelling circumstances."). In other words, a district court has significant

discretion in sentencing a criminal defendant, including to an upward departure, but must affirmatively exercise its discretion and state its reasons for the departure on the record.

When a district court sentences a defendant to life with the possibility of parole, the district court "shall specify a minimum term of imprisonment, based on the sentencing guidelines or any applicable mandatory minimum sentence, that must be served before the offender may be considered for supervised release." Minn. Stat. § 609.3455, subd. 5.

> [A]fter imposing a life sentence pursuant to Minn. Stat. § 609.3455, subds. 3 or 4, the district court must . . . specify a minimum term of imprisonment using the procedures that would have been used to sentence the defendant in the absence of the mandatory life sentence . . . that is, by reference to any applicable mandatory minimum sentence or the sentencing guidelines.

State v. Hodges, 784 N.W.2d 827, 833 (Minn. 2009). A minimum term of incarceration that departs from any applicable mandatory minimum sentence or the sentencing guidelines is an upward departure. *Id.*

When a district court imposes an upward departure, it must articulate a substantial and compelling reason for doing so. *State v. Schmit*, 601 N.W.2d 896, 898 (Minn. 1999). "Substantial and compelling" reasons are those that establish that the defendant's conduct was significantly more serious than conduct typically involved in the offense at issue. *State v. Edwards*, 774 N.W.2d 596, 601 (Minn. 2009). The presence of a single aggravating factor is sufficient to uphold an upward departure. *See State v. O'Brien*, 369 N.W.2d 525, 527 (Minn. 1985). But "all departures from the Minnesota Sentencing Guidelines must be supported by substantial and compelling circumstances, and that a plea agreement—standing alone—is not a sufficient basis to depart from the sentencing guidelines."

Misquadace, 644 N.W.2d at 72. A plea agreement that implies that the parties have agreed to an upward departure is insufficient on its own to establish the requisite substantial and compelling rationale to depart. *State v. Rushton*, 820 N.W.2d 287, 290 n.4 (Minn. App. 2012).

Here, the district court sentenced Bell to a minimum term of imprisonment of 30 years. But the maximum presumptive sentence for first-degree criminal sexual conduct under the guidelines was far less than 30 years. Minn. Sent. Guidelines 4.B (2018). Accordingly, the imposition of a 30-year minimum term of incarceration constituted an upward departure. *See Hodges*, 784 N.W.2d at 833. Our review of the record shows that the state did not indicate that the proposed sentence pursuant to the plea agreement constituted an upward departure from the guidelines. We further observe that the district court did not affirmatively state or otherwise indicate that it was imposing an upward-departure sentence. And the district court did not make any substantial-and-compelling aggravating-factor findings. To the contrary, the sentencing report filed by the district court expressly provided that it did *not* impose a sentence that departed from the guidelines.

The district court thus erred by sentencing Bell to an upward departure without stating that it was doing so or articulating any rationale to support an upward-departure sentence. This failure to adequately support a departure requires reversal of the sentence and prohibits any future upward departure from the guidelines. *See Geller*, 665 N.W.2d at 517.

Our decision in *Rushton* is instructive. There, the district court imposed a life sentence with a minimum term of imprisonment of 300 months. 820 N.W.2d at 289. The guidelines, however, provided for a minimum term of incarceration of 144 months. *Id.* at 290. The district court did not state any reason for imposing the upward departure. *Id.* We held that the district court erred by departing from the sentencing guidelines "without stating substantial and compelling reasons when setting the minimum term of imprisonment." *Id.* We reversed and remanded, instructing the district court to resentence the defendant to a minimum prison term within the guidelines' presumptive range. *Id.* at 291. Just as in *Rushton*, here too the district court failed to properly exercise its discretion by articulating no substantial and compelling basis on which to impose an upward departure.

The state contends that the departure was legally permissible, notwithstanding the failure of the district court to set forth substantial and compelling reasons for imposing an upward-departure sentence. The state argues that *Hodges* affords authority to an appellate court to independently review the record to find a basis for the imposition of Bell's upward-departure sentence. We disagree.

In *Hodges*, the district court explicitly found seven aggravating factors to support the imposition of an upward-departure sentence. 784 N.W.2d at 833. There, the district court sentenced defendant to a greater-than-double durational departure. *Id.* at 834. In order to justify a greater-than-double sentence, the district court was obligated to find that those aggravating factors were "severe," which it did not. *Id.* The supreme court held that it could conduct an independent review of the record to determine whether the aggravating

factors as found by the district court were severe, and ultimately affirmed the district court's upward departure. *Id.*

The state argues that, as in *Hodges*, we too can conduct an independent review of the record and find support for the upward departure imposed by the district court. But here, unlike in *Hodges*, the district court did not identify *any* aggravating factor to support the imposition of an upward departure.[7] The state cites no authority to support its argument that we can independently review the record to determine the existence of an aggravating factor, and we are aware of none. We therefore reiterate that a district court may not impose an upward-departure sentence without articulating a substantial and compelling rationale in support of that sentence on the record. *See Geller*, 665 N.W.2d at 517; *Williams*, 361 N.W.2d at 844.

We reverse and remand for resentencing consistent with this opinion and the Minnesota Sentencing Guidelines.

DECISION

Bell is not entitled to withdraw his guilty plea. No manifest injustice occurred when Bell solicited and accepted a plea offer from the state and ultimately entered a guilty plea. The department's parole-eligibility decision is a collateral consequence of a guilty plea and does not implicate the intelligence of Bell's plea. Bell was not improperly induced to accept the plea agreement by the district court and counsel's incomplete description of the

[7] Although Bell pleaded guilty to one of the heinous elements, this element supported imposition of the life sentence and so then could not also be used as an aggravating factor on which to base an additional departure. *See* Minn. Stat. § 609.3455, subds. 3, 5 (2018).

department's parole-eligibility process. The district court, however, erred by sentencing Bell in the incorrect order, with an incorrect criminal-history score, and by imposing an impermissible upward departure for the minimum sentence. We therefore affirm the convictions, reverse the sentences, and remand for resentencing consistent with this opinion.

Affirmed in part, reversed in part, and remanded.

Appendix E

STATE OF MINNESOTA

IN SUPREME COURT

A21-0283

State of Minnesota,

Respondent,

vs.

Dequarn Markeyth Bell,

Petitioner.

O R D E R

Based upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED that the petition of Dequarn Markeyth Bell for further review be, and the same is, denied.

IT IS FURTHER ORDERED that the request of respondent State of Minnesota for conditional cross-review be, and the same is, denied.

Dated: April 27, 2022

BY THE COURT:

Lorie S. Gildea
Chief Justice

Appendix F

STATE OF MINNESOTA

COURT OF APPEALS

JUDGMENT

State of Minnesota, Respondent, vs. Dequarn Markeyth Bell, Appellant.

Appellate Court # A21-0283

Trial Court # 27-CR-19-22461

Pursuant to a decision of the Minnesota Court of Appeals duly made and entered, it is determined and adjudged that the decision of the Hennepin County District Court, Criminal Division herein appealed from be and the same hereby is affirmed in part, reversed in part, and remanded. Judgment is entered accordingly.

Dated and signed: June 1, 2022

FOR THE COURT

Attest: Christa Rutherford-Block
Clerk of the Appellate Courts

By: Christa Rutherford-Block
Clerk of the Appellate Courts

STATE OF MINNESOTA **COURT OF APPEALS**
TRANSCRIPT OF JUDGMENT

I, Christa Rutherford-Block, Clerk of the Appellate Courts, do hereby certify that the foregoing is a full and true copy of the Entry of Judgment in the cause therein entitled, as appears from the original record in my office; that I have carefully compared the within copy with said original and that the same is a correct transcript therefrom.

Witness my signature at the Minnesota Judicial Center,

In the City of St. Paul *June 1, 2022*
Dated

Attest: Christa Rutherford-Block
Clerk of the Appellate Courts

By: Christa Rutherford-Block
Clerk of the Appellate Courts

Appendix G

28 U.S. Code § 2254 - State custody; remedies in Federal courts

(a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

(b)

(1) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that—

(A) the applicant has exhausted the remedies available in the courts of the State; or

(B)

(i) there is an absence of available State corrective process; or

(ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

(2) An application for a writ of habeas corpus may be denied on the merits, notwithstanding the failure of the applicant to exhaust the remedies available in the courts of the State.

(3) A State shall not be deemed to have waived the exhaustion requirement or be estopped from reliance upon the requirement unless the State, through counsel, expressly waives the requirement.

(c) An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented.

(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

(e)

(1) In a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination of a factual issue made by a State court shall be presumed to be correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence.

(2) If the applicant has failed to develop the factual basis of a claim in State court proceedings, the court shall not hold an evidentiary hearing on the claim unless the applicant shows that—

(A) the claim relies on—

(i) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(ii) a factual predicate that could not have been previously discovered through the exercise of due diligence; and

(B) the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

(f) If the applicant challenges the sufficiency of the evidence adduced in such State court proceeding to support the State court's determination of a factual issue made therein, the applicant, if able, shall produce that part of the record pertinent to a determination of the sufficiency of the evidence to support such determination. If the applicant, because of indigency or other reason is unable to produce such part of the record, then the State shall produce such part of the record and the Federal court shall direct the State to do so by order directed to an appropriate State official. If the State cannot provide such pertinent part of the record, then the court shall determine under the existing facts and circumstances what weight shall be given to the State court's factual determination.

(g) A copy of the official records of the State court, duly certified by the clerk of such court to be a true and correct copy of a finding, judicial opinion, or other reliable written indicia showing such a factual determination by the State court shall be admissible in the Federal court proceeding.

(h) Except as provided in section 408 of the Controlled Substances Act, in all proceedings brought under this section, and any subsequent proceedings on review, the court may appoint counsel for an applicant who is or becomes financially unable to afford counsel, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Appointment of counsel under this section shall be governed by section 3006A of title 18.

(i) The ineffectiveness or incompetence of counsel during Federal or State collateral post-conviction proceedings shall not be a ground for relief in a proceeding arising under section 2254.