

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0304**

Steven Charles Perkins, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed October 2, 2023
Affirmed
Wheelock, Judge**

Hennepin County District Court
File No. 27-CR-19-26505

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

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

Mary F. Moriarty, Hennepin County Attorney, Adam Petras, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Larkin, Presiding Judge; Wheelock, Judge; and Kirk,
Judge.*

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

NONPRECEDENTIAL OPINION

WHEELOCK, Judge

In this appeal from an order denying postconviction relief, appellant argues that the district court abused its discretion by determining that his guilty plea was accurate and by failing to consider the pro se arguments in his petition. In a supplemental brief, appellant also argues that the district court abused its discretion by denying relief for his pro se postconviction arguments and raises ineffective-assistance-of-counsel claims. We conclude that the postconviction court did not abuse its discretion and that appellant's ineffective-assistance arguments do not merit relief. Therefore, we affirm.

FACTS

Respondent State of Minnesota charged appellant Steven Charles Perkins with unlawful possession of a firearm in violation of Minn. Stat. § 624.713, subd. 1(2) (Supp. 2019), which prohibits a person who has been convicted of a crime of violence from possessing a firearm. According to the complaint, the Minneapolis Police Department executed an unannounced search warrant at Perkins's home in October 2019. Police recovered a handgun, magazine, and ammunition in Perkins's bedroom and a rifle and magazine in the basement of the home. The complaint also identified Perkins's previous conviction for a third-degree controlled-substance offense in Hennepin County.

Perkins denied knowledge of the rifle that law enforcement recovered from the basement but admitted that he possessed the handgun. He pleaded guilty to the charge based on his possession of the handgun. In October 2021, the district court accepted his guilty plea and sentenced him to 60 months in prison.

In October 2022, Perkins filed a pro se postconviction petition alleging three issues: (1) the state engaged in malicious prosecution by charging him under Minn. Stat. § 624.713, subd. 1(2), because his prior conviction was not a “crime of violence”; (2) the legislature intended that chapter 152 controlled-substance offenses would qualify as a “crime of violence” only if they were perpetrated using physical force, injury, or a weapon; and (3) his public defender provided ineffective assistance of counsel. Shortly thereafter, Perkins’s appellate counsel filed a postconviction petition arguing that the district court must vacate Perkins’s conviction and allow him to withdraw his guilty plea because the plea was invalid as inaccurate or, in the alternative, that the district court must resentence Perkins and consider a sentencing departure because the prosecution made a mistake of law in its sentencing argument. The state filed an answer and memorandum opposing Perkins’s requested postconviction relief. In December 2022, the district court issued an order denying postconviction relief without an evidentiary hearing.

Perkins appeals.

DECISION

I. The district court did not abuse its discretion by denying Perkins’s postconviction plea-withdrawal request because the guilty plea was valid.

Perkins argues that the district court abused its discretion by denying his postconviction request to withdraw his guilty plea. He contends that his guilty plea was inaccurate because his plea colloquy did not establish an adequate factual basis for the offense, and therefore, the plea was invalid. Specifically, he did not admit in his plea colloquy that he had a prior conviction for a “crime of violence” that would make him

ineligible to possess a firearm, nor did he testify to the truth and accuracy of the criminal complaint that included the information about his prior conviction. He requests that we reverse his conviction and remand to allow him to withdraw his guilty plea.

We review the denial of a postconviction petition for an abuse of discretion. *Swaney v. State*, 882 N.W.2d 207, 214 (Minn. 2016). The district court’s decision warrants reversal if “the court exercised its discretion in an arbitrary or capricious manner, based its ruling on an error of law, or made clearly erroneous factual findings.” *Id.* The validity of a guilty plea is a question of law that we review de novo. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010).

The district court must allow a defendant to withdraw a guilty plea at any time “to correct a manifest injustice.” Minn. R. Crim. P. 15.05, subd. 1. “A manifest injustice exists if a guilty plea is not valid,” meaning that the plea is not accurate, voluntary, and intelligent. *Raleigh*, 778 N.W.2d at 94. “To be accurate, a plea must be established on a proper factual basis.” *Id.* “The purpose of the accuracy requirement is to protect a defendant from pleading guilty to a more serious offense than that for which he could be convicted if he insisted on his right to trial.” *Lussier v. State*, 821 N.W.2d 581, 588 (Minn. 2012) (quotation omitted). Two recent cases guide our analysis of whether a guilty plea has established a proper factual basis to support its accuracy.

In *Rosendahl v. State*, we concluded that a defendant’s guilty plea was inaccurate because his plea colloquy did not establish sufficient facts from which to infer the intent element of his offense. 955 N.W.2d 294, 298 (Minn. App. 2021). The state argued that

we were permitted to consider the allegations in the criminal complaint to supplement the plea colloquy. *Id.* We disagreed, explaining:

A postconviction court may consider record evidence, in addition to a defendant’s words [in a plea colloquy], in inferring intent. However, because Rosendahl did not expressly testify as to the truthfulness and accuracy of these allegations of the complaint during his colloquy, the allegations are not part of the record and we cannot consider them in assessing the accuracy of his plea.

Id. at 300 (emphasis omitted) (citation omitted). Thus, *Rosendahl* stands for the proposition that “in determining the accuracy of a guilty plea, the reviewing court does not consider allegations in the complaint unless the truthfulness and accuracy of the allegations have been expressly admitted to by the defendant.” *Id.* at 302.

The following year, the supreme court created a narrow exception to *Rosendahl* in *State v. Epps*, 977 N.W.2d 798 (Minn. 2022). Epps was charged with violating a domestic-abuse no-contact order, and the offense was enhanced from a gross misdemeanor to a felony due to his prior convictions. *Epps*, 977 N.W.2d at 800, 802. Epps did not testify about his previous convictions in his plea colloquy or admit to the truthfulness and accuracy of the previous convictions alleged in the criminal complaint. *Id.* at 800-01. When Epps challenged the validity of his guilty plea on appeal, the supreme court concluded that the *Rosendahl* rule was “unsound as applied specifically to the facts” of Epps’s case and that Epps’s plea was valid:

In these circumstances—when the felony complaint alleges prior convictions, the defendant had the opportunity to review the felony complaint and discuss the plea with his lawyer, and the defendant does not contest the validity of the prior convictions—the defendant’s failure to expressly acknowledge

those convictions in the plea colloquy does not give rise to a manifest injustice.

Id. at 802. Specifically, the supreme court held that Epps’s plea was valid because “a manifest injustice does not occur, and [plea] withdrawal is not required, when a plea colloquy omits questions about uncontested previous convictions that were alleged in the complaint.” *Id.*

Perkins argues that the *Rosendahl* holding, not the *Epps* holding, should control the outcome of the instant case. He contends that *Epps* is inapposite because the prior convictions at issue in that case were “being used as an element for enhancement of a lower-severity level offense to a felony level offense.” He argues that the factual basis in *Rosendahl* is comparable to that in the instant case “because it involves the lack of a necessary element to establish the offense itself.” We are not persuaded.

For purposes of the *Epps* exception, we see no distinction between elements used to enhance the severity of an offense and other elements of an offense. The supreme court did not reach its conclusion in *Epps* on the basis that it is less necessary to establish in a plea colloquy a prior conviction used to enhance the severity of an offense than it is other elements of an offense.¹ Rather, the supreme court based its ruling on the fact that Epps

¹ We stated in a nonprecedential opinion that “[a] prior conviction is an element of an aggravated offense that the state must prove at trial and that the defendant has the right to have a jury decide.” *State v. Foster*, No. A21-0533, 2022 WL 351214, at *2 (Minn. App. Feb. 7, 2022) (citing *State v. Berkelman*, 355 N.W.2d 394, 396 (Minn. 1984)); *see also* Minn. R. Civ. App. P. 136.01, subd. 1(c) (stating that “nonprecedential opinions may be cited as persuasive authority”). This is consistent with our conclusion that a prior-conviction element used to enhance the severity of an offense is “a necessary element to establish the offense itself,” contrary to Perkins’s argument.

“had the opportunity to review the felony complaint and discuss the plea with his lawyer” and did not contest the validity of his prior convictions after this opportunity. *Epps*, 977 N.W.2d at 802.

Similarly, Perkins had the opportunity to review the complaint and discuss his plea with his lawyer prior to the plea hearing. The probable-cause section of the complaint alleged that Perkins was previously convicted of a third-degree controlled-substance crime and cited the relevant district court file and date of the conviction. Perkins then signed and filed a guilty-plea petition on the day of the plea hearing, affirming that he received, read, and discussed a copy of the complaint with his counsel and understood the charge made against him. At no point did Perkins allege that his previous conviction was invalid. The facts in Perkins’s case align squarely with the facts in *Epps*, and thus, the *Epps* holding controls the outcome of this case.

We therefore conclude that the district court did not abuse its discretion by denying Perkins’s postconviction request to withdraw his guilty plea because the district court correctly applied the *Epps* exception and determined that Perkins’s guilty plea was valid.

II. The district court did not abuse its discretion by denying relief based on Perkins’s pro se statutory-interpretation and malicious-prosecution claims.

Both Perkins’s counseled appellate brief and pro se supplemental brief assert that the district court abused its discretion by denying relief based on the arguments in Perkins’s pro se postconviction petition. We address each of Perkins’s arguments in turn. First, Perkins argues that his previous third-degree controlled-substance conviction does not qualify as a “crime of violence” for purposes of the statute under which he was convicted

of unlawful possession of a firearm. We review the denial of a postconviction petition for an abuse of discretion. *Swaney*, 882 N.W.2d at 214. We review questions of law raised in a postconviction petition de novo. *State v. Brown*, 896 N.W.2d 557, 560 (Minn. App. 2017), *rev. denied* (Minn. July 18, 2017). And statutory interpretation is a question of law that we review de novo. *State v. Holl*, 966 N.W.2d 803, 808 (Minn. 2021).

Section 624.713, subdivision 1(2), states that a person “shall not be entitled to possess” a firearm if the person “has been convicted of, or adjudicated delinquent or convicted as an extended jurisdiction juvenile for committing, in this state or elsewhere, a crime of violence.” The preceding section, Minn. Stat. § 624.712, subd. 5 (Supp. 2019), defines the phrase “crime of violence” to include felony convictions under chapter 152, the statutory scheme for controlled-substance offenses.

Perkins argues that the “manifest intent of the legislature” was to limit the definition of a “crime of violence” to include only felony convictions that involve an “element of physical force, injury, [a] dangerous weapon, or the threat [there]of.” He asserts that his prior conviction is not a “crime of violence” under this interpretation of the statute, and therefore, his conviction for unlawful possession of a firearm must be reversed. We disagree because Perkins’s argument is based on a misunderstanding of the relevant statutes.

Perkins’s argument assumes that the definition of a “crime of violence” in Minn. Stat. § 624.712, subd. 5, is ambiguous. “The first step in statutory interpretation is to determine whether the statute’s language, on its face, is ambiguous,” meaning that “it is subject to more than one reasonable interpretation.” *State v. Thonesavanh*, 904 N.W.2d

432, 435 (Minn. 2017) (quotation omitted). But “[i]f the language of the statute is not ambiguous on its face, [appellate courts] abide by the plain language of the statute.” *Holl*, 966 N.W.2d at 808. Appellate courts “are not permitted to rewrite a statute or add additional statutory language” when conducting a statutory-interpretation analysis. *Id.* at 812 (quotation omitted).

Here, the statutory definition of “crime of violence” in Minn. Stat. § 624.712, subd. 5, is unambiguous on its face. The statute provides an exhaustive list of offenses for which a felony conviction constitutes a “crime of violence.” Felony convictions for chapter 152 offenses are included on this list. Subdivision 5 does not include any language that specifies, or even suggests, that a felony conviction for a chapter 152 offense must involve physical force, injury, or use of a dangerous weapon.

Furthermore, Perkins relies on inapposite authority. In his postconviction petition, he relied on 18 U.S.C. § 924(e)(2)(B) (2018)—which defines “violent felony” for the purposes of federal statutes—to support his argument. In his pro se supplemental brief, he similarly cites to a federal case involving 18 U.S.C. §§ 922(g)(1), 924(e)(1) (2018), which are federal statutes that prohibit the possession of firearms by individuals previously convicted of a felony offense. However, Perkins was charged under Minnesota’s unlawful-possession statute, not the federal unlawful-possession statute. Therefore, the definition of a “crime of violence” under state law, not federal law, controls this case.

Here, the criminal complaint described Perkins’s prior conviction as a “third-degree controlled substance crime” but did not cite the statute governing that offense. A review of chapter 152 indicates that Minn. Stat. § 152.023 (2018) governs third-degree

controlled-substance crimes and that these crimes are felony-level offenses. *See* Minn. Stat. § 152.023, subd. 3(a) (providing that the penalty for third-degree controlled-substance crimes may be not more than 20 years); *Hill v. State*, 483 N.W.2d 57, 62 (Minn. 1992) (stating that in Minnesota, an offense is classified as a felony if it may be punished by more than one year in prison). Therefore, Perkins’s prior conviction fits the statutory definition of a “crime of violence” under sections 624.712 and 624.713. *See also State v. Craig*, 826 N.W.2d 789, 797 (Minn. 2013) (noting that a prior conviction for felony fifth-degree controlled-substance possession “is defined by statute as a ‘crime of violence’” because “a substantial nexus exists between drugs and violence”). We therefore conclude that the district court did not abuse its discretion by denying Perkins’s request for postconviction relief based on his statutory-interpretation argument.

We next turn to Perkins’s argument that the prosecutor engaged in malicious prosecution by charging him under Minn. Stat. § 624.713, subd. 1(2), and that the district court abused its discretion by rejecting this argument in his postconviction petition. Perkins asserts that the prosecutor “maliciously applied” section 624.713 to Perkins’s conduct despite the “legislat[ive] intent” that the statute “be interpreted and construed to apply to persons under 18 years of age or who have a prior conviction that was committed under the age of 18 years.”

Perkins’s argument misinterprets the unlawful-possession statute. Section 624.713, subdivision 1(2), prohibits possession of a firearm by “a person who has been convicted of, or adjudicated delinquent or convicted as an extended jurisdiction juvenile for committing . . . a crime of violence.” Individuals under 18 years of age who have been

convicted of a “crime of violence” are included in the statute’s purview, as are adults convicted of a “crime of violence.” Thus, there is no support for Perkins’s malicious-prosecution argument, and we conclude that the district court did not abuse its discretion by denying relief based on this argument.

III. The district court did not abuse its discretion by denying relief based on Perkins’s ineffective-assistance-of-trial-counsel claim.

Perkins next argues that the public defender who represented him at trial rendered ineffective assistance of counsel by collaborating with the prosecution to convict him of a crime that did not apply to his conduct. He contends that the public defender “permitted [the] prosecutor” to “utilize[e] a prior drug conviction that did not contain use or threat[ened] use of physical force, [a] dangerous weapon, or bodily harm . . . to qualify as a crime of violence.” He further contends that the public defender “knew [his] prior drug conviction was committed . . . when he was 43 years of age and not under 18 years of age as is required by” section 624.713. Based on our preceding analysis, we discern no abuse of discretion in the district court’s denial of relief on these grounds.

We apply the two-prong *Strickland v. Washington* test to evaluate an appellant’s ineffective-assistance-of-counsel claim. *State v. King*, 990 N.W.2d 406, 417 (Minn. 2023); *see Strickland v. Washington*, 466 U.S. 668, 687 (1984). The first prong requires an appellant to show that their “attorney’s representation fell below an objective standard of reasonableness.” *King*, 990 N.W.2d at 417 (quotations omitted). The second prong requires the appellant to show that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Id.*

(quotations omitted). If one prong is determinative, the reviewing court need not address the other. *State v. Rhodes*, 657 N.W.2d 823, 842 (Minn. 2003).

Minnesota courts define the “objective standard of reasonableness” in the first prong of the *Strickland* test to mean “the representation of an attorney exercising the customary skills and diligence that a reasonably competent attorney would perform under the circumstances.” *State v. Doppler*, 590 N.W.2d 627, 633 (Minn. 1999) (quotation omitted). There is also a “strong presumption” that counsel’s conduct meets this standard. *King*, 990 N.W.2d at 417 (quotation omitted); *Doppler*, 590 N.W.2d at 633.

We find no support in the record for Perkins’s assertion that his trial counsel failed to exhibit “the customary skills and diligence [of] a reasonably competent attorney.” *Doppler*, 590 N.W.2d at 633. As we previously concluded, the unlawful-possession statute applies to Perkins’s conduct because his prior conviction meets the statutory definition of a “crime of violence” and the statute prohibits possession of a firearm regardless of the ineligible person’s age. It was therefore reasonable for trial counsel to proceed with representation on the premise that the unlawful-possession charge was appropriate for the facts of Perkins’s case. We conclude that trial counsel’s conduct met the “objective standard of reasonableness” required by the first *Strickland* prong and that the district court did not abuse its discretion by denying postconviction relief on this basis.

IV. Perkins’s ineffective-assistance-of-appellate-counsel argument does not merit relief.

Finally, Perkins argues that his appellate counsel has rendered ineffective assistance of counsel here because she refused to address or litigate his

ineffective-assistance-of-trial-counsel claim in this appeal. He requests that this court appoint “new conflict-free counsel” to represent him.

“When an ineffective assistance of appellate counsel claim is based on appellate counsel’s failure to raise an ineffective assistance of trial counsel claim, the appellant must first show that trial counsel was ineffective.” *Fields v. State*, 733 N.W.2d 465, 468 (Minn. 2007). Because we conclude that Perkins failed to show that his trial counsel was ineffective, his ineffective-assistance-of-appellate-counsel argument also fails.

Perkins also asserts that “[a]ppellate counsel is just referencing appellant’s post-conviction issues but has not . . . support[ed the] issues” with legal arguments in the counseled appellate brief. However, “[i]f a defendant raises an issue in a pro se supplemental brief, then counsel’s failure to raise the same issue in the principal brief or at oral argument is not prejudicial.” *Morrow v. State*, 886 N.W.2d 204, 206-07 (Minn. 2016). Because Perkins argued that the district court abused its discretion by denying his postconviction petition in his pro se supplemental brief, his appellate counsel’s alleged failure to develop this argument in the principal brief is not prejudicial and does not merit relief.

Affirmed.