STATE OF MINNESOTA
IN COURT OF APPEALS
A16-0751

Ronnie Jerome Jackson, III, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed March 27, 2017
Affirmed
Jesson, Judge

Crow Wing County District Court
File No. 18-CR-11-2655

Ronnie Jerome Jackson, III, Stillwater, Minnesota (pro se appellant)

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

Donald F. Ryan, Crow Wing County Attorney, Candace Prigge, Assistant County Attorney, Brainerd, Minnesota (for respondent)

Considered and decided by Halbrooks, Presiding Judge; Worke, Judge; and Jesson, Judge.

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

JESSON, Judge

Appellant Ronnie Jerome Jackson challenges the denial of his postconviction petition following his conviction for arson involving an occupied home. Because we conclude that Jackson's trial and appellate counsels' representations did not fall below an

objective standard of reasonableness and that his remaining claims are procedurally barred, we affirm.

FACTS

In 2012, Jackson was convicted of first-degree arson after a jury trial and sentenced to 115 months in prison. Although he did not testify at trial, Jackson's statement to investigators, in which he acknowledged participating in setting the fire with Nancy Portz, was admitted into evidence. Additional evidence presented at trial was thoroughly recounted in this court's decision on direct appeal and will not be repeated here. *See State v. Jackson*, No. A13-0346, 2014 WL 902667, at *1–*2 (Minn. App. Mar. 10, 2014), *review denied* (Minn. Apr. 29, 2014). On direct appeal, Jackson argued that (1) there was insufficient evidence to sustain his conviction; (2) the district court failed to properly instruct the jury on accomplice liability; (3) the district court erred by permitting the state to reopen its case-in-chief; (4) there was insufficient evidence to prove that the victim was particularly vulnerable for purposes of an aggravated sentence; and (5) the district court failed to properly instruct the sentencing jury. *Id.* at *1. This court affirmed his conviction. *Id.*

In July 2015, Jackson filed a petition for postconviction relief, alleging that the state failed to disclose exculpatory evidence, improperly presented inconsistent theories of liability at trial, and presented "false evidence." He also asserted that he was denied effective assistance of trial and appellate counsel. The district court held an evidentiary hearing, at which Jackson's trial counsel testified. The district court denied Jackson's postconviction petition, concluding that his claims were *Knaffla*-barred and that trial and

appellate counsels' representations did not fall below an objective standard of reasonableness. This appeal follows.

D E C I S I O N

Appellate courts review the denial of a postconviction petition for an abuse of discretion. *Riley v. State*, 819 N.W.2d 162, 167 (Minn. 2012). To prevail on a petition for postconviction relief, the petitioner must establish facts that warrant relief by "a fair preponderance of the evidence." *Williams v. State*, 692 N.W.2d 893, 896 (Minn. 2005); *see also* Minn. Stat. § 590.04, subd. 3 (2016). The district court may deny the petition if any claim, based on the facts alleged in the petition, is time-barred, *Knaffla*-barred, or meritless. *See McDonough v. State*, 827 N.W.2d 423, 426-27 (Minn. 2013); *State v. Knaffla*, 309 Minn. 246, 252, 243 N.W.2d 737, 741 (1976).

I. The district court did not abuse its discretion by concluding that three of Jackson's claims were barred under *Knaffla*.

Once a direct appeal has been taken, "all matters raised therein, and all claims known but not raised, will not be considered upon a subsequent petition for postconviction relief." *Knaffla*, 309 Minn. at 252, 243 N.W.2d at 741. Claims that should have been known at the time of direct appeal are also barred. *Leake v. State*, 737 N.W.2d 531, 534-35 (Minn. 2007).[1]

[1] Two exceptions to the rule may nevertheless permit appellate review: (1) if a novel issue is present and its legal basis was not reasonably available on direct appeal or (2) if the interest of fairness requires review and the petitioner did not deliberately and inexcusably fail to raise the issue on direct appeal. *Leake*, 737 N.W.2d at 535. Because Jackson does not argue that either novel issues are present or that the interests of fairness permit appellate review, we do not address these exceptions to the *Knaffla* bar. *See id.*

The district court concluded that the following claims were barred under *Knaffla*: the state's failure to disclose exculpatory evidence, the state's submission of "false evidence," and the state's presentation of inconsistent theories of liability. To determine if the *Knaffla* bar applies, we must address whether Jackson knew or should have known of these claims at the time of direct appeal.

Jackson first argues that the state committed a *Brady* violation[2] when it failed to provide him with the details of his accomplice's plea deal. A review of the record shows that the basis of this claim was ascertainable on direct appeal. Four months before trial, Jackson learned that Nancy Portz had already pleaded guilty. Leading up to trial, the state also disclosed its witness list, which named Portz and listed her conviction. And before sentencing, Jackson moved the district court for a new trial based on Portz's plea agreement, asserting the same argument that he now raises on appeal. The district court denied that motion. This claim is *Knaffla*-barred because Jackson knew or should have known about it on direct appeal.

Jackson also argues that the state submitted false evidence to obtain his conviction. Beyond that mere assertion, Jackson fails to point to any evidence that was false or erroneously admitted. Regardless, any evidence he now challenges is the same evidence that was admitted at trial and part of the record on direct appeal. Because this claim was ascertainable on direct appeal, and it appears to be a characterization of his sufficiency-of-

[2] Generally, the state has a duty to disclose favorable evidence that is in the state's possession to the defendant that may be material as to guilt or punishment. Minn. R. Crim. P. 9.01; *Brady v. Maryland*, 373 U.S. 83, 87, 83 S. Ct. 1194, 1196-97 (1963).

the-evidence argument that was previously rejected, we agree with the district court that it is *Knaffla*-barred. *See State v. Bailey*, 732 N.W.2d 612, 623 (Minn. 2007) (stating that a party may not raise, on appeal, "the same general issue litigated below but under a different theory" (quotation omitted)).

Likewise, Jackson's argument that the state was prohibited from presenting inconsistent and irreconcilable theories of liability at trial is barred under *Knaffla*. Jackson maintains that the state could not prosecute him under the theory that he provided aid to Portz because Portz already pleaded guilty to aiding him. Because the state's theory at trial involved who the actual principal of the arson was, and Jackson knew about Portz's plea deal, Jackson should have known about this claim on direct appeal.[3] The claim is *Knaffla*-barred.

Because Jackson knew or should have known about these three claims on direct appeal, we conclude that they are barred under *Knaffla* and that the district court did not abuse its discretion by denying his postconviction petition on these grounds.

II. Jackson was not denied effective assistance of trial or appellate counsel.

Jackson argues that trial counsel's representation was deficient in three ways: failing to advise him to accept a plea offer, providing erroneous legal advice that led to his

[3] As the district court points out in its thorough order, the aiding-and-abetting statute does not require a "true" principal to obtain a conviction because the participants of a crime may be prosecuted themselves as if they were principals. Minn. Stat. § 609.05, subd. 4 (2016); *State v. Atkins*, 543 N.W.2d 642, 646 (Minn. 1996); *State v. Bates*, 289 Minn. 157, 161, 183 N.W.2d 287, 289-90 (1971). The purpose of the statute is to enable the state to prosecute two accomplices who "each point the finger at the other as the truly guilty one." *Atkins*, 543 N.W.2d at 646.

rejection of a plea offer, and neglecting to inform him of the amended complaint, which he claims caused him to reject the plea offer.

"We review the denial of postconviction relief based on a claim of ineffective assistance of counsel de novo because such a claim involves a mixed question of law and fact." *Hawes v. State*, 826 N.W.2d 775, 782 (Minn. 2013) (citing *Strickland v. Washington*, 466 U.S. 668, 698, 104 S. Ct. 2052, 2070 (1984)). Claims of ineffective assistance of trial counsel are not barred under *Knaffla* if, as here, additional fact finding is needed. *See Zornes v. State*, 880 N.W.2d 363, 369 (Minn. 2016). Therefore, the district court properly held an evidentiary hearing on this claim, at which trial counsel testified.

To prevail on an ineffective-assistance-of-counsel claim, Jackson must show that counsel's representation (1) fell below an objective standard of reasonableness; and (2) a reasonable probability exists that the outcome would have been different absent counsel's errors. *See Hawes*, 826 N.W.2d at 783 (noting that appellate courts need not address both elements if one is determinative). There is a strong presumption that counsel's performance was reasonable. *Zornes*, 880 N.W.2d at 370. The reasonableness of an attorney's representation is judged by an objective standard: "an attorney exercising the customary skills and diligence that a reasonably competent attorney would perform under similar circumstances." *Schleicher v. State*, 718 N.W.2d 440, 447 (Minn. 2006) (quotation omitted).

First, Jackson argues that trial counsel failed to advise him to accept the state's 58-month plea offer. Jackson does not dispute that he knew about the offer. Trial counsel testified that he does not expressly advise clients to accept or reject offers. Instead, he

discusses the offer and answers any questions, leaving the ultimate decision with the client. *See, e.g.*, *Erickson v. State*, 725 N.W.2d 532, 536 (Minn. 2007) (stating that the defendant, not trial counsel, has "the ultimate authority . . . to plead guilty" (quotation omitted)). To this end, trial counsel used this approach with Jackson. During these discussions, however, trial counsel explained that Jackson was adamantly opposed to any plea offer that would require him to serve time in prison. The district court found trial counsel's testimony credible. *See State v. Olson*, 884 N.W.2d 906, 911 (Minn. App. 2016) (noting that appellate courts defer to the district court on assessing credibility), *review denied* (Minn. Nov. 15, 2016).

Second, Jackson argues that trial counsel's erroneous advice led him to reject the state's plea offer. *Cf. Leake*, 737 N.W.2d at 540 (explaining that advice is ineffective if it is misleading or inaccurate, which may lead a defendant to decline a plea offer). According to Jackson, trial counsel advised him that the state would not zealously seek an aggravated sentence and that his worst-case scenario at trial was 81 months in prison. Trial counsel denied advising Jackson that 81 months was his worst-case scenario. Instead, trial counsel told Jackson that if the state did not seek an aggravated sentence, the state would seek a top-of-the-box sentence, 81 months. While unsure if the state would zealously seek an aggravated sentence, trial counsel testified that he explained to Jackson that an aggravated sentence was still a possibility. Again, the district court found counsel's testimony credible.

Third, Jackson argues that trial counsel failed to inform him about the state's amended complaint, which charged him under an aiding-and-abetting theory based upon

his statement to the police. But the record establishes that four months before trial, Jackson learned that the state intended to present an aiding-and-abetting theory of liability. And he was aware that his statement could be used against him from the beginning of these proceedings. In addition, the state may amend a complaint, with the permission of the district court, at any time before the verdict as long as no additional or different offense is charged and the substantial rights of the defendant are not prejudiced. Minn. R. Crim. P. 17.05; *see also State v. Ostrem*, 535 N.W.2d 916, 922 (Minn. 1995). The supreme court has long held that adding an aiding-and-abetting offense is not a separate substantive offense. *State v. DeVerney*, 592 N.W.2d 837, 846 (Minn. 1999). And trial counsel testified that the amendment did not change the theory of the defense because the state's theory "was part of our discussions from the very beginning."

Based upon this evidence and the district court's credibility assessments, the court found that trial counsel's representation did not fall below an objective standard of reasonableness. We agree. The district court's conclusion is supported by the extensive record developed at the evidentiary hearing. Testimony from trial counsel demonstrates that he advised Jackson of his options, preserved Jackson's autonomy to decide whether to enter a plea agreement, and gave Jackson all of the relevant information required to make an informed decision. Jackson also knew that the state would present an accomplice theory of liability at trial. Nevertheless, Jackson was adamantly opposed to accepting a plea offer that would require him to serve prison time. On this record, we cannot conclude that trial

counsel's representation fell below an objective standard of reasonableness.[4] *See Strickland*, 466 U.S. at 698, 104 S. Ct. at 2070.

Finally, Jackson also argues that he was denied effective assistance of appellate counsel because appellate counsel's representation was based on an incomplete record—it lacked the transcript from the postconviction hearing. But even the best appellate counsel could not be expected to have a transcript of a hearing that occurred after the appellate representation. Jackson was not denied effective assistance of appellate counsel.

Affirmed.

[4] In his postconviction petition, Jackson also argued that trial counsel had a conflict of interest, failed to call Portz as a witness, and failed to request corroboration testimony. Because Jackson failed to raise these issues on appeal, they are effectively forfeited. *See State v. Powers*, 654 N.W.2d 667, 676 (Minn. 2003) (stating that issues not briefed are forfeited).