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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1049**

John Patrick Murphy, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed March 13, 2017
Affirmed
Larkin, Judge**

Ramsey County District Court
File No. 62-K2-93-001209

Beau D. McGraw, McGraw Law Firm, P.A., Lake Elmo, Minnesota (for appellant)

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

Michael O. Freeman, Hennepin County Attorney, Michael Richardson, Assistant County
Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Larkin, Presiding Judge; Connolly, Judge; and Reyes,
Judge.

UNPUBLISHED OPINION

LARKIN, Judge

Appellant challenges the postconviction court's denial of his petition for relief. We
affirm.

FACTS

In 1993, respondent State of Minnesota charged appellant John Patrick Murphy with 34 counts of terroristic threats, conspiracy to commit terroristic threats, criminal damage to property, and burglary, which were committed against judges and other individuals involved with Murphy's criminal cases. Murphy pleaded guilty and was convicted of multiple counts of terroristic threats and one count of conspiracy to commit terroristic threats. The district court sentenced Murphy to serve 96 months in prison and stayed additional prison terms totaling 450 months.

Murphy's case has been reviewed by Minnesota's appellate courts on direct appeal and after postconviction proceedings. His conviction and sentence were affirmed by this court and the supreme court. *State v. Murphy*, No. C3-94-1931, 1995 WL 227643, at *1 (Minn. App. Apr. 18, 1995), *aff'd*, 545 N.W.2d 909 (Minn. 1996). In 1999, the district court revoked Murphy's probation on one of his stayed sentences and executed the corresponding 24-month prison term. *State v. Murphy*, No. C0-99-1453, 2000 WL 272074, at *1 (Minn. App. Mar. 14, 2000). This court affirmed the revocation. *Id.* In 2006, the district court revoked Murphy's probation and executed his remaining stayed sentences, committing him to prison for 330 months. *State v. Murphy*, No. A06-1471, 2007 WL 4390348, at *3 (Minn. App. Dec. 18, 2007), *review denied* (Minn. Feb. 27, 2008). This court affirmed the revocation. *Id.* at *6. In 2013, postconviction proceedings were held on Murphy's claims for relief. *Murphy v. State*, Nos. A13-2332, A13-2413, 2014 WL 4176080, at *1 (Minn. App. Aug. 25, 2014), *review denied* (Minn. Oct. 28, 2014). This court affirmed the denial of those claims. *Id.*

This appeal stems from the postconviction court’s summary denial of Murphy’s most recent petition for postconviction relief.

D E C I S I O N

A postconviction court may deny a postconviction petition without a hearing when “the petition and the files and records of the proceeding conclusively show that the petitioner is entitled to no relief.” Minn. Stat. § 590.04, subd. 1 (2014). “An evidentiary hearing upon a petition for postconviction relief is not required unless the petitioner alleges such facts which, if proved by a fair preponderance of the evidence, would entitle him or her to the requested relief.” *Roby v. State*, 547 N.W.2d 354, 356 (Minn. 1996). Allegations in a postconviction petition must be “more than argumentative assertions without factual support.” *State v. Caldwell*, 803 N.W.2d 373, 388 (Minn. 2011) (quotation omitted).

This court reviews a summary denial of postconviction relief for an abuse of discretion. *State v. Hokanson*, 821 N.W.2d 340, 357 (Minn. 2012). In doing so, this court reviews the postconviction court’s legal determinations de novo and its factual findings for clear error. *Bonga v. State*, 797 N.W.2d 712, 718 (Minn. 2011).

Murphy assigns error to the postconviction court’s resolution of his claims regarding newly discovered evidence, restitution, and ineffective assistance of counsel. In denying Murphy’s petition, the postconviction court reasoned, in part, that the newly-discovered-evidence claim is barred under a previous order of this court, that the restitution claim is procedurally barred under caselaw, and that the ineffective-assistance-of-counsel claim is not supported by sufficient factual allegations. We address each of the postconviction court’s rulings in turn.

Newly Discovered Evidence

To obtain relief based on newly discovered evidence, the defendant must show that neither he nor his counsel was aware of the evidence despite diligent efforts; that the evidence is material and not cumulative or doubtful; and that the evidence will likely result in a more favorable outcome. *Race v. State*, 417 N.W.2d 264, 266 (Minn. 1987).

Murphy asserts that he has new evidence showing that his convictions are the result of a confidential informant's false testimony implicating Murphy in exchange for favorable treatment. Murphy submitted an affidavit from R.O. as support, stating that R.O. was incarcerated with the confidential informant, that the confidential informant regularly bragged that he could "get criminal charges either reduced or dismissed," that the police had returned rifles to the confidential informant that he was not allowed to possess, and that the confidential informant received money for gas and rent, all "because he gave St. Paul Police and the Ramsey County Sheriff false information" regarding Murphy. R.O.'s affidavit also states that the confidential informant confessed to R.O. that he had committed the crimes of which Murphy was convicted.

In rejecting Murphy's newly-discovered-evidence claim, the postconviction court reasoned, in part:

[B]oth the district court and the Court of Appeals have determined in this file that [Murphy] has waived any objection to the confidential informant by pleading guilty. *See Murphy v. State*, A12-0559, order op. (Minn. App. June 5, 2012) (citing *State v. Ford*, 397 N.W.2d 875, 878 (Minn. 1986)) ("[Murphy's] claim that he has evidence that would call his guilt into question is one that he waived by pleading guilty."). . . . Even though [Murphy] now alleges a different person has provided him information about the same confidential

informant, these past holdings compel the same conclusion: by pleading guilty, [Murphy] waived his right to object to the confidential informant.

In *State v. Ford*, the Minnesota Supreme Court noted that “[a] guilty plea by a counseled defendant has traditionally operated . . . as a waiver of all non-jurisdictional defects arising prior to the entry of the plea.” 397 N.W.2d 875, 878 (Minn. 1986); *see also* *Murphy*, 545 N.W.2d at 918 (finding that an allegation of prosecutorial vindictiveness was waived by Murphy’s guilty plea). In an attempt to avoid the waiver rule, Murphy argues:

It cannot be by entering a plea [he] agreed to waive a later challenge to his conviction when he obtained direct evidence that a person who would have been an important witness against him was lying to agents of the State in exchange for being paid in cash and in currying good favor to later be cashed in to avoid trouble of his own. Such a holding in this case ignores the requirements [that] a plea be knowing, voluntary, and intelligent, and the fact that there are often factors other than guilt or innocence which play into a defendant’s decision to enter a plea, or not.

A court must allow a defendant to withdraw a guilty plea at any time if it is necessary to correct a manifest injustice. Minn. R. Crim. P. 15.05, subd. 1. “A manifest injustice exists if a guilty plea is not valid.” *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010). A guilty plea must be “accurate, voluntary, and intelligent.” *Perkins v. State*, 559 N.W.2d 678, 688 (Minn. 1997). “A defendant bears the burden of showing his plea was invalid.” *Raleigh*, 778 N.W.2d at 94. We review the validity of a plea de novo. *Id.*

Murphy notes that the intelligence requirement “insures that the defendant understands the charges, his or her rights under the law, and the consequences of pleading guilty.” *State v. Wukawitz*, 662 N.W.2d 517, 522 (Minn. 2003) (quotation omitted). But

he does not explain how his lack of knowledge regarding the newly discovered evidence compromised his understanding of the charges, his rights, or the consequences of his guilty plea. Instead, he argues that:

Even though [he] was aware he did not commit these crimes, the reality he faced at the time of deciding to plead guilty was that [the confidential informant] would testify that [Murphy] had committed those crimes. At the time, though [he] knew he did not commit them, he did not have the ability to rebut those claims directly, and after his past experiences within the judicial system, chose to enter a plea. The fact that [the confidential informant] was lying and receiving undisclosed inducements for doing so goes directly to whether [his] plea was accurate, voluntary, and intelligent.

Murphy does not provide legal support for his assertion that newly discovered evidence regarding the veracity of an informant's anticipated testimony can render a guilty plea unintelligent. We therefore adhere to the established standard for assessing the intelligence of a guilty plea. *See id.* Under that standard, Murphy has not shown that his plea was unintelligent.

Murphy also notes that “the need for a voluntary plea ensures that the defendant does not plead guilty because of improper inducements.” “The voluntariness requirement ensures a defendant is not pleading guilty due to improper pressure or coercion.” *Raleigh*, 778 N.W.2d at 96. Improper pressure or coercion generally requires a threat or promise made to induce a defendant to plead guilty. *See, e.g., Brady v. United States*, 397 U.S. 742, 750, 90 S. Ct. 1463, 1470 (1970) (“[A]gents of the State may not produce a plea by actual or threatened physical harm or by mental coercion overbearing the will of the defendant.”); *Nelson v. State*, 880 N.W.2d 852, 861 (Minn. 2016) (noting the fact that a defendant denied

that he had been “subjected to threats or promises” was further evidence that his plea was voluntary); *State v. Brown*, 606 N.W.2d 670, 674 (Minn. 2000) (“A guilty plea cannot be induced by unfulfilled or unfulfillable promises . . .”).

Murphy does not explain how the newly discovered evidence constitutes improper pressure or coercion under the standard set forth in caselaw. He therefore has not shown that his plea was involuntary.

In sum, this court has previously held that Murphy may not challenge the validity of his conviction by attacking the evidence that the state would have offered had he not pleaded guilty. Moreover, Murphy has not advanced a persuasive legal argument showing that he is entitled to relief on the grounds that his plea was unintelligent or involuntary.¹ The postconviction court therefore did not abuse its discretion by summarily denying Murphy’s newly-discovered-evidence claim.

Restitution

In seeking postconviction relief, Murphy claimed that his victims have been doubly compensated by their receipt of restitution payments from Murphy, as well as insurance proceeds. The postconviction court ruled that this claim is procedurally barred under *State v. Knaffla*, 309 Minn. 246, 243 N.W.2d 737 (1976).

“The *Knaffla* rule provides that when a petition for postconviction relief follows a direct appeal of a conviction, all claims raised in the direct appeal and all claims of which

¹ Murphy does not challenge the accuracy of his guilty plea. See *State v. Trott*, 338 N.W.2d 248, 251 (Minn. 1983) (“The main purpose of the accuracy requirement is to protect a defendant from pleading guilty to a more serious offense than he could be convicted of were he to insist on his right to trial.”).

the defendant knew or should have known at the time of the direct appeal are procedurally barred.” *Buckingham v. State*, 799 N.W.2d 229, 231 (Minn. 2011). The same is true of subsequent petitions for postconviction relief: issues “raised or known but not raised in an earlier petition for postconviction relief will generally not be considered in subsequent petitions for postconviction relief.” *Powers v. State*, 731 N.W.2d 499, 501 (Minn. 2007). “There are two exceptions to these general rules: (1) if a novel legal issue is presented, or (2) if the interests of justice require review.” *Spears v. State*, 725 N.W.2d 696, 700 (Minn. 2006). This court reviews the denial of postconviction relief under the *Knaffla* rule for an abuse of discretion. *Quick v. State*, 692 N.W.2d 438, 439 (Minn. 2005).

In 2009, Murphy attempted to file a petition for postconviction relief that included a claim that his victims had been doubly compensated. This filing was rejected because it did not comply with frivolous-litigant restrictions that the district court had imposed on Murphy. The affidavit submitted with the 2009 petition stated that Murphy “was told by his prior attorney . . . that many of the victims he was ordered to pay restitution to had already been reimbursed for losses by their insurance companies and this fact was withheld by the county attorney from [Murphy] and his attorney at the time.” However, Murphy did not raise this claim in his later 2013 postconviction filings.

Murphy’s attempted postconviction filing in 2009 demonstrates that he knew about his double-compensation claim before his successful postconviction filing in 2013, yet he did not raise the issue in the 2013 postconviction proceeding. Moreover, Murphy does not argue that an exception to the resulting *Knaffla* bar applies. The postconviction court

therefore did not abuse its discretion by denying Murphy's restitution claim as *Knaffla*-barred.

Ineffective Assistance of Counsel

Ineffective-assistance-of-counsel claims are generally analyzed as trial errors under *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052 (1984). *Dereje v. State*, 837 N.W.2d 714, 721 (Minn. 2013). To prevail under *Strickland*, a “defendant must show that counsel’s representation fell below an objective standard of reasonableness” and “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” 466 U.S. at 688, 694, 104 S. Ct. at 2064, 2068.

“[D]efense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused.” *Missouri v. Frye*, 566 U.S. 134, 145, 132 S. Ct. 1399, 1408 (2012). To prevail on an ineffective-assistance-of-counsel claim based on counsel’s failure to do so, “defendants must demonstrate a reasonable probability they would have accepted the earlier plea offer had they been afforded effective assistance of counsel.” *Id.* at 147, 132 S. Ct. at 1409.

Murphy’s postconviction petition alleges that:

[Murphy] also has learned that a plea offer was communicated to his then attorney, . . . whereby he would be sentenced to 5 years in prison for entering an admission to the probation violation and waive his right to an attorney. [Murphy] contends that [his attorney] never communicated the offer to him. As such, [Murphy’s] right to effective assistance of counsel was violated.

In denying Murphy’s ineffective-assistance-of-counsel claim, the postconviction court reasoned, in part, that Murphy did not allege sufficient facts to obtain relief,

explaining that Murphy's statement that "his 'right to effective assistance of counsel was violated' is a mere legal assertion, and, without sufficient facts alleged to support the assertion, does not require the Court to grant relief."

Murphy did not and does not proffer evidence to establish that the state actually made the purported settlement offer or that his trial attorney failed to communicate the offer. In fact, Murphy does not provide any factual support for his belief that the state made such an offer. Conversely, the state calls the purported offer "nothing more nor less than a complete fiction" and notes that it consistently requested execution of Murphy's remaining stayed sentence.

In addition to providing inadequate factual support, Murphy does not allege that he would have accepted the purported offer if it had been communicated. The law does not support Murphy's assertion that his trial attorney's failure to present the offer alone constitutes ineffective assistance of counsel. The law requires him to allege and establish a reasonable probability that he would have accepted the offer. In sum, because Murphy did not provide adequate factual support for his ineffective-assistance-of-counsel claim and does not allege prejudice, the postconviction court did not abuse its discretion by summarily denying the claim.

Affirmed.