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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1302**

Paul Ronny Barsness, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed May 8, 2017
Affirmed
Kirk, Judge**

Otter Tail County District Court
File No. 56-CR-12-1983

Paul Ronny Barsness, Moose Lake, Minnesota (pro se appellant)

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

David J. Hauser, Otter Tail County Attorney, Fergus Falls, Minnesota (for respondent)

Considered and decided by Bratvold, Presiding Judge; Kirk, Judge; and Toussaint,
Judge.*

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

UNPUBLISHED OPINION

KIRK, Judge

Pro se appellant challenges the postconviction court's denial of his petition for relief on numerous grounds. We affirm.

FACTS

In May 2013, a jury convicted appellant Paul Ronny Barsness of second-degree criminal sexual conduct for his contact with the 10-year-old daughter of a coworker. *State v. Barsness*, No. A13-2013, 2014 WL 5419726, at *1 (Minn. App. Oct. 27, 2014), *review denied* (Minn. Dec. 30, 2014). The district court sentenced appellant to 72 months in prison. *Id.* at *2.

In October 2014, this court affirmed appellant's conviction, but we declined to review his ineffective-assistance-of-counsel claims relating to alleged communication issues and evidence not presented because these claims could not be determined on the record before this court. *Id.* at *7. The Minnesota Supreme Court denied review.

On February 19, 2016, acting pro se, appellant petitioned the postconviction court for relief, and he raised numerous issues in his petition that can be grouped into the following categories: (1) prosecutorial misconduct that effectively denied him the right to a fair trial; (2) ineffective assistance of trial counsel; and (3) ineffective assistance of appellate counsel. In May, appellant moved the postconviction court to compel disclosure of additional materials and requested various items of disclosure.

The postconviction court denied appellant's petition without an evidentiary hearing, reasoning that all of appellant's prosecutorial-misconduct claims were procedurally barred

under *State v. Knaffla*, 309 Minn. 246, 252, 243 N.W.2d 737, 741 (1976), because they were either raised or could have been raised on direct appeal. It also rejected appellant's ineffective-assistance-of-counsel claims relating to evidentiary and discovery matters, concluding that they were either *Knaffla*-barred, were a matter of trial strategy, or that appellant failed to demonstrate prejudice at trial. With respect to appellant's counsel-related sentencing claims, the postconviction court found that appellant failed to prove that he was prejudiced because there were no grounds supporting a downward departure in sentencing, and that appellant failed to adequately explain his lack of cooperation with the presentencing assessment.

The postconviction court denied appellant's ineffective-assistance-of-counsel claim that his appellate counsel should have petitioned the Minnesota Supreme Court for review of this court's rejection of his *Spreigl*-evidence¹ claim, concluding that appellate counsel was not required to raise claims on direct appeal that counsel could have legitimately concluded would not prevail. The postconviction court also rejected appellant's claim that appellate counsel did not provide him with disclosure materials from trial, finding that there was no supporting record evidence. It also denied appellant's motion to compel discovery.

On August 3, appellant filed a motion to correct his sentence and a motion for reconsideration with the postconviction court, and then filed a pro se notice of appeal the

¹ Under *State v. Spreigl*, 272 Minn. 488, 490, 139 N.W.2d 167, 169 (1965), evidence showing that the defendant committed another crime unrelated to the crime for which he or she is on trial is generally inadmissible. But evidence of prior crimes are admissible to show motive, lack of mistake, identity, or a common plan or scheme. *Id.* at 491, 139 N.W.2d at 169.

following day. Appellant then moved this court to stay proceedings and allow the postconviction court to address his motions for correction and reconsideration. This court stayed appellant's appeal and remanded to the postconviction court to consider his motions. The postconviction court reaffirmed its previous orders denying appellant's petition for postconviction relief and motion to compel discovery.

Appellant next moved the district court for in camera inspection and preservation of discovery materials under Minn. R. Crim. P. 9.01, subd. 2. Appellant moved this court to stay proceedings and remand the matter to the district court and to file an enlarged brief. We denied appellant's motions. Appellant renewed his motion to stay the appeal and remand to allow the district court to "inspect and preserve requested materials" under Minn. R. Crim. P. 9.01, subd. 2, but we denied appellant's motion, concluding that a stay and remand was not authorized for this purpose. Appellant next moved for summary judgment, which we denied.

This appeal follows.

D E C I S I O N

Appellate courts review the denial of a petition for postconviction relief, including a request for an evidentiary hearing, for an abuse of discretion. *Swaney v. State*, 882 N.W.2d 207, 214 (Minn. 2016). We review legal issues de novo and the postconviction court's factual findings for clear error. *Id.*

A postconviction court may deny a petition without a hearing if the files and records of the proceedings conclusively establish that the petitioner is not entitled to relief. *Brown v. State*, 863 N.W.2d 781, 786 (Minn. 2015); see Minn. Stat. § 590.04, subd. 1 (2014). But

the court must consider the alleged facts in the light most favorable to the petitioner. *Martin v. State*, 825 N.W.2d 734, 740 (Minn. 2013). In order to warrant a hearing, however, a petitioner's allegations must constitute more than argumentative assertions without factual support. *Doppler v. State*, 771 N.W.2d 867, 871 (Minn. 2009).

When a petition for postconviction relief follows a direct appeal, all claims that were raised in the direct appeal are procedurally barred. *Knaffla*, 309 Minn. at 252, 243 N.W.2d at 741. "The *Knaffla* rule also bars all claims that were known or should have been known at the time of the direct appeal." *Swaney*, 882 N.W.2d at 215.

A. Prosecutorial-misconduct claims

In his petition for postconviction relief, appellant raises numerous issues of district court error. Appellant argues: (1) the investigating officer committed perjury while testifying when he claimed that only one interview was performed with himself and A.N., and that a mental-health employee was present during that interview; (2) the state concealed the involvement of S.L., another victim; (3) the state deprived appellant of the ability to prepare a defense; (4) the investigating officer committed many other acts of perjury and falsely testified on several occasions; (5) the prosecutor committed misconduct by admitting unsubstantiated and possibly fabricated other-crimes evidence; (6) the prosecutor and her agents concealed interviews with a witness that were exculpatory evidence; (7) the interview techniques used in A.N.'s CornerHouse interview were suggestive and coercive; and (8) the state failed to disclose evidence that another individual abused A.N.

All of these claims are *Knaffla*-barred because they were known or should have been known at the time of the direct appeal. *Swaney*, 882 N.W.2d at 215. Moreover, while appellant cites caselaw in support of his claims, his allegations are no more than “argumentative assertions without factual support.” *Doppler*, 771 N.W.2d at 871. The postconviction court properly concluded that the record demonstrates that appellant was aware of all of the trial evidence, including all existing CornerHouse videos. The record also established that there was another CornerHouse video, but it had nothing to do with alleged sexual misconduct between appellant and A.N. The video concerns appellant’s alleged sexual misconduct with another victim that was not shown to the jury or admitted at trial.

B. Ineffective-assistance-of-trial-counsel claims

Knaffla bars ineffective-assistance-of-counsel claims that can be reviewed on the basis of the trial record when the known claim is not brought on direct appeal. *Sontoya v. State*, 829 N.W.2d 602, 604 (Minn. 2013). But “an ineffective-assistance-of-counsel claim is not *Knaffla*-barred when the claim requires examination of evidence outside the record and additional fact-finding by the postconviction court because it cannot be resolved solely on the basis of the record and the briefs.” *Swaney*, 882 N.W.2d at 216.

To prove ineffective assistance of counsel, the petitioner must show that (1) counsel’s representation fell below an objective standard of reasonableness and (2) there is a reasonable probability that, but for counsel’s errors, the result of the proceeding would have been different. *Lussier v. State*, 853 N.W.2d 149, 154 (Minn. 2014) (citing *Strickland v. Washington*, 466 U.S. 668, 688, 694, 104 S. Ct. 2052, 2064, 2068

(1984)). The second part of the *Strickland* test is referred to as the prejudice prong. *Patterson v. State*, 670 N.W.2d 439, 442 (Minn. 2003). “A ‘reasonable probability’ is a probability sufficient to undermine confidence in the outcome of the case.” *Swaney*, 882 N.W.2d at 217.

Appellant asserts that his trial counsel committed the following errors: (1) failed to keep in contact with appellant; (2) raised his voice at appellant within earshot of the jury; (3) informed appellant that he would not continue to represent appellant after the conclusion of trial; (4) failed to call witnesses that could have relieved confusion in the proceedings; (5) failed to impeach the state’s witnesses; (6) failed to interview a witness whose testimony would have been material; (7) failed to object to prosecutorial misconduct by wrongfully admitting *Spreigl* evidence at trial; (8) denied him access to the contents of his file, thereby impeding his ability to raise issues in his direct appeal; (9) failed to seek expert testimony to impeach the interviewing techniques used on A.N.; and (10) did not try to exclude A.N.’s testimony on the ground that it was tainted by the interviewing techniques.

Appellant’s first three claims fail because appellant fails to show prejudice. *Patterson*, 670 N.W.2d at 442. Appellant’s remaining claims fail because they involve trial strategy. Strategic choices made by an attorney after a thorough investigation of the facts and law are “virtually unchallengeable.” *Strickland*, 466 U.S. at 690, 104 S. Ct. at 2066. Moreover, appellant cannot demonstrate prejudice on the remaining claims. There is also no reasonable probability that, but for counsel’s errors, the result of the proceeding would have been different. *Swaney*, 882 N.W.2d at 217. As this court found on direct

appeal, the state's case against appellant was strong. *Barsness*, 2014 WL 5419726, at *6. A.N. gave testimony detailing the sexual contact between herself and appellant that was largely consistent with her interview at CornerHouse. *Id.* A.N. voluntarily spoke about the sexual contact to investigators without prompting, and her mother and stepfather also testified about their concerns over appellant's relationship with A.N. *Id.*

C. Ineffective-assistance-of-appellate-counsel claims

Appellant argues that his appellate counsel erred by failing to petition for review to the Minnesota Supreme Court, thereby failing to preserve the issues for federal review in a habeas corpus petition. It appears that appellant wanted appellate counsel to request that the Minnesota Supreme Court change the law to permit reversal for *Spreigl* violations without conducting a plain-error analysis. But appellate counsel is not required to raise unmeritorious claims. *Reed v. State*, 793 N.W.2d 725, 736 (Minn. 2010). Accordingly, the postconviction court did not abuse its discretion in denying appellant's petition for relief.

D. Motion-to-compel claims

"[T]he [district court] judge has wide discretion to issue discovery orders and, absent clear abuse of that discretion, normally its order with respect thereto will not be disturbed." *Shetka v. Kueppers, Kueppers, Von Feldt & Salmen*, 454 N.W.2d 916, 921 (Minn. 1990). To receive a new trial based on newly discovered evidence, a petitioner must prove, by a preponderance of the evidence:

- (1) that the evidence was not known to the defendant or his/her counsel at the time of the trial; (2) that the evidence could not have been discovered through due diligence before trial;

(3) that the evidence is not cumulative, impeaching, or doubtful; and (4) that the evidence would probably produce an acquittal or a more favorable result.

Carridine v. State, 867 N.W.2d 488, 496 (Minn. 2015) (quotation omitted). Here, the record confirms that the postconviction court did not abuse its discretion in denying appellant's motion to compel because appellant failed to demonstrate that his request was nothing more than a "fishing expedition" for any potential evidence that might impeach witness testimony at trial.

Affirmed.