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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1227**

Paul Ronny Barsness, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed June 17, 2019
Affirmed
Schellhas, Judge**

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

Judie Marshall, Kent Marshall, Marshall Law Office, Barrett, Minnesota (for appellant)

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

Michelle M. Eldien, Otter Tail County Attorney, Sarah Estep-Larson, Assistant County
Attorney, Fergus Falls, Minnesota (for respondent)

Considered and decided by Schellhas, Presiding Judge; Tracy M. Smith, Judge; and
Cochran, Judge.

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant challenges the summary denial of his petition for postconviction relief,
arguing that the postconviction court erred by concluding that his claims of actual

innocence, ineffective assistance of counsel, and prosecutorial misconduct, are time-barred and *Knaffla*-barred. We affirm.

FACTS

A district court sentenced appellant Paul Barsness to 72 months in prison after a jury found him guilty of second-degree criminal sexual conduct involving a ten-year-old girl. Barsness appealed his conviction, and this court affirmed. *State v. Barsness*, No. A13-2013 (Minn. App. Oct. 27, 2014) (*Barsness I*), review denied (Minn. Dec. 30, 2014). Barsness subsequently filed an 80-plus page pro se petition for postconviction relief, arguing, inter alia, that he was denied the effective assistance of trial and appellate counsel, and that the prosecutor committed prejudicial misconduct. The postconviction court denied Barsness's postconviction petition, and this court affirmed. *Barsness v. State*, No. A16-1302 (Minn. App. May 8, 2017) (*Barsness II*), review denied (Minn. July 18, 2017).

In January 2018, Barsness filed a second petition for postconviction relief, claiming “actual innocence” based on newly discovered evidence. Specifically, Barsness alleged that Investigating Officer Kevin Sonstebo perjured himself by testifying that N.T., a school mental-health worker, was present during an interview that he conducted with the victim. Barsness claimed that he has now obtained N.T.'s affidavit, stating that she was not present during the interview. Barsness also claimed that (1) the prosecutor committed misconduct in the form of nondisclosure, presenting false testimony, introduction of unnoticed *Spreigl* evidence, and misstatement of the burden of proof; and (2) he received ineffective assistance of trial counsel for failure to conduct an adequate investigation, pursue an

alternative perpetrator theory, engage in effective cross-examination, and make additional trial objections.

The postconviction court concluded that Barsness’s “claims are all *Knaffla*-barred on their face” because “[v]irtually all of the claims in this second petition for postconviction relief were previously raised in some form in [Barsness]’s first petition for postconviction relief, which was voluminous and wide-ranging.” The postconviction court also concluded that Barsness’s postconviction petition was time-barred under Minn. Stat. § 590.01, and that no exception applies. The postconviction court therefore denied Barsness’s petition without an evidentiary hearing.

This appeal follows.

D E C I S I O N

Barsness contends that the postconviction court erred by summarily denying his petition on the basis that his three claims are time-barred and *Knaffla*-barred. This court reviews a postconviction court’s summary denial of a petition for postconviction relief for an abuse of discretion. *Andersen v. State*, 913 N.W.2d 417, 422 (Minn. 2018). “A postconviction court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record, or exercises its discretion in an arbitrary or capricious manner.” *Crow v. State*, 923 N.W.2d 2, 9 (Minn. 2019) (quotation omitted).

A postconviction petition may be procedurally barred under *State v. Knaffla*, 243 N.W.2d 737 (Minn. 1976). Under the *Knaffla* rule, “once a direct appeal has been taken, all claims raised in the direct appeal and all claims that were known or should have been

known but were not raised in the direct appeal are procedurally barred.” *Colbert v. State*, 870 N.W.2d 616, 626 (Minn. 2015) (emphasis omitted). Claims that were raised, or could have been raised, in a previous postconviction petition are also procedurally barred. *Id.* “A postconviction court does not abuse its discretion when it summarily denies a petition that is procedurally barred by the *Knaffla* rule.” *Jackson v. State*, 919 N.W.2d 470, 473 (Minn. 2018).

A. Actual-innocence claim

Barsness challenges the denial of his claim of “actual innocence.” Specifically, he contends that newly discovered evidence in the form of an affidavit of N.T. “supports the conclusion that Officer Sonstebo offered perjured testimony and that suggestive interview techniques were used in the investigation of this case.” Barsness argues that if “[g]iven an opportunity to develop [his] proffer of newly discovered evidence through an evidentiary hearing, [he] can demonstrate by clear and convincing evidence that [he] is actually innocent of the offense.” We disagree.

In his first petition for postconviction petition relief, Barsness argued that Officer Sonstebo “committed perjury while testifying when he claimed that only one interview was performed with himself and [the victim], and that [N.T.] was present during that interview.” *Barsness II*, 2017 WL 1842835, at *2. This is essentially the same argument raised here. Although Barsness has now filed an affidavit of N.T., the affidavit simply states that N.T. was not present during the April 2012 interview. As respondent State of Minnesota points out, the affidavit “does not change the analysis because [Barsness’s] claim—that Officer Sonstebo lied at trial by indicating that [N.T.] was present at the April 19, 2012 interview—

has not changed.” Moreover, even if Barsness’s argument is somehow distinct from the one he made in his previous postconviction petition, Barsness asserts no reason that the affidavit could not have been obtained during earlier proceedings. Rather, the basis for this claim was previously known to Barsness through pre-trial discovery and the trial record. In fact, this court previously determined that Barsness’s claim was *Knaffla*-barred because it was known or should have been known at the time of his direct appeal. *Id.* Because Barsness’s claim of “actual innocence” was raised or could have been raised in his previous postconviction petition, the postconviction court did not err by concluding that this claim was *Knaffla*-barred. *See Colbert*, 870 N.W.2d at 626 (stating that claims that were raised, or could have been raised, in a previous postconviction petition are procedurally barred under the *Knaffla* rule).

Moreover, the alleged newly discovered evidence does not establish that Barsness is innocent of the offense. “[A]ctual innocence’ requires the petitioner to prove it is more likely than not that no reasonable jury would convict.” *Brown v. State*, 863 N.W.2d 781, 788 (Minn. 2015) (quotation omitted). To satisfy the actual-innocence criterion, the “proffered evidence must be unequivocal, intrinsically probable, and free from frailties.” *Rhodes v. State*, 875 N.W.2d 779, 788 (Minn. 2016).

Here, N.T.’s affidavit states that despite Officer Sonstebo’s trial testimony to the contrary, she is “confident I was not present during [the] interview” with the victim on April 19, 2012. Nowhere does the affidavit indicate that Barsness is innocent of the crime of which he was convicted. Instead, the affidavit simply casts doubt on the truthfulness of Officer Sonstebo’s testimony, and it does not weaken the other evidence offered by the

state at trial, which as this court has previously noted “was strong.” *Barsness I*, 2014 WL 5419726, at *6. And, as the postconviction court acknowledged, the affidavit “addresses only a secondary issue at trial, and so [it] falls short of offering evidence of actual innocence.” Barsness therefore cannot establish that the alleged newly discovered evidence demonstrates actual innocence.

B. Ineffective-assistance-of-counsel claim

Barsness also challenges the postconviction court’s determination that his ineffective-assistance-of-counsel claim is *Knaffla*-barred. To prove ineffective assistance of counsel, a 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 v. State*, 882 N.W.2d 207, 217 (Minn. 2016).

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.

Here, Barsness alleges that his trial counsel provided deficient performance by failing to (1) “conduct an adequate investigation into the allegations made by [the victim]”; (2) discover “the identity of [N.T.], and the fact that Officer Sonstebo was claiming she assisted with coordinating and was present at the [April 19, 2012] interview” with the victim; (3) “investigate the interview techniques that were used, and the possibility of suggestive interview techniques leading to falsely implanted memories”; and (4) “object to the elicitation of inadmissible character evidence, *Spreigl* evidence . . . without prior notice, and the prosecutor’s misstatement of the burden of proof.” But as the postconviction court found, Barsness’s “claims were either raised or available in prior proceedings.” For example, in his direct appeal, Barsness claimed that he was denied effective assistance of counsel based on his trial counsel’s failure “to object to . . . instances of alleged prosecutorial misconduct,” and “present certain evidence and call witnesses in his defense.” *Barsness I*, 2014 WL 5419726, at *7. And in his first petition for postconviction relief, Barsness alleged that his trial counsel was ineffective because he “failed to impeach the state’s witnesses,” “failed to interview a witness whose testimony would have been material,” “failed to object to prosecutorial misconduct by wrongfully admitting *Spreigl* evidence at trial,” and failed to challenge the interview techniques used on the victim. *Barsness II*, 2017 WL 1842835, at *3. Finally, to the extent that Barsness’s ineffective-assistance-of-counsel claims differ from the claims raised in previous proceedings, they could have been raised at the time of the direct appeal because they are based on the trial record alone. See *Sontoya*, 829 N.W.2d at 604 (stating that *Knaffla* bars ineffective-assistance-of-counsel claims that can be reviewed on basis of trial record when known

claim is not brought on direct appeal). The postconviction court therefore properly concluded that Barsness's ineffective-assistance-of-counsel claim is *Knaffla* barred.

C. Prosecutorial-misconduct claim

Finally, Barsness alleged prosecutorial misconduct based on the prosecutor's alleged "failure to disclose exculpatory evidence," and "correct the false and/or perjured testimony of Officer Sonstebo." But again, Barsness raised these issues in his previous petition for postconviction relief. *Barsness II*, 2017 WL 1842835, at *2. Barsness cannot raise the same claim in a second petition for postconviction relief. *See Colbert*, 870 N.W.2d at 626 (stating that claims that were raised, or could have been raised, in previous postconviction petition are procedurally barred). Moreover, to the extent that Barsness did not raise the issues in his previous postconviction petition, the claims were known or should have been known at the time of his direct appeal. Accordingly, the postconviction court did not err by concluding that Barsness's prosecutorial-misconduct claims are *Knaffla* barred.

Affirmed.