

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1831**

Oji Konata Markham, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed July 22, 2019
Affirmed
Worke, Judge**

Dakota County District Court
File No. 19HA-CR-16-287

Oji Konata Markham, Moose Lake, Minnesota (pro se appellant)

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

James C. Backstrom, Dakota County Attorney, Dain L. Olson, Assistant County Attorney,
Hastings, Minnesota (for respondent)

Considered and decided by Worke, Presiding Judge; Florey, Judge; and Cochran,
Judge.

UNPUBLISHED OPINION

WORKE, Judge

On appeal from the summary denial of his petition for postconviction relief, appellant argues that the postconviction court abused its discretion by denying his petition without a hearing. We affirm.

FACTS

This is appellant Oji Konata Markham's second appeal. The underlying facts of Markham's conviction are set forth in more detail in this court's earlier opinion, *State v. Markham*, A16-1548, 2017 WL 3974466, at *1-2 (Minn. App. Sept. 11, 2017), *review denied* (Minn. Nov. 28, 2017). Briefly, in 2016 Markham was convicted of first-degree burglary and sentenced to 111 months in prison. Markham appealed his conviction to this court, arguing prosecutorial misconduct, insufficiency of the evidence, ineffective assistance of trial counsel, a *Brady*¹ violation, evidentiary errors, and other errors affecting his substantial rights. His conviction was affirmed. *Id.* at *7. Markham petitioned the Minnesota Supreme Court for review, which was denied. On July 19, 2018, Markham filed a petition for postconviction relief in district court, alleging ineffective assistance of trial and appellate counsel and newly discovered evidence pertaining to police reports of his arrest. The district court denied the petition without an evidentiary hearing, concluding Markham's claims were barred by *Knaffla*² and Minn. Stat. § 590.01, subd. 1(1) (2018). This appeal followed.

DECISION

A district court may deny a petition for postconviction relief without an evidentiary hearing if “the petition and the files and records of the proceeding conclusively show that

¹ See *Brady v. Maryland*, 373 U.S. 83, 87, 83 S. Ct. 1194, 1196-97 (1963) (holding that the state has an affirmative duty in criminal cases to disclose evidence that is favorable and material to the defense).

² See *State v. Knaffla*, 243 N.W.2d 737, 741 (Minn. 1976) (noting that when “direct appeal has once been taken, all matters raised therein, and all claims known but not raised, will not be considered upon a subsequent petition for postconviction relief”).

the petitioner is entitled to no relief.” Minn. Stat. § 590.04, subd. 1 (2018). “[W]e review a denial of a petition for postconviction relief, including a denial of relief without an evidentiary hearing, for an abuse of discretion.” *State v. Nicks*, 831 N.W.2d 493, 503 (Minn. 2013). Legal issues raised in a petition for postconviction relief are reviewed de novo, but factual issues are limited to whether the record sufficiently sustains the postconviction court’s findings. *Matakis v. State*, 862 N.W.2d 33, 36 (Minn. 2015). This court does not reverse an order on a petition for postconviction relief “unless the postconviction court exercised its discretion in an arbitrary or capricious manner, based its ruling on an erroneous view of the law, or made clearly erroneous factual findings.” *Id.* (quoting *Reed v. State*, 793 N.W.2d 725, 729 (Minn. 2010)).

Markham asserts that the district court abused its discretion because the claims he raised in his postconviction petition were either not barred by *Knaffla* or satisfied the interests-of-justice exception to *Knaffla*. See *Taylor v. State*, 691 N.W.2d 78, 79 (Minn. 2005) (noting an issue that is *Knaffla*-barred may be heard in “the interests of justice” if “the petitioner did not deliberately and inexcusably fail to raise the issue on direct appeal”) (quotation omitted). Markham also asserts that the district court failed to address his claim of ineffective assistance of appellate counsel.

Probable cause

Markham argues that he is entitled to a new trial because the arresting officer’s police report was not disclosed, constituting newly discovered evidence that substantiates his claim that there was neither a warrant nor a warrantless exception to authorize the arrest

in his home. The postconviction court denied this claim in part because the report was in fact not newly discovered evidence. We agree.

In an April 11, 2016 pretrial order, the district court received exhibits, including a disc containing police reports, without objection. There is nothing supporting or substantiating Markham's assertion that this disc did not contain the arresting officer's report. Indeed, evidence in the record indicates that Markham had possession of the report at all relevant times.

For example, Markham referenced a statement contained within the report in a pretrial pro se motion. Markham wrote, "Officer [] stated Mr. Markham was at home when he arrested me. But I see Officer [] forgot to mention when he arrested me at my house I was on my way to work." This statement indicates that Markham had possession of the officer's report as early as February 26, 2016. Additionally, the record clearly shows that Markham's appellate counsel had possession of the report as early as February 20, 2018, and that appellate counsel had received these reports from Markham's trial counsel. Thus, contrary to Markham's claim, the report was disclosed. Therefore, the report is not newly discovered evidence, and the postconviction court did not err by denying Markham relief on the basis of his asserted *Brady* violation.

The district court also based its denial of Markham's probable-cause-to-arrest claim as *Knaffla*-barred. However, while Markham attempted to raise the issue in his first appeal, this court did not address the claim in its decision. See *Markham*, 2017 WL 3974466, at *2-7. Because Minn. Stat. § 590.04, subd. 3 (2018), states that a postconviction court may summarily deny a petition for relief "when the issues raised in it have previously been

decided by the Court of Appeals or the supreme court,” summary dismissal of this issue was error, as the issue had not yet been decided on appeal. (Emphasis added.) In the interests of justice, we will therefore address this issue on the merits.

Absent probable cause and exigent circumstances, police officers may not enter an individual’s home to effect a warrantless arrest. *Payton v. New York*, 445 U.S. 573, 584-90, 100 S. Ct. 1371, 1379-82 (1980). “[T]he test of probable cause is whether the evidence worthy of consideration . . . brings the charge against the [defendant] within reasonable probability.” *State v. Florence*, 239 N.W.2d 892, 896 (Minn. 1976) (quotation omitted). “Unlike proof beyond a reasonable doubt or preponderance of the evidence, probable cause requires only a probability or substantial chance of criminal activity, not an actual showing of such activity.” *State v. Harris*, 589 N.W.2d 782, 790-91 (Minn. 1999) (quotation omitted). The district court must view the evidence in the light most favorable to the state. *State v. Knoch*, 781 N.W.2d 170, 178 (Minn. App. 2010), *review denied* (Minn. June 29, 2010). The district court may not “assess[] the relative credibility or weight of . . . conflicting evidence.” *State v. Hegstrom*, 543 N.W.2d 698, 702 (Minn. App. 1996), *review denied* (Minn. Apr. 16, 1996).

Markham’s arrest was supported by probable cause. The record shows that police officers went to Markham’s residence, where he rented a room, and the homeowner invited them inside. After speaking with Markham, the officers arrested him based on eyewitness accounts, a 911 call, and physical evidence collected during the burglary investigation, all of which implicated Markham in the crime. This same information was then used to

convict Markham beyond a reasonable doubt of first-degree burglary. We therefore conclude that probable cause existed to support Markham's arrest.

Ineffective assistance of appellate counsel

Markham also claimed that he received ineffective assistance of appellate counsel because the alleged illegality of his arrest was not raised by counsel in his direct appeal.

Ineffective-assistance-of-appellate-counsel claims are not barred by *Knaffla* because they cannot be raised on direct appeal. *Leake v. State*, 737 N.W.2d 531, 536 (Minn. 2007). Accordingly, we will also address this claim.

Appellate courts generally analyze ineffective-assistance-of-counsel claims under *Strickland v. Washington*, which requires a defendant to “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. 668, 694, 104 S. Ct. 2052, 2064, 2068 (1984); see also *State v. Rhodes*, 657 N.W.2d 823, 842 (Minn. 2003) (applying *Strickland* to a claim of ineffective assistance of counsel). Appellate courts apply “a strong presumption that a counsel’s performance falls within the wide range of reasonable professional assistance.” *State v. Jones*, 392 N.W.2d 224, 236 (Minn. 1986) (quotation omitted).

Markham’s appellate counsel was not ineffective. “Appellate counsel is not required to raise all possible claims on direct appeal, and counsel need not raise a claim if she could have legitimately concluded that it would not prevail.” *Arredondo v. State*, 754 N.W.2d 566, 571 (Minn. 2008) (quotation omitted). Appellate counsel was under no

obligation to raise the probable-cause-to-arrest issue, as it had already proven to be a losing argument in pre and posttrial motions. *See Case v. State*, 364 N.W.2d 797, 800 (Minn. 1985) (stating counsel has no duty to include claims which would distract from more meritorious issues when counsel and appellant disagree). We therefore conclude that Markham's appellate counsel was not ineffective.

Ineffective assistance of trial counsel

Markham argues that the postconviction court erred in denying his claim for ineffective assistance of trial counsel. This claim is clearly *Knaffla*-barred as it was raised and addressed in Markham's direct appeal, and no exception to *Knaffla* applies. *See Markham*, 2017 WL 3974466, at *7.

Affirmed.