

*This opinion will be unpublished and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
A18-2123**

Johnathan Bernard Edwards, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed July 15, 2019
Affirmed
Schellhas, Judge**

Ramsey County District Court
File No. 62-CR-13-9489

Cathryn Middlebrook, Chief Appellate Public Defender, Benjamin J. Butler, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

John J. Choi, Ramsey County Attorney, Peter R. Marker, Assistant County Attorney, St. Paul, Minnesota (for respondent)

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

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

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant argues that a postconviction court erred by denying him relief after an evidentiary hearing because his trial counsel provided him ineffective assistance and his sentence is based on an erroneous criminal-history score. Appellant also raises pro se claims. We affirm.

FACTS

After a jury found appellant Jonathan Edwards guilty of one count of first-degree sex trafficking of a 15-year-old victim, the district court sentenced Edwards to 240 months' imprisonment. On direct appeal to this court, Edwards argued that the court erroneously admitted: objected-to and unobjected-to hearsay statements, a statement by a nontestifying codefendant, and improper bad-acts evidence; and that the cumulative effects of the alleged errors denied him a fair trial. In a pro se supplemental brief, Edwards also argued that: he did not knowingly waive a challenge to probable cause; the court erroneously joined his trial with a codefendant; the court erroneously failed to strike a juror; the prosecutor committed misconduct; he received ineffective assistance of trial counsel; the court erroneously calculated his criminal-history points; and the court erroneously assigned to him a custody-status point. This court affirmed but preserved for a postconviction proceeding Edwards's ineffective-assistance-of-counsel claim. *State v. Edwards*, No. A15-0836 (Minn. App. May 23, 2016) (*Edwards I*), review denied (Minn. Aug. 9, 2016), cert. denied 137 S. Ct. 484 (2016).

Edwards petitioned for postconviction relief, claiming ineffective assistance of trial counsel and an improper sentence due to an erroneous calculation of his criminal-history score. In a pro se petition, Edwards also asserted arguments about ineffective assistance of trial counsel and the calculation of his criminal-history score. Following two evidentiary hearings, the postconviction court denied Edwards's petition.

This appeal follows.

D E C I S I O N

Appellate courts “review the denial of a petition for postconviction relief . . . for an abuse of discretion.” *Reed v. State*, 925 N.W.2d 11, 18 (Minn. 2019). A postconviction court “abuses its discretion if it 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.* (quotation omitted). “The postconviction court’s conclusions of law are reviewed de novo.” *Fox v. State*, 913 N.W.2d 429, 433 (Minn. 2018). We address each of Edwards’s postconviction claims, counseled and uncounseled.

I. Ineffective assistance of counsel: failure to object to hearsay

“The United States and Minnesota Constitutions guarantee a criminal defendant the right to effective assistance of counsel.” *Crow v. State*, 923 N.W.2d 2, 14 (Minn. 2019).

To prevail on an ineffective assistance of counsel claim, [an] appellant must show both that (1) his trial counsel’s representation fell below an objective standard of reasonableness and (2) there is a reasonable probability that, but for the counsel’s unprofessional errors, the result of the proceeding would have been different.

Id.; *Strickland v. Washington*, 466 U.S. 668, 687–88, 104 S. Ct. 2052, 2064 (1984). “The objective standard of reasonableness is defined as representation by an attorney exercising the customary skill and diligence that a reasonably competent attorney would perform under similar circumstances.” *Crow*, 923 N.W.2d at 14 (quotation omitted). A reviewing court “considers the totality of the evidence before the judge or jury in making a determination of prejudice.” *Andersen v. State*, 830 N.W.2d 1, 10 (Minn. 2013). “In evaluating claims of ineffective assistance of counsel, there is a strong presumption that counsel’s performance was reasonable and this court does not review matters of trial strategy or the particular tactics used by counsel.” *Crow*, 923 N.W.2d at 14. Appellate courts review a postconviction court’s application of the *Strickland* test “de novo because it involves a mixed question of law and fact.” *State v. Mosley*, 895 N.W.2d 585, 591 (Minn. 2017). Edwards argues that he received ineffective assistance of counsel because his trial counsel failed “to object to inadmissible, highly damaging hearsay evidence.”

Respondent State of Minnesota argues that this claim is *Knaffla* barred. *See Leake v. State*, 737 N.W.2d 531, 535 (Minn. 2007) (“When a claim of ineffective assistance of trial counsel can be adjudicated on the basis of the trial record, it must be brought on direct appeal or it is barred by the *Knaffla* rule if raised in a postconviction petition.”); *see also State v. Knaffla*, 243 N.W.2d 737, 741 (Minn. 1976) (barring postconviction review of all claims raised “and all claims known but not raised” on direct appeal). Because Edwards’s claim lacks merit, we decide this case on other grounds and need not address the state’s argument. *See Wayne v. State*, 866 N.W.2d 917, 920 n.3 (Minn. 2015) (refusing to address argument where case decided on other grounds).

In his postconviction petition, Edwards claimed that he received ineffective assistance of trial counsel because of his counsel's failure to object to testimony from victim T.S.'s mother, T.S.'s "auntie," T.S.'s father's girlfriend, and two investigating officers who testified about T.S.'s description about various aspects of Edwards's involvement in facilitating T.S. having sex with men for money ("7 to 20 men a day"), and T.S.'s written statement in a notebook that she kept. On direct appeal, Edwards challenged the district court's failure to strike these alleged hearsay statements sua sponte. This court concluded that admission of the alleged hearsay was not plain error because it was "not clear or obvious" as to whether the statements would have been admissible under the residual exception to hearsay. *Edwards I*, 2016 WL 2945947, at *6.¹

At the postconviction evidentiary hearing, Edwards's trial counsel testified that after T.S. testified at trial that "everything [she had reported] was a lie," he was "not going to hammer and object to what she's already said [were] lies. If I object to it, I'm bringing attention to it"; and he further explained that "the strategy at that point was not to belabor what the lies were. . . . I wasn't going to draw what would be unnecessary attention to something she said she already lied about." The postconviction court concluded that Edwards's counseled ineffective-assistance-of-counsel claim failed because he presented "no evidence" that his trial counsel's performance was not reasonable and his decisions not to object amounted to unreviewable "tactical" trial decisions.

¹ This court also concluded that the district court did not abuse its discretion by overruling Edwards's trial counsel's objection to other hearsay statements. *Id.* at *3

The state argues that this court's conclusion in *Edwards I*, that the district court did not plainly err by not sua sponte striking the alleged hearsay, shows that the statements were not obviously inadmissible and that Edwards therefore did not receive ineffective assistance of trial counsel on the basis that his counsel did not object to admission of the statements. We agree.

In *Leake*, the supreme court concluded that a defendant's ineffective-assistance-of-counsel claim based on his counsel's failure to object to hearsay "despite the judge's observation that 'extensive hearsay of very questionable admissibility' had been elicited," was not unreasonable because the decisions not to object "were sound strategic decisions." 737 N.W.2d at 542. Similarly here, Edwards's counsel's decision not to object to the alleged hearsay in order not "to bring attention to" T.S.'s admitted lies was a sound strategic trial decision. *See id.* at 536 (stating that "[m]atters of trial strategy lie within the discretion of trial counsel and will not be second guessed by appellate courts," and that "[d]ecisions about objections at trial are matters of trial strategy"); *see also Mosley*, 895 N.W.2d at 591–92 (concluding that postconviction court did not err in denying ineffective-assistance-of-counsel claim based on failure to object because it "is well established that we give an attorney's trial-strategy decision particular deference," and that "decisions about objections at trial are matters of trial strategy, which we will not review" (quotations omitted)); *State v. Bahtuoh*, 840 N.W.2d 804, 818 n.3 (Minn. 2013) (stating that appellate courts "do not second-guess trial counsel's decisions about trial strategy," and declining to address claim involving counsel's trial strategy to not have client testify).

Citing *State v. Nicks*, 831 N.W.2d 493, 507 (Minn. 2013), Edwards argues that even though appellate courts generally do not review trial strategy, this court should “reject” this approach. But *Nicks* is inapposite because it involves a postconviction court that did not grant an evidentiary hearing, and the petitioner’s trial counsel allegedly failed to investigate facts “directly related to the defendant’s theory of that case.” *Id.* at 508. The *Nicks* court emphasized that “trial counsel’s choices made after conducting a thorough investigation of the law and the facts are virtually unchallengeable.” *Id.* (quotation and emphasis omitted).

In this case, Edwards has not overcome the “strong presumption” that his trial counsel acted reasonably; he relies on caselaw from foreign and federal courts, and unpublished cases from this court, none of which is binding on this court. *See Johnson v. Soo Line R. Co.*, 463 N.W.2d 894, 899 n.7 (Minn. 1990) (stating that federal cases are “helpful and instructive but not necessarily controlling”); *Mahowald v. Minn. Gas Co.*, 344 N.W.2d 856, 861 (Minn. 1984) (stating that decisions from other states “are not binding on us as authority”). Edwards has failed to meet the first *Strickland* prong because his trial counsel, by choosing not to object to the alleged hearsay statements as part of his trial strategy, did not perform below an objective level of reasonableness. *See Mosley*, 895 N.W.2d at 591–92 (concluding that challenge to trial counsel’s failure to object to in-court identification was “legally insufficient to show that . . . attorney’s performance was unreasonable,” because decision amounted to trial strategy).

Because we determine that Edwards’s claim does not meet the first requirement of the *Strickland* test, we need not consider the other requirement. *See id.* at 591. (“If a claim fails to satisfy one of the *Strickland* requirements, we need not consider the other

requirement.”). We therefore conclude that the postconviction court did not abuse its discretion by denying Edwards’s counseled ineffective-assistance-of-counsel claim. See *Griffin v. State*, 883 N.W.2d 282, 287 (Minn. 2016) (“An attorney’s failure to make an objection that would have been properly denied is not objectively unreasonable under the *Strickland* test.”).

II. Custody-status point

Edwards argues that the postconviction court abused its discretion by concluding that the sentencing court did not err “by assigning [him] a custody-status point based on offenses for which he had served more than the executed prison sentence.” The state argues that Edwards’s claim is barred from consideration because this court already considered the same claim in *Edwards I*. In his reply brief, Edwards does not respond to the state’s argument. The state is correct, and, citing *Edwards I*, the postconviction court concluded that Edwards’s custody-status-point claim had been “ruled on” by this court. On direct appeal in *Edwards I*, this court stated:

Edwards also argues that he should not have received a custody-status point because he was not on probation or parole. But the presentence-investigation report shows that Edwards was placed on felony probation on May 24, 2012, for a period of ten years. Although Edwards was discharged from probation on January 22, 2013, the Minnesota Sentencing Guidelines state: “Early Discharge From Probation. Assign a custody point if the offender is discharged from probation but commits an offense within the initial period of probation pronounced by the court.” Minn. Sent. Guidelines 2.B.2(4) (2012). The dates of offense for this case were from July 1, 2013, to November 24, 2013, which was within the initial ten-year period of probation pronounced by the court for Edwards’s earlier conviction. Thus, Edwards properly received a custody-status point. Given Edwards’s five criminal-history points and his

conviction under a statute with a severity level of B, his 240-month sentence was within the presumptive range under the Minnesota Sentencing Guidelines.

2016 WL 2945947, at *11.

Under Minn. Stat. § 590.04, subd. 3 (2016), a postconviction court may “summarily deny a petition when the issues raised in it have previously been decided by the Court of Appeals or the Supreme Court in the same case.” In *Wayne v. State*, a postconviction court denied a petitioner’s ninth petition; the supreme court affirmed the denial, stating, “[b]ecause we have already addressed these claims, they are procedurally barred by Minnesota Statutes section 590.04.” 912 N.W.2d 633, 638–39, 641 (Minn. 2018). Similarly, in this case, we have already addressed Edwards’s claim of error regarding the assignment of a custody-status point. We therefore conclude that Edwards’s claim is procedurally barred. *See Roby v. State*, 531 N.W.2d 482, 484 (Minn. 1995) (concluding that claim could not be relitigated in a postconviction petition after assertion in pro se brief in prior direct appeal).

III. Edwards’s pro se claims

Edwards raises a number of additional claims in his pro se supplemental brief, arguing ineffective assistance by his trial counsel for failing to: investigate his case; challenge probable cause; challenge certain evidence; present favorable evidence; and impeach witnesses. Edwards cites to no legal authority to support his claim that his trial counsel’s actions fell below an objective standard of reasonableness, or to explain how, but for the alleged failures, a jury would not have rendered a guilty verdict. *See State v. Sontoya*, 788 N.W.2d 868, 876 (Minn. 2010) (declining to consider pro se argument where

appellant failed to cite legal authority to support claim). Instead, Edwards’s pro se brief focuses on how the evidence was presented at trial, and how evidence that he allegedly presented to his trial counsel could have defeated the state’s case. The postconviction court concluded that these claims were time-barred and, citing to *Andersen*, 830 N.W.2d at 10, challenged unreviewable trial tactics.² Even if they were not time-barred, Edwards failed to present any evidence showing that trial counsel’s tactics “fell below an objective standard of reasonableness, or that the outcome would have been different.”

The supreme court “ha[s] repeatedly stated that we generally will not review attacks on counsel’s trial strategy.” *Opsahl v. State*, 677 N.W.2d 414, 421 (Minn. 2004). The supreme court’s “reluctance to scrutinize trial tactics is grounded in the public policy of allowing counsel to have the flexibility to represent a client to the fullest extent.” *Id.* (quotation omitted). In *Opsahl*, the supreme court concluded that a postconviction court did not abuse its discretion for rejecting an ineffective-assistance-of-counsel claim based on counsel’s failure to investigate and challenge evidence because his decisions fell “within the realm of defense strategy,” and the court was “in no position to second-guess counsel’s decision” on trial strategy. *Id.* And, in *Andersen*, the supreme court concluded that a counsel’s failure to investigate, impeach witnesses, and call exculpatory witnesses fell “within trial strategy and therefore is not reviewable.” 830 N.W.2d at 13.

² Although the postconviction court concluded that Edwards’s pro se ineffective-of-counsel claims were “time-barred” because he failed to argue it in his direct appeal in *Edwards I*, this court explicitly reserved the ineffective-assistance-of-counsel claim for review in a postconviction proceeding. *Edwards I*, 2016 WL 2945947, at *10. The state concedes that Edwards’s ineffective-assistance-of-counsel claim was properly before the postconviction court. We therefore conclude that the claim was not time-barred.

Here, at the postconviction hearing, Edwards's trial counsel testified about his strategic decisions regarding investigation, probable cause, challenges to and presentation of certain evidence, and not impeaching some witnesses. Edwards's counsel recounted how he "read through all the discovery; looked at [the] background of the witnesses; looked at the evidence that the State had. We also looked at [Edwards's] medical records. . . . And we went through and looked at the electronic data that was provided by the State." When Edwards asked his trial counsel whether he ever found anything that could be used to defend him, his trial counsel responded, "To be honest . . . a lot of this stuff worked against you," and that the evidence Edwards presented "didn't have a lot of information . . . that would've been beneficial." Edwards's counsel further testified that, based on the information Edwards provided, additional "investigation would not have been anything other than redundant or useless" because "there's also a point where I got to figure out whether or not it makes sense, if it's a good use of time and if there's a relevant purpose behind it, and none of those presented in this case."

Edwards's trial counsel testified that he did not challenge probable cause because he "believe[d] there was probable cause. The issue [wa]s whether or not there was proof beyond a reasonable doubt to convict [Edwards]." He testified that he did not challenge a search warrant because he did "not see[] that there was an issue [with] it," and that his decision not to impeach T.S. "came down to trial strategy on how much of the bell I was going to re-ring after she said she lied about her statement to police. So in terms of impeaching the other witnesses, that came down to a strategy." He further explained that after T.S. stated on the stand that she lied, his strategy was not going to "highlight

something to make . . . the jury, think, ‘Well, why are they objecting to something she just said she lied to you about?’ I wasn’t going to draw what would be unnecessary attention to something she said she already lied about.”

Similar to *Opsahl* and *Andersen*, Edwards’s pro se ineffective-assistance-of-counsel claims challenge his trial counsel’s defense strategy, which the supreme court has “repeatedly stated that [it] generally will not review.” *Opsahl*, 677 N.W.2d at 421. Edwards cites to no law or facts in the record to explain why this court should depart from such an approach; nor does he explain, beyond speculation, about how the outcome of the trial would have been different, but for his trial counsel’s defense strategy. We conclude that the postconviction court did not abuse its discretion by denying relief to Edwards on his pro se claims. *See id.* (affirming postconviction court’s denial of ineffective-assistance-of-counsel claims challenging trial strategy).

Affirmed.