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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0442
A19-0676**

Christian David-Robert Wille, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed February 18, 2020
Affirmed
Worke, Judge**

Ramsey County District Court
File No. 62-CR-15-7793

Christian David-Robert Wille, Moose Lake, Minnesota (pro se appellant)

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

John Choi, Ramsey County Attorney, St. Paul, Minnesota; and

Adam E. Petras, Special Assistant County Attorney, Minneapolis, Minnesota (for
respondent)

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

UNPUBLISHED OPINION

WORKE, Judge

Appellant argues that the district court abused its discretion by denying his petition for postconviction relief and his request for an evidentiary hearing on his ineffective-assistance-of-appellate-counsel claims. He also urges us to remand to the district court for consideration of his civil motions. We affirm.

FACTS

This is appellant Christian David-Robert Wille's second appeal; the underlying facts of Wille's convictions are set forth in his direct appeal. *See State v. Wille*, No. A16-1710, 2017 WL 3585108 (Minn. App. Aug. 21, 2017), *review denied* (Minn. Nov. 14, 2017). In his direct appeal, Wille challenged his two third-degree criminal-sexual-conduct convictions, arguing that the state committed prosecutorial misconduct. Wille also filed a pro se supplemental brief, arguing that the district court erred by failing to properly instruct the jury, the district court erred by imposing consecutive sentences, the evidence was insufficient to sustain his convictions, and his constitutional right to effective assistance of counsel was violated. We affirmed Wille's convictions and sentences, and the Minnesota Supreme Court denied his petition for review.

In January 2019, Wille filed a petition for postconviction relief and a motion to correct an unauthorized sentence in district court, alleging that (1) the district court failed to adequately instruct the jury on an element of the offense; (2) there was insufficient evidence to sustain his convictions; (3) the district court imposed illegal consecutive sentences; (4) the prosecutor committed misconduct; (5) the cumulative effect of the errors

violated his right to a fair trial; (6) he received ineffective assistance of trial counsel; (7) he received ineffective assistance of appellate counsel; and (8) *Knaffla* is unconstitutional.¹

The district court denied Wille's motion to correct his sentence on the merits with prejudice and denied his postconviction petition without prejudice for improper service. After Wille properly refiled and served his petition, the district court held a hearing in March 2019. Following the hearing, the district court denied Wille's postconviction petition. The district court found that Wille was not entitled to relief because this court addressed most of his claims on direct appeal in 2017. The district court also found that an evidentiary hearing on Wille's ineffective-assistance-of-appellate-counsel claim was not required because the facts in the trial record were sufficient to address his claim and he would not be able to demonstrate the required prejudice. This appeal followed.

DECISION

Postconviction relief

Wille argues that he is entitled to postconviction relief. This court reviews a district court's denial of a petition for postconviction relief and request for an evidentiary hearing for an abuse of discretion. *Opsahl v. State*, 677 N.W.2d 414, 422 (Minn. 2004). We will not reverse the district court's postconviction decision unless it "is based on an erroneous view of the law or is against logic and the facts in the record, or [the district court] exercise[d] its discretion in an arbitrary or capricious manner." *Crow v. State*, 923 N.W.2d 2, 9 (Minn. 2019) (quotation omitted).

¹ *State v. Knaffla*, 243 N.W.2d 737 (Minn. 1976).

Wille first argues that his multiple convictions violate Minn. Stat. § 609.04 (2018). He contends that his claims are not procedurally barred, and even if they are, this court should reach them in the interests of justice.

Under *Knaffla*, 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.” 243 N.W.2d at 741. “A claim is not *Knaffla*-barred, however, if (1) the defendant presents a novel legal issue or (2) the interests of justice require the court to consider the claim.” *Buckingham v. State*, 799 N.W.2d 229, 231 (Minn. 2011). To satisfy the novel-legal-issue exception, the claim must be so novel that it would not have been available to the petitioner on direct appeal. *Powers v. State*, 695 N.W.2d 371, 374 (Minn. 2005). The interests-of-justice exception applies only “if fairness requires it and the petitioner did not deliberately and inexcusably fail to raise the claim on direct appeal.” *Perry v. State*, 731 N.W.2d 143, 146 (Minn. 2007). The claim must also have substantive merit. *Anderson v. State*, 811 N.W.2d 632, 634 (Minn. 2012). The postconviction statute also acts as a separate procedural bar, stating that, “[a] petition for postconviction relief after a direct appeal has been completed may not be based on grounds that could have been raised on direct appeal of the conviction or sentence.” Minn. Stat. § 590.01, subd. 1 (2018).²

² We note that our supreme court has not determined whether the two *Knaffla* exceptions remain viable following the 2005 amendments to Minn. Stat. § 590.01. See *Fox v. State*, 913 N.W.2d 429, 433 n.2 (Minn. 2018) (“We have not addressed the impact of the 2005 amendments to Minn. Stat. § 590.01 on *Knaffla* and its exceptions.”).

Based on the aforementioned, we determine that Wille's multiple-convictions claims are procedurally barred by *Knafla* and section 590.01, subdivision 1. On direct appeal, Wille argued that the district court erred by imposing consecutive sentences because the jury found no aggravating factors. We rejected this claim. While it appears that Wille now attempts to raise claims about his convictions and sentence in a manner different than on direct appeal, his sentencing claims were known at the time of his direct appeal but not raised. See *Powers v. State*, 731 N.W.2d 499, 501-02 (Minn. 2007) (affirming denial of postconviction-relief claim raised differently in two postconviction petitions because could have been raised in earlier petition). Further, no *Knafla* exceptions apply to Wille's claims.

Lastly on this issue, Wille argues that "there is no published case law in . . . Minnesota supporting the imposition of consecutive sentences on all or each and every of the victims of a Defendant[] for violating the same section of the same statute, as done in this case." However, this case involved two victims. And when there are multiple victims of crimes committed as part of a single behavioral incident, the district court has discretion to impose multiple and consecutive sentences when doing so will not unfairly exaggerate the criminality of the conduct. See *State v. Cruz-Ramirez*, 771 N.W.2d 497, 512 (Minn. 2009). Assuming that Wille's actions in this case involved a single behavioral incident, the district court acted within its discretion by imposing two consecutive 48-month prison

sentences given that there were multiple victims and it found the sentences would not exaggerate the criminality of Wille's conduct.³

Wille next argues that the district should have granted postconviction relief on his ineffective-assistance-of-counsel claim. This claim, however, is *Knaffla*-barred as it was raised and addressed in Wille's direct appeal, and no exception applies.

Wille also claims that he received ineffective assistance of appellate counsel because of the failure to raise his sentencing claims on direct appeal. Specifically, Wille contends that his appellate counsel failed to raise issues regarding trial counsels' failures to argue that (1) the imposition of consecutive sentences unfairly exaggerated the criminality of his conduct; (2) the imposition of multiple convictions violated section 609.04; (3) his sentence was based on a letter from an unreliable source regarding an alleged Navy incident; and (4) the state cannot show legislative intent to impose multiple convictions and consecutive sentences for the nature of his conduct.

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). 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 that "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, 688, 694, 104 S. Ct. 2052, 2064,

³ For purposes of our analysis, we need not determine whether Wille's actions constituted separate behavioral incidents.

2068 (1984); *see also State v. Rhodes*, 657 N.W.2d 823, 842 (Minn. 2003) (applying *Strickland* to ineffective-assistance-of-counsel claim). 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). If one prong of the *Strickland* test is determinative, this court need not address the other. *Rhodes*, 657 N.W.2d at 842. “When an ineffective assistance of appellate counsel claim is based on appellate counsel’s failure to raise an ineffective assistance of trial counsel claim, the [petitioner] must first show that trial counsel was ineffective.” *Fields v. State*, 733 N.W.2d 465, 468 (Minn. 2007). In addition, appellate counsel need not raise all potential claims on direct appeal or a claim that he legitimately concludes would not prevail. *Arredondo v. State*, 754 N.W.2d 566, 571 (Minn. 2008). Further, when a defendant raises an issue in a pro se supplemental brief, appellate counsel’s failure to raise the same issue is not prejudicial.” *Morrow v. State*, 886 N.W.2d 204, 206-07 (Minn. 2016).

Wille’s appellate counsel was not ineffective. In his pro se supplemental brief on direct appeal, Wille argued that his trial counsel was ineffective for failing to raise any of the issues raised in his direct appeal. This court determined that his ineffective-assistance-of-trial-counsel claim was without merit because Wille was unable to show that any errors prejudiced him by adversely affecting the jury’s verdicts. Therefore, we determine that Wille’s ineffective-assistance-of-appellate-counsel claim is without merit because Wille is unable to show that his trial counsel was ineffective. Further, as Wille raised his ineffective-assistance-of-trial-counsel claim in his pro se supplemental brief on direct

appeal, he is unable to show the required prejudice to prevail on his ineffective-assistance-of-appellate-counsel claim.

In a related claim, Wille argues that the district court should have granted him a postconviction evidentiary hearing on his ineffective-assistance-of-appellate-counsel claim. “To be entitled to an evidentiary hearing on an ineffective-assistance-of-appellate-counsel claim, a defendant must allege facts that, if proven by a fair preponderance of the evidence, would satisfy the two requirements from *Strickland*” *Id.* at 206.

Here, Wille stated that he sought to subpoena his trial and appellate counsel for examination in order to confirm that they did not raise certain issues on appeal and to determine their subjective reasons for their decisions. However, *Strickland* requires a defendant to show that his counsel’s representation fell below an objective standard of reasonableness. *See State v. Nicks*, 831 N.W.2d 493, 504 (Minn. 2013). Because testimony regarding Wille’s counsel’s subjective reasons for their decisions is irrelevant to an ineffective-assistance analysis, we determine that the district court did not abuse its discretion by denying Wille a postconviction evidentiary hearing on his ineffective-assistance-of-appellate-counsel claim.

Civil motions

Finally, Wille makes a separate argument that he should receive a review of his civil motions. In April 2019, Wille moved for a new hearing, new order, and amended findings of fact under several rules of civil procedure. By order of this court, we stated that when Wille filed his notice of appeal, “the district court was divested of jurisdiction to grant relief on [Wille]’s April 23 motions for renewed proceedings.” Therefore, the district court did

not have the ability to rule on Wille's civil motions and there is nothing for us to review as an error-correcting court. *See Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988) ("The function of the court of appeals is limited to identifying errors and then correcting them."). Therefore, we decline to address this argument.

Affirmed.