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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0483**

Prince Lashone Holt, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed September 30, 2019
Affirmed
Larkin, Judge**

Hennepin County District Court
File No. 27-CR-16-27297

Prince Lashone Holt, Bayport, Minnesota (pro se appellant)

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

Michael O. Freeman, Hennepin County Attorney, Jonathan P. Schmidt, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Rodenberg, Presiding Judge; Larkin, Judge; and
Stauber, Judge.*

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

UNPUBLISHED OPINION

LARKIN, Judge

Appellant challenges the postconviction court's summary denial of his petition for relief. Appellant also challenges the district court's denial of his motion to remove the judge assigned to preside over his postconviction proceeding. We affirm.

FACTS

In 2016, respondent State of Minnesota charged appellant Prince Lashone Holt with third-degree controlled-substance sale. At the omnibus hearing, Holt's counsel moved to dismiss the charge for lack of probable cause. Defense counsel informed the district court that the parties had discussed submitting surveillance video and police reports as the factual record for the motion and that "the defense [was] in agreement that the facts alleged in the police reports are stipulated to and can be understood as true for the purposes of [the probable-cause] motion," except for a police report describing the contents of the surveillance video. Soon after informing the district court of the stipulation, defense counsel stated that Holt was no longer comfortable with the stipulation, and Holt informed the district court that he wanted to challenge certain evidence at a hearing. In concluding the omnibus hearing, the district court clarified that "[t]here's . . . no stipulation right now." After the hearing, Holt submitted a written motion to dismiss for lack of probable cause, along with a supporting memorandum stating, "Shortly after the omnibus hearing, the parties agreed to the proposed stipulations."

The district court denied Holt’s motion, noting that the facts on which it relied were “discerned from the two exhibits submitted by the parties: the video of the incident and the documents from law enforcement.”

The case was tried to a jury. Although the surveillance video was admitted as evidence at trial, the police reports that were included in the factual stipulation for the omnibus hearing were not. Holt did not object to the admission of the surveillance video. The jury found Holt guilty as charged. The district court entered judgment of conviction and sentenced Holt to serve 60 months in prison.

Holt appealed his conviction and made the following arguments in his principal brief: (1) the evidence was insufficient to support his conviction, (2) the prosecutor engaged in misconduct by eliciting inadmissible character evidence from a witness, and (3) his trial counsel was ineffective because he conceded guilt on an element of the offense. *State v. Holt*, No. A17-0617, 2018 WL 1997072, at *1 (Minn. App. Apr. 30, 2018), *review denied* (Minn. July 17, 2018). This court rejected those claims. *Id.* at *2-4. Holt made the following arguments in his pro se supplemental brief: (1) the district court violated his due-process rights by denying him a hearing to challenge statements made by the police, (2) the factual stipulation was “forced on [him]” against his wishes, (3) the state’s case was based on fabricated evidence, and (4) the district court judge who presided over the omnibus hearing and trial was biased. This court rejected Holt’s pro se arguments, stating that they “fail[ed] on various legal and factual grounds, and none warrant[ed] a detailed discussion.” *Id.* at *4. This court affirmed Holt’s conviction. *Id.*

In January 2019, Holt petitioned for postconviction relief and set forth the following claims: (1) “the district court failed to honor [his] request . . . for an Evidentiary Hearing” regarding the factual stipulation, (2) “the district court violated [his] 5th [A]mendment privilege against Self-Incrimination” by “unconstitutionally compel[ling] and forc[ing him] to agree to a self incriminating stipulation against his will and enter[ing] the stipulation into evidence without his consent,” (3) “the district court used the Invalid Stipulation as a vehicle to bar [him] from challenging the evidence and receiving the Evidentiary Hearing he requested,” (4) he received ineffective assistance of trial counsel, and (5) he received ineffective assistance of appellate counsel. Holt sought to remove the judge assigned to preside over his postconviction proceeding, arguing that the assigned judge had presided over Holt’s omnibus hearing and trial and was therefore not impartial because she “fail[ed] to adhere to the safeguards of Minn. R. Crim. P. 26.01 requiring personal waiver from [him] of . . . his trial rights” when accepting a factual stipulation.

The chief judge of the district court denied Holt’s request for removal, and the postconviction court summarily denied Holt’s request for relief. The postconviction court reasoned that Holt’s claims regarding the lack of an evidentiary hearing, the factual stipulation, and ineffective assistance of trial counsel were procedurally barred and “fail[ed] to raise a cognizable claim.” The postconviction court also reasoned that Holt’s ineffective-assistance-of-appellate-counsel claim failed on the merits. This appeal follows.

DECISION

I.

Minnesota's postconviction statute provides that

a person convicted of a crime, who claims that: (1) the conviction obtained or the sentence or other disposition made violated the person's rights under the Constitution or laws of the United States or of the state . . . may commence a proceeding to secure relief by filing a petition in the district court in the county in which the conviction was had to vacate and set aside the judgment and to discharge the petitioner or to resentence the petitioner or grant a new trial or correct the sentence or make other disposition as may be appropriate.

Minn. Stat. § 590.01, subd. 1 (2018).

A postconviction court may summarily deny a petition for relief without a hearing if “the petition and the files and records of the proceeding conclusively show that the petitioner is entitled to no relief.” Minn. Stat. § 590.04, subd. 1 (2018). “An evidentiary hearing upon a petition for postconviction relief is not required unless the petitioner alleges such facts which, if proved by a fair preponderance of the evidence, would entitle him or her to the requested relief.” *Roby v. State*, 547 N.W.2d 354, 356 (Minn. 1996). Allegations in a postconviction petition must be “more than argumentative assertions without factual support.” *State v. Caldwell*, 803 N.W.2d 373, 388 (Minn. 2011) (quotation omitted). This court reviews a denial of postconviction relief for an abuse of discretion. *Reed v. State*, 925 N.W.2d 11, 18 (Minn. 2019). In doing so, this court reviews the postconviction court's legal determinations de novo and its factual findings for clear error. *Brown v. State*, 895 N.W.2d 612, 617 (Minn. 2017).

Stipulation-Related Claims

Holt contends that he is entitled to postconviction relief based on errors related to the factual stipulation that followed the omnibus hearing. He argues that the district court failed to obtain a valid waiver of his trial rights under Minn. R. Crim. P. 26.01 before “proceeding to trial on a set of stipulated facts,” that the district court violated his due-process rights by denying him an opportunity to contest the evidence submitted as stipulated, that the district court violated his Fifth Amendment right against compelled self-incrimination by “forcing stipulations of facts,” and that his trial attorney was ineffective because he “stipulate[d] to the facts of the case without first obtaining a valid waiver from [him] in open court.”

The postconviction court determined that Holt’s claims regarding the stipulation were procedurally barred under *State v. Knaffla*, 243 N.W.2d 737, 741 (Minn. 1976). Under *Knaffla*, “where 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; see Minn. Stat. § 590.01, subd. 1 (“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.”). Any claim that was not raised, but should have been known, is also barred by *Knaffla*. *Andersen v. State*, 830 N.W.2d 1, 8 (Minn. 2013). “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).

In Holt’s pro se supplemental brief in his direct appeal, Holt argued that the district court violated his due-process rights by denying him a hearing to challenge statements made by the police and that a factual stipulation was “forced on [him]” against his wishes. We rejected those arguments, stating that we “carefully considered all of the supplemental arguments Holt [had] forwarded” and that “[e]ach argument plainly fail[ed] on various legal and factual grounds, and none warrant[ed] a detailed discussion.” *Holt*, 2018 WL 1997072, at *4.

Because Holt argued, in his direct appeal, that the district court denied him an opportunity to challenge certain information in the factual stipulation and that the stipulation was “forced on him,” those issues are *Knaffla*-barred. See *Knaffla*, 243 N.W.2d at 741. To the extent that Holt’s stipulation-related claims in his postconviction petition were different than the issues raised in his direct appeal, they are nonetheless *Knaffla*-barred because Holt was aware of them, but did not raise them, in his direct appeal. As the postconviction court reasoned, all issues based on the stipulation should have been raised in the direct appeal.

Holt does not argue that his stipulation-related claims fall within either the novel-legal-issue or interests-of-justice exceptions to the *Knaffla* bar. To satisfy the novel-legal-issue exception, “a claim must be so novel that its legal basis was not reasonably available to [the] petitioner at the time the direct appeal was taken.” *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 court correctly determined that neither *Knaffla* exception applies, reasoning that Holt’s petition “largely lacks any factual or legal basis for relief that is comprehensible, let alone a basis that did not exist formerly” and that “[n]ot only has there not been a colorable explanation for why [Holt] did not make [the stipulation-related] claims earlier, but also some of the claims were already denied by the Court of Appeals.”

Ineffective Assistance of Appellate Counsel

Holt contends that his appellate attorney was ineffective because he “ignore[d] the Constitutional core issues of the district court failing to obtain a valid waiver from [him] in accordance with Minn. R. Crim. P. 26.01” before “proceeding to trial on a set of stipulated facts when he was well aware of [those] issue[s].”

A determination whether a defendant received ineffective assistance of counsel involves a mixed question of law and fact that is reviewed de novo. *Dereje v. State*, 837 N.W.2d 714, 721 (Minn. 2013). Appellate courts generally analyze ineffective-assistance-of-counsel claims under *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052 (1984). *Id.* To prevail under *Strickland*, a defendant “must 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. at 688, 694, 104 S. Ct. at 2064, 2068; *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 [an attorney’s] performance

falls within the wide range of ‘reasonable professional assistance.’” *State v. Jones*, 392 N.W.2d 224, 236 (Minn. 1986).

“Appellate counsel is not required to raise all possible claims on direct appeal, and counsel need not raise a claim if [he] could have legitimately concluded that it would not prevail.” *Arredondo v. State*, 754 N.W.2d 566, 571 (Minn. 2008) (quotation omitted). A claim of ineffective assistance of appellate counsel is “properly raised in a first postconviction petition, because the petitioner could not have known of such a claim at the time of direct appeal.” *Zornes v. State*, 880 N.W.2d 363, 370-71 (Minn. 2016).

Holt argues that it was objectively unreasonable for his appellate counsel to “totally ignore[] the omnibus [hearing]” and the stipulation because the district court “stated on the record in the omnibus hearing the stipulation was the reason why [he] couldn’t have any type of evidentiary hearing or ascertain any other issues outside of the stipulations before trial that would promote a fair and expeditious trial.”

It was not objectively unreasonable for Holt’s appellate attorney to focus on the concession of guilt that defense counsel made at trial, instead of the alleged erroneous admission of documents that impacted the district court’s probable-cause determination. Moreover, because Holt challenged the stipulation in his pro se appellate brief and this court rejected his challenge, it is unlikely that the failure to raise such arguments affected the result of Holt’s direct appeal. *Holt*, 2018 WL 1997072, at *2-3. In sum, Holt’s claim of ineffective assistance of appellate counsel fails both the performance and prejudice prongs of *Strickland*, and the postconviction court did not err by rejecting it.

Because the petition, files, and records of the proceeding conclusively show that Holt is not entitled to relief, the postconviction court did not abuse its discretion by denying Holt’s petition for relief without a hearing.¹

II.

Holt contends that the district court erred by denying his motion to remove the judge assigned to preside over his postconviction proceeding. “A judge must not preside at a trial or other proceeding if disqualified under the Code of Judicial Conduct.” Minn. R. Crim. P. 26.03, subd. 14(3). Under the Minnesota Code of Judicial Conduct, a judge is disqualified “in any proceeding in which the judge’s impartiality might reasonably be questioned.” Minn. Code Jud. Conduct Rule 2.11(A). “A judge is disqualified due to an appearance of partiality if a reasonable examiner, with full knowledge of the facts and circumstances, would question the judge’s impartiality.” *State v. Finch*, 865 N.W.2d 696, 703 (Minn. 2015) (quotation omitted).

“A motion to remove for cause is committed to the discretion of the [district] court and [an appellate court] will reverse only for an abuse of that discretion.” *Hooper v. State*, 838 N.W.2d 775, 790 (Minn. 2013) (quotation omitted). We “presume that a judge has discharged her duties properly.” *Hannon v. State*, 752 N.W.2d 518, 522 (Minn. 2008).

¹ In his reply brief, Holt argues, for the first time, that “the district court, prosecutor and the public defender failed to adhere to the criminal procedure along with the standards for determining the admissibility of . . . impeachment evidence.” Issues raised “for the first time in [an] appellant’s reply brief [in a criminal case],” having not been raised in respondent’s brief, are “not proper subject matter for [the] appellant’s reply brief,” and they may be deemed waived. *State v. Yang*, 774 N.W.2d 539, 558 (Minn. 2009). Because Holt raised his impeachment argument for the first time in his reply brief, we do not consider it.

“[B]ias must be proved in light of the record as a whole” and “[p]revious adverse rulings by themselves do not demonstrate judicial bias.” *Id.*

In denying Holt’s removal motion, the chief judge of the Fourth Judicial District reasoned that Holt generally “failed to provide any information substantiating his . . . claim of judicial prejudice.” Holt’s removal motion was based entirely on his belief that the district court erred in accepting the probable-cause stipulation and that the stipulation was adverse to him. Assuming without deciding that the stipulation was adverse to Holt, the district court’s acceptance of it by itself does not demonstrate judicial bias. *See Hannon*, 752 N.W.2d at 522 (“Previous adverse rulings by themselves do not demonstrate judicial bias.”). And Holt does not point to any other evidence of bias. Lastly, in his direct appeal, Holt argued in his pro se supplemental brief that the district court judge who accepted the stipulation was biased. This court rejected that argument on the merits. *Holt*, 2018 WL 1997072, at *4. On this record, the chief judge did not abuse her discretion by denying Holt’s motion to remove the judge assigned to preside over his postconviction proceedings.

Affirmed.