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STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0887

Jonathon Michael Honeycutt, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed January 6, 2020
Affirmed
Segal, Judge

Ramsey County District Court
File No. 62-CR-14-486

Jonathon Michael Honeycutt, Faribault, Minnesota (pro se appellant)

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

John J. Choi, Ramsey County Attorney, Adam E. Petras, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Considered and decided by Florey, Presiding Judge; Johnson, Judge; and Segal, Judge.

U N P U B L I S H E D O P I N I O N

SEGAL, Judge

In this pro se appeal from the district court's order denying his petition for postconviction relief, appellant argues that the postconviction court (1) abused its

discretion when it considered the timeliness of his petition where the state failed to argue timeliness to the district court in its response and (2) erred by denying appellant's request for an evidentiary hearing and by denying his petition, rejecting his arguments of due-process violations. We affirm.

FACTS

In January 2015, appellant Jonathon Michael Honeycutt was convicted of first-degree criminal sexual conduct in violation of Minn. Stat. § 609.342, subd. 1(h)(iii) (2010). Honeycutt was originally given probation, but after multiple appeals was resentenced to the presumptive sentence of 144 months in prison.[1] Honeycutt appealed his conviction in a direct appeal to this court. *State v. Honeycutt*, No. A15-1429, 2016 WL 3222934 (Minn. App. June 13, 2016), *review denied* (Minn. Sept. 20, 2016). In his direct appeal, Honeycutt alleged that the district court abused its discretion in evidentiary rulings, that the prosecutor committed prosecutorial misconduct, and that the cumulative effect of these errors deprived him of a fair trial. *Id*. at *1. This court affirmed his conviction. *Id*. at *4. Honeycutt petitioned the Minnesota Supreme Court for review, which was denied on September 20, 2016.

On October 16, 2018, self-represented Honeycutt petitioned for postconviction relief in district court. The district court accepted this petition but required that he correct

[1] The sentencing issues are not at issue in this appeal. *See State v. Honeycutt*, No. A15-1456 (Minn. App. Jan. 25, 2016), *review denied* (Minn. Apr. 19, 2016); No. A16-1665 (Minn. App. Feb. 21, 2017) (order op.), *review denied* (Minn. May 16, 2017); No. A17-1599 (Minn. App. Apr. 24, 2018) (order op.), *review denied* (Minn. July 17, 2018), for the appellate history on those issues.

errors in the petition. After two additional attempts, Honeycutt filed a third amended petition, within the statutory deadline, that met the filing requirements. Honeycutt submitted a legal memorandum in support of the petition after the statutory deadline for filing the petition had passed. In his petition for postconviction relief, Honeycutt alleged: (1) ineffective assistance of trial counsel, (2) prosecutorial misconduct, and (3) ineffective assistance of appellate counsel. The state alleged that Honeycutt forfeited his claims by failing to file any legal arguments or citations when he filed his petition.

The postconviction court summarily denied the petition without a hearing and, while noting that the petition may be time-barred, decided the issues on the merits. It held that Honeycutt's ineffective-assistance-of-trial-counsel claims and his prosecutorial-misconduct claims were *Knaffla*-barred. Additionally, the court held his allegations of ineffective assistance of appellate counsel, even if true, did not demonstrate unreasonable conduct, and he failed to allege anything that would have affected the outcome of his direct appeal. Honeycutt appeals.

D E C I S I O N

This court reviews the denial of postconviction relief for an abuse of discretion. *Andersen v. State*, 913 N.W.2d 417, 422 (Minn. 2018). "Under this standard of review, a matter will not be reversed 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." *Reed v. State*, 793 N.W.2d 725, 729 (Minn. 2010). We review issues of law de novo. *Butala v. State*, 664 N.W.2d 333, 338 (Minn. 2003).

I. The postconviction court did not abuse its discretion when it considered the timeliness of Honeycutt's petition.

Honeycutt alleges that the postconviction court abused its discretion by considering, sua sponte, the timeliness of his petition when the state failed to challenge timeliness in its response. Here, however, the postconviction court did not rule on the question of timeliness, but merely stated that the petition *may* be time-barred and then proceeded to rule on the merits of the petition. Moreover, a district court may, on its own motion, consider the timeliness of a postconviction petition even when the state fails to raise the issue. *Weitzel v. State*, 883 N.W.2d 553, 560 (Minn. 2016).

The state acknowledges that Honeycutt's third amended petition was submitted within the statutory time limit. However, the state claims that because appellant failed to provide any legal authority or citations to support his petition until after the statutory deadline for filing the petition, appellant has forfeited all of his postconviction claims. A petition for postconviction relief, in relevant part, shall contain

> a statement of the facts and the grounds upon which the petition is based and the relief desired. All grounds for relief must be stated in the petition or any amendment thereof unless they could not reasonably have been set forth therein. It shall not contain argument or citation of authorities.

Minn. Stat. § 590.02, subd. 1(1) (2018).

Honeycutt's petition contained all of the statutorily required elements. As noted in the statute, petitioner is not required to include legal arguments as part of the petition. In fact, the statute expressly directs that petitions shall not contain legal argument or citations. *Id*. Additionally, since the state did not raise the issue of timeliness in front of the

postconviction court, this issue has been waived. *See Carlton v. State*, 816 N.W.2d 590, 601-02 (Minn. 2012) (holding that the statute of limitations in Minn. Stat. § 590.01 is not jurisdictional and thus is waivable by the state). Therefore, the postconviction court did not abuse its discretion and the state cannot raise the issue on appeal.

II. The postconviction court did not err when it denied Honeycutt's request for an evidentiary hearing and denied his petition for postconviction relief.

The postconviction court denied Honeycutt's request for an evidentiary hearing and determined that his ineffective-assistance-of-trial-counsel claims and his prosecutorial-misconduct claims were *Knaffla*-barred. Additionally, the court denied a hearing on his ineffective-assistance-of-appellate-counsel claims, concluding that they would not be successful.

"We review the ultimate decision by the postconviction court to grant or deny an evidentiary hearing for an abuse of discretion." *Caldwell v. State*, 853 N.W.2d 766, 770 (Minn. 2014). A court must hold an evidentiary hearing on a postconviction petition "[u]nless 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). When determining if an evidentiary hearing is required, a postconviction court "considers the facts alleged in the petition as true and construes them in the light most favorable to the petitioner." *Andersen*, 913 N.W.2d at 422-23 (quotation omitted).

A. *Knaffla*-barred claims.

"Claims that were raised on direct appeal, or were known or should have been known but were not raised on direct appeal, are procedurally barred." *Sontoya v. State*,

829 N.W.2d 602, 604 (Minn. 2013) (citing *State v. Knaffla*, 243 N.W.2d 737, 741 (Minn. 1976)); *see also* Minn. Stat. § 590.01, subd. 1 (2018) ("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."). A claim is not *Knaffla*-barred, however, if "(1) the claim is novel; or (2) the interests of fairness and justice warrant relief." *Sontoya*, 829 N.W.2d at 604.

In his direct appeal, Honeycutt brought claims regarding evidentiary rulings and prosecutorial misconduct. He alleged that the "cumulative effect" of these errors deprived him of a fair trial. *Honeycutt*, 2016 WL 3222934, at *1.

In his petition for postconviction relief, Honeycutt raises 15 claims of ineffective assistance of trial counsel including trial strategy, investigation, and filing of motions. All of his 15 claims regarding ineffective assistance of trial counsel were known or should have been known at the time of his direct appeal. Therefore they are *Knaffla*-barred.

Honeycutt also argues that he should have received an evidentiary hearing due to prosecutorial misconduct at his trial that denied him his due-process rights. He claims this occurred when the state (1) used "evidence that they knew or should have known was fabricated to secure the conviction," (2) presented "witness[es] that they knew or should have known would produce perjured testimony," and (3) "fail[ed] to correct false testimony." In his direct appeal, Honeycutt raised issues of prosecutorial misconduct and this court held that Honeycutt failed to demonstrate that prosecutorial misconduct occurred. *Id.* at *3-4. Here, all of Honeycutt's postconviction claims regarding prosecutorial

misconduct were either presented in his direct appeal, or should have been known at that time. Therefore, his prosecutorial misconduct claims are also *Knaffla*-barred.

Because Honeycutt's ineffective-assistance-of-trial-counsel and prosecutorial-misconduct claims are *Knaffla*-barred, the postconviction court did not err when it denied the petition without an evidentiary hearing on these issues.

B. Ineffective-assistance-of-appellate-counsel claims.

Honeycutt also argues that he received ineffective assistance of appellate counsel and that the postconviction court erred when it denied him an evidentiary hearing on this claim. "To establish ineffective assistance of appellate counsel a petitioner must demonstrate that appellate counsel's performance was objectively unreasonable and that the unreasonable performance prejudiced him." *McDonough v. State*, 675 N.W.2d 53, 56 (Minn. 2004); *see also Strickland*, 466 U.S. at 691-92, 104 S. Ct. at 2066-67.

Honeycutt claims he received ineffective assistance of appellate counsel due to appellate counsel's strategy, including the choice of issues to pursue on appeal and failure to reply to the state's response brief. He also claims his appellate counsel "fail[ed] to pursue valid due process claim[s]" and instead argued admissibility of the evidence and that the state improperly vouched for a witness.

All of Honeycutt's ineffective-assistance-of-appellate-counsel claims involve his counsel's strategy on appeal. "Appellate counsel does not have a duty to raise all possible issues, and may choose to present only the most meritorious claims on appeal." *Morrow v. State*, 886 N.W.2d 204, 206 (Minn. 2016). The analysis in an ineffective-assistance-of-appellate-counsel claim focuses on whether the representation provided by counsel was

reasonable in light of the circumstances. *Id.* It does not focus on whether the attorney raised all of the claims that the appellant wanted counsel to raise. *See id.* Additionally, there is a strong presumption that appellate counsel's judgment about which issues to raise "falls within the wide range of reasonable professional assistance." *Fields v. State*, 733 N.W.2d 465, 468 (Minn. 2007) (quotations omitted).

Because these claims rest entirely within the scope of strategy, and Honeycutt has not presented any evidence why these choices were unreasonable or prejudicial, the district court did not err by denying the request for an evidentiary hearing and, ultimately, denying the petition.

Affirmed.