

STATE OF MINNESOTA

IN SUPREME COURT

A19-1229

Dakota County

Anderson, J.

Took no part, Moore, J.

Shavelle Oscar Chavez-Nelson,

Appellant,

vs.

Filed: September 16, 2020

Office of Appellate Courts

State of Minnesota,

Respondent.

Shavelle Oscar Chavez-Nelson, Oak Park Heights, Minnesota, pro se.

Keith Ellison, Attorney General, Saint Paul, Minnesota; and

James C. Backstrom, Dakota County Attorney, Kathryn M. Keena, Chief Deputy County Attorney, Hastings, Minnesota, for respondent.

S Y L L A B U S

The district court did not abuse its discretion by denying appellant's petition for postconviction relief without an evidentiary hearing because, even if the facts alleged in the petition were proven by a preponderance of the evidence, appellant is conclusively entitled to no relief.

Affirmed.

Considered and decided by the court without oral argument.

OPINION

ANDERSON, Justice.

A Dakota County jury found appellant Shavelle Chavez-Nelson guilty of first-degree premeditated murder and second-degree intentional murder for the shooting death of Palagor Obang Jobi. The district court convicted Chavez-Nelson of first-degree premeditated murder and sentenced him to life imprisonment without the possibility of release. On direct appeal, we affirmed his conviction. On July 2, 2018, Chavez-Nelson filed a petition for postconviction relief, alleging that, based on the affidavits filed in support of the petition, both his trial counsel and his appellate counsel were ineffective. The district court denied the petition without holding an evidentiary hearing. Based on our review of the record, even if the facts alleged in the petition were proven by a preponderance of the evidence, Chavez-Nelson is conclusively entitled to no relief and, therefore, we affirm.

FACTS

Around 2 a.m. on September 22, 2013, Chavez-Nelson argued with Jobi outside Nina's Bar and Grill in Burnsville. During the argument, Jobi punched Chavez-Nelson in the face, causing Chavez-Nelson to spin away from Jobi. Chavez-Nelson regained his balance near the driver's side headlight of a parked SUV. As R.C. remotely unlocked the SUV and the headlights illuminated, she saw Chavez-Nelson pull out a gun. Jobi tried to use the SUV as cover, but when he reached the rear driver's side of the SUV, he was fatally shot.

When the police arrived, they found Jobi lying face down on the pavement near the rear driver's side of R.C.'s SUV in a pool of blood. Jobi was declared dead at the scene. Crime-scene investigators determined that at least nine shots were fired. One bullet and one bullet fragment were located on the parking lot pavement directly under Jobi's head. One crime-scene investigator also identified four impact points from the bullets in the pavement under Jobi's head.

Following an autopsy, the medical examiner determined that Jobi had suffered eight gunshot wounds that were the cause of death. Two of the gunshot wounds, one to the hip and one to the forehead, were front entry wounds. The medical examiner found six other wounds on the back of Jobi's body. Four of the back entry wounds were consistent with a "shored wound," meaning Jobi's body was in direct contact with the pavement when the bullets passed through his body.

Chavez-Nelson was subsequently arrested. A search of the area near where Chavez-Nelson was arrested revealed a 9mm pistol. Testing of the pistol by the Minnesota Bureau of Criminal Apprehension (BCA) lab determined that all nine of the cartridge casings recovered from the scene of Jobi's shooting came from the pistol recovered at the scene of Chavez-Nelson's arrest. Swabs taken from various parts of the pistol revealed DNA that matched the DNA profiles of Chavez-Nelson and Jobi.

A Dakota County grand jury indicted Chavez-Nelson for first-degree premeditated murder, *see* Minn. Stat. § 609.185(a)(1) (2018), and second-degree intentional murder, *see* Minn. Stat. § 609.19, subd. 1(1) (2018). Chavez-Nelson pleaded not guilty and demanded a jury trial.

Four days before trial, Chavez-Nelson fired his court-appointed attorneys, citing disagreements in trial strategy, the decision of his attorneys not to hire an expert, and his perception that his attorneys were hostile toward him. The district court denied Chavez-Nelson's request for a continuance and appointed different attorneys as advisory counsel for trial. During jury selection, Chavez-Nelson asked the court to allow advisory counsel to assume full representation. The court denied the request. After the jury was selected, Chavez-Nelson asked that his original attorneys be reappointed, and his request was granted.

The State presented evidence that was consistent with the facts discussed above. In addition, R.C. testified that, after Jobi ran to the rear of the SUV, she felt the SUV shake and believed that the two men were struggling near the driver's side of her vehicle. R.C. then heard several shots and saw Jobi fall to the ground. Where Chavez-Nelson was standing when he fired the shot that entered Jobi's forehead was disputed at trial. According to the State, Chavez-Nelson was still standing on the sidewalk when the shot was fired. By contrast, Chavez-Nelson argued that he was struggling with Jobi near the rear of the SUV when the shot was fired. The medical examiner testified that the shored wounds were consistent with a scenario in which Chavez-Nelson stood over Jobi's body when firing the six shots that produced the back entry wounds. But the medical examiner conceded that he could not be certain that Jobi was on the ground when the back entry wounds were inflicted. The jury found Chavez-Nelson guilty of all counts, and Chavez-Nelson was sentenced to life in prison without the possibility of release for the first-degree murder conviction.

On direct appeal, Chavez-Nelson raised a number of claims. In a brief submitted by his appellate counsel, Chavez-Nelson argued that he was denied his Sixth Amendment right to counsel when the district court denied Chavez-Nelson’s request to have advisory counsel assume full representation; that the district court made three evidentiary errors that, either individually or cumulatively, deprived him of a fair trial; and that the district court committed reversible error by declining to instruct the jury on the lesser-included offense of first-degree heat-of-passion manslaughter. *State v. Chavez-Nelson*, 882 N.W.2d 579, 584 (Minn. 2016). Chavez-Nelson also raised a variety of other claims in a pro se supplemental brief. *Id.* Relevant here, Chavez-Nelson argued that his trial counsel was ineffective because counsel failed to call a purportedly necessary crime scene reconstruction expert, Dr. Nematollahi, and because trial counsel did not argue self-defense due to a lack of “understanding the law concerning self-defense.” We concluded that Chavez-Nelson’s claims raised by his appellate counsel and in his pro se supplemental brief were without merit, and we affirmed the conviction. *Id.* at 592.

Chavez-Nelson subsequently filed a motion for discovery and a petition for postconviction relief, alleging that trial counsel was ineffective when counsel failed to investigate and failed to make trial objections.¹ As to his failure-to-investigate claims, Chavez-Nelson alleged that trial counsel failed to (1) obtain a ballistics expert, (2) visit the crime scene, (3) interview eyewitness R.C., and (4) retain or consult with a use-of-force

¹ The discovery motion sought documents from his trial attorneys as well as tangible items—the murder weapon, the bullet, and the bullet fragments—recovered from the crime scene.

expert. As to his objection claims, Chavez-Nelson alleged that trial counsel failed to (1) object to prejudicial evidence offered by the prosecutor, (2) object to the prosecutor's improper closing argument, and (3) present an opening statement that supported a reasonable self-defense theory.

Chavez-Nelson also argued that appellate counsel was ineffective for failing to raise on direct appeal the above-described claims of ineffective assistance of trial counsel. In addition, he argued that appellate counsel was ineffective when he advised Chavez-Nelson that the claims of ineffective assistance of trial counsel could not be raised on direct appeal and that such claims could be raised in a subsequent postconviction petition.

In support of his postconviction petition, Chavez-Nelson attached the affidavit of Deborah Collier, who investigated the scene at Nina's, and photographs taken by Collier. In the affidavit, Collier described how she took measurements of the scene outside Nina's and attempted to recreate the events leading up to Jobi's death. Based on her measurements and her review of police photographs in Chavez-Nelson's case file, Collier alleged that the length of R.C.'s SUV was 16 feet and that the distance from the sidewalk where Chavez-Nelson was seen standing by R.C. to the back of the SUV was 20 feet, 3 inches. She also alleged that the distance from the sidewalk to where Jobi's body was found was 15 feet, 3 inches. Collier's affidavit did not include information regarding the accuracy of her methodology, nor did she describe her experience or expertise.

Chavez-Nelson also submitted his own affidavits in support of his petition for postconviction relief. In his affidavits, Chavez-Nelson described the importance of Collier's affidavit, the conversations that he had with first trial counsel, and later appellate

counsel, regarding the trial decision not to hire a crime scene investigator, and counsel's hostility toward Chavez-Nelson.

To support his claim of ineffective assistance of trial counsel, Chavez-Nelson submitted an affidavit alleging the following facts. While meeting with counsel before trial, counsel asked Chavez-Nelson to explain what happened, and Chavez-Nelson drew the parking lot area at Nina's Bar and Grill to show counsel where he and Jobi were during the moments leading up to the shooting. Trial counsel also brought crime scene photos, and Chavez-Nelson pointed out his relative locations in the photos. Chavez-Nelson asked counsel whether counsel would interview any witnesses or conduct an investigation, and counsel told him that she would "speak to the Medical Examiner and BCA in the Jobi case, but would otherwise rely exclusively on the investigative work of the S[tate] and limit their investigation to review of the S[tate]'s files in regards to the crime scene and eyewitness accounts."

To support his claim of ineffective assistance of appellate counsel, Chavez-Nelson attached a letter from his appellate counsel. In that letter, counsel stated that he would not challenge the decisions of trial counsel on the use-of-force and self-defense issues on appeal. Chavez-Nelson also submitted an affidavit in which he attested that he explained to his appellate counsel that his trial counsel neither visited the crime scene nor retained a use-of-force expert, and that his trial counsel failed to interview any eyewitnesses to the shootings or call R.C. as a witness. Chavez-Nelson's affidavit also stated that he was told by appellate counsel that, on direct appeal, Chavez-Nelson could not hire an investigator to visit the crime scene to take measurements or hire other experts because that evidence

was outside of the record. Chavez-Nelson's appellate attorney also told him that Chavez-Nelson could hire experts and could raise issues in a postconviction proceeding after the direct appeal.²

The district court summarily denied Chavez-Nelson's claims of ineffective assistance of both trial counsel and appellate counsel, and did so without first holding an evidentiary hearing. In its order, the court explained that Chavez-Nelson failed to alleged facts that, if proven by a fair preponderance of the evidence, would entitle him to postconviction relief. More specifically, the court found that Chavez-Nelson's claims of ineffective assistance of trial counsel were either procedurally barred or unreviewable strategic decisions, appellate counsel's decisions to raise issues on direct appeal were matters of strategy, several of Chavez-Nelson's claims had been brought in his pro se supplemental briefing and therefore were barred, and that Collier's affidavit had no evidentiary value.

² Chavez-Nelson also submitted an affidavit in support of his discovery request, alleging that ballistics testing was necessary and would show that Jobi's wounds could not have been caused by a gunshot made from the distance of 15 to 20 feet (which is the distance from where he alleged he stood on the sidewalk to where Jobi's body lay on the ground). He also alleged that this testing was necessary to argue the prejudice he suffered by the ineffective assistance of trial counsel.

ANALYSIS

Chavez-Nelson argues that the district court committed reversible error when it summarily denied his claims of ineffective assistance of both trial counsel and appellate counsel without first holding an evidentiary hearing.³ We disagree.

We review the “denial of a petition for postconviction relief, as well as a request for an evidentiary hearing, for an abuse of discretion.” *Morrow v. State*, 886 N.W.2d 204, 206 (Minn. 2016) (quoting *Riley v. State*, 819 N.W.2d 162, 167 (Minn. 2012)) (internal quotation marks omitted). A district court need not hold an evidentiary hearing when the petitioner alleges facts that, even if true, are legally insufficient to entitle him to the requested relief. *Spann v. State*, 740 N.W.2d 570, 572 (Minn. 2007). Accordingly, a district court may summarily deny a postconviction petition that is procedurally barred by the rule announced in *State v. Knaffla*, 243 N.W.2d 737, 741 (Minn. 1976). *Ouk v. State*, 884 N.W.2d 392, 394 (Minn. 2016).

To be entitled to an evidentiary hearing on an ineffective-assistance-of-counsel claim, an appellant must “allege facts that, if proven by a fair preponderance of the evidence,” would satisfy the two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668, 687 (1984). *Bobo v. State*, 820 N.W.2d 511, 516 (Minn. 2012). Under the first *Strickland* prong, an appellant must prove that his counsel’s representation “fell below an

³ Chavez-Nelson also argues that the district court abused its discretion by denying his discovery motion. The district court denied the motion, stating that it needed no additional evidence outside of the trial record to determine whether Chavez-Nelson’s trial counsel was ineffective because counsel’s decision was a strategic choice. Because the reasoning of the district court is sound, we conclude that the district court did not abuse its discretion.

objective standard of reasonableness.” *Id.* (citations omitted) (internal quotation marks omitted). And under the second prong, an appellant must show “ ‘there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.’ ” *Id.* (quoting *Strickland*, 466 U.S. at 694). Generally, we will not review an ineffective-assistance-of-counsel claim when the attorney’s conduct in question is based on trial strategy. *State v. Vang*, 847 N.W.2d 248, 267 (Minn. 2014). Trial strategy includes the extent of counsel’s investigation and the selection of evidence presented to the jury. *Id.* Similarly, “[a]ppellate counsel does not have a duty to raise all possible issues, and may choose to present only the most meritorious claims on appeal.” *Morrow*, 886 N.W.2d at 206. When a defendant raises an issue in a pro se supplemental brief, “counsel’s failure to raise the same issue in the principal brief or at oral argument is not prejudicial.” *Id.* at 206–07. We need not analyze both requirements of *Strickland* when either one is determinative. *Vang*, 847 N.W.2d at 266.

We begin our analysis by considering the facts that Chavez-Nelson alleged in support of the claim that his trial counsel was ineffective when counsel failed to investigate the crime scene. Chavez-Nelson personally alleged that, when he asked trial counsel if counsel would interview any witnesses or conduct an investigation, counsel told him that she would “speak to the Medical Examiner and BCA in the Jobi case, but would otherwise rely exclusively on the investigative work of the [S]tate and limit their investigation to review of the [S]tate’s files in regards to the crime scene” Deborah Collier alleged in her affidavit that the SUV was about 16 feet long and that the distance from the sidewalk to Jobi’s body was between 15 and 20 feet. Chavez-Nelson further alleged that his

appellate counsel advised him that he was unable to raise the ineffective-assistance-of-counsel claim on direct appeal because it required evidence outside of the record, and advised Chavez-Nelson to bring this claim on a subsequent postconviction petition.

Even if the alleged facts were proven by a preponderance of the evidence, they fail to satisfy the second requirement of *Strickland*. The measurement information obtained by Collier indicates that the distance from the sidewalk to the back of the SUV was around 16 feet. According to Chavez-Nelson, when combined with the gunshot stippling evidence that suggested the forehead shot was fired from no more than “several feet,” the 16-foot measurement undermines the State’s theory that Chavez-Nelson shot Jobi from the sidewalk. Although this is true, it does not establish a reasonable probability that the outcome of the trial would have been different had trial counsel presented such testimony to the jury. The precise length of the SUV was not critical in this case because the jury had access to the photograph of the SUV and could judge for itself the relevant distances. Therefore, Chavez-Nelson’s additional measurements are cumulative and do not support the claim for relief here. Further, on direct appeal, we assumed that Jobi sustained all of the gunshot wounds during the scuffle behind the SUV and concluded that there was no reversible error. *See Chavez-Nelson*, 882 N.W.2d at 582–83, 591. For the above-stated reasons, we conclude that the district court did not abuse its discretion by summarily

denying the claim of ineffective assistance of trial counsel that was based on the failure of the attorneys for Chavez-Nelson to visit the crime scene.⁴

We next consider the facts that Chavez-Nelson alleged in support of the claim that his trial counsel was ineffective when counsel failed to (1) elicit favorable testimony from a witness; (2) retain certain experts; (3) make certain objections during trial; and (4) present a theory of self-defense. Chavez-Nelson personally alleged that, while counsel also brought crime scene photos, counsel told him that counsel would not interview any witnesses or conduct an investigation and would rely on the State's evidence to form their defense. Chavez-Nelson alleged that he believed that if R.C. had been asked by trial counsel during cross-examination or called as a defense witness, she would have further testified about the struggle that she observed between Chavez-Nelson and Jobi.

Even if the alleged facts were proven by a preponderance of the evidence, Chavez-Nelson's claims are barred under the rule adopted in *State v. Knaffla*, 243 N.W.2d (Minn. 1976). Under the *Knaffla* rule, claims that were raised on direct appeal are procedurally barred on a postconviction appeal. *Buckingham v. State*, 799 N.W.2d 229, 231–32 (Minn.

⁴ In its order, the district court found that, because Ms. Collier is an unknown person and was not subject to qualification or cross-examination as a witness, the information she provided in her affidavit did not hold evidentiary value at this stage of the proceeding. On appeal, Chavez-Nelson argues that the district court committed reversible error because the above-quoted statement demonstrates that the district court improperly assessed Collier's credibility without holding an evidentiary hearing. Because Chavez-Nelson is conclusively entitled to no relief, even when the facts alleged in Collier's affidavit are assumed to be true, we need not decide whether the above-quoted statement reflects an improper credibility determination. Nevertheless, we reaffirm that a district court may not find a postconviction affiant unreliable without first holding an evidentiary hearing to assess the affiant's credibility. See, e.g., *Wilson v. State*, 726 N.W.2d 103, 107 (Minn. 2007) (stating that evidentiary hearings provide the means for evaluating credibility).

2011) (explaining that the first two allegations of error are undoubtedly *Knaffla*-barred because we expressly considered and rejected identical arguments on direct appeal). The *Knaffla* rule also “includes all claims that the appellant should have known of at the time of appeal.” *McKenzie v. State*, 687 N.W.2d 902, 905 (Minn. 2004). For claims that were not raised on direct appeal, two exceptions to the *Knaffla* rule exist: (1) a novel legal issue is presented that was unavailable at the time of the direct appeal; or (2) the interest of justice requires review. *Id.* at 905–06. Petitions allowed under the second exception must have substantive merit and must be asserted without deliberate or inexcusable delay. *Wright v. State*, 765 N.W.2d 85, 90 (Minn. 2009).

The trial record and the facts alleged in Chavez-Nelson’s affidavits demonstrate that he knew (1) that his trial counsel had neither called R.C. as a witness nor elicited the additional testimony of Chavez-Nelson’s and Jobi’s struggle for a gun behind her SUV; (2) that trial counsel had secured neither a ballistics nor a use-of-force expert; (3) that trial counsel failed to object to the introduction of his lineup photo at trial and the prosecutor’s remarks during closing argument; and (4) the substance of trial counsel’s statements during closing arguments. These claims, therefore, are *Knaffla* barred. Moreover, the alleged facts, even if proven by a preponderance of the evidence, fail to establish the existence of a novel legal issue or an excusable delay. For these reasons, we conclude that the district court did not abuse its discretion by summarily denying Chavez-Nelson’s claim that trial counsel was ineffective by failing to elicit favorable testimony from a witness, retain certain experts, make certain objections during trial, and present a theory of self-defense.

Next, we consider the facts that Chavez-Nelson alleged in support of his claim that appellate counsel was ineffective when he failed to raise certain arguments on direct appeal and when he told Chavez-Nelson not to raise certain claims in his direct appeal. Chavez-Nelson personally alleged the following facts. Appellate counsel told Chavez-Nelson that several of his claims of ineffective assistance of trial counsel could not be raised on direct appeal because the reason why trial counsel may or may not have done something was not part of the record on appeal. Appellate counsel also told Chavez-Nelson that he could not hire an investigator to visit the crime scene to take the measurements or hire a ballistics expert to have the gunshot-distance-determination tests performed on direct appeal or consult a use-of-force expert because those issues were not pursued during a direct appeal. Instead, appellate counsel told Chavez-Nelson that his claims of ineffective assistance of trial counsel concerning lack of investigation and failures in trial counsel's opening statement could be raised in a postconviction proceeding after the direct appeal.

Even if the alleged facts were proven by a preponderance of the evidence, Chavez-Nelson is conclusively entitled to no relief because the failure to raise the arguments in question does not, by itself, satisfy the first requirement of *Strickland*. See *Morrow*, 886 N.W.2d at 206 (explaining that appellate counsel does not have a duty to raise all possible issues and may choose to present only the most meritorious claims on appeal). Instead, a defendant must establish that appellate counsel improperly concluded that waived or unraised arguments would be unsuccessful on appeal. See *Zornes v. State*, 880 N.W.2d 363, 371 (Minn. 2016) ("Appellate counsel does not act unreasonably by not raising issues that he or she could have legitimately concluded would not prevail.").

Because Chavez-Nelson failed to allege such facts, he is conclusively entitled to no relief on his claim that appellate counsel failed to exercise reasonable professional judgment in selecting the issues to raise on appeal.⁵ For the above stated reasons, we conclude that the district court did not abuse its discretion by summarily denying Chavez-Nelson's claim that appellate counsel was ineffective by failing to raise certain claims on direct appeal.

Finally, we consider the facts Chavez-Nelson alleged in support of his claim that appellate counsel was ineffective when he told Chavez-Nelson not to raise certain claims in his direct appeal. Chavez-Nelson personally alleged that appellate counsel told Chavez-Nelson that his claims of ineffective assistance of trial counsel concerning the lack of investigation and the failures in trial counsel's opening statement could be raised in a

⁵ As for Chavez-Nelson's argument that his appellate counsel was ineffective when counsel failed to argue on direct appeal that he was entitled to lesser-included-offense jury instructions, on direct appeal we held that the jury instruction issue was without merit. *Chavez-Nelson*, 882 N.W.2d at 592. Therefore, appellate counsel was not ineffective. As to the equal protection argument, we hold Chavez-Nelson's argument also to be without merit. Chavez-Nelson cites *State v. Galvan*, 912 N.W.2d 663 (Minn. 2018), for the assertion that he is entitled to relief. In *Galvan*, we clarified "the long-established, uncontroversial proposition that premeditation and heat of passion cannot coexist." *Id.* at 674. The effect of the holding was to overrule inconsistent language in *State v. Auchampach*, 540 N.W.2d 808, 814–18 (Minn. 1995), and *State v. Quick*, 659 N.W.2d 701, 711 (Minn. 2003). Chavez-Nelson asserts that because *Auchampach* and *Quick* were good law at the time of his conviction and at the time of his direct appeal, his equal protection rights were violated when we did not grant relief on direct appeal under the existing case law. We disagree. On direct appeal, we found that Chavez-Nelson's case was analogous to *Cooper v. State*, 745 N.W.2d 188, 194 (Minn. 2008), which was consistent with our case law then and now. If Chavez-Nelson disagreed with our holding, his remedy was a direct appeal to the Supreme Court of the United States. The district court did not err by denying postconviction relief on this basis.

postconviction proceeding after direct appeal and advised him not to bring those claims on direct appeal.

Even if the alleged facts were proven by a preponderance of the evidence, Chavez-Nelson is conclusively entitled to no relief because the unraised claims would have been unavailing for the reasons outlined above.⁶

CONCLUSION

For the foregoing reasons, we affirm the decision of the district court.

Affirmed.

MOORE, J., not having been a member of this court at the time of submission, took no part in the consideration or decision of this case.

⁶ Chavez-Nelson's remaining claims of ineffective assistance of appellate counsel are that trial counsel was ineffective when counsel failed to (1) elicit favorable testimony from a witness, (2) retain necessary experts, (3) object to closing remarks made by the prosecutor, and (4) present a theory of self-defense. The third and fourth claims brought by Chavez-Nelson in a supplemental petition in his direct appeal are barred by *Knaffla*. See *Chavez-Nelson*, 882 N.W.2d at 592. The first and second claims are unreviewable trial strategy. See *Andersen v. State*, 830 N.W.2d 1, 10 (Minn. 2013).