

*This opinion will be unpublished and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
A19-1279**

Antonio Xavier Daniels, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed May 4, 2020
Affirmed in part, reversed in part, and remanded
Slieter, Judge**

Hennepin County District Court
File No. 27-CR-13-27736

Antonio Daniels, Bayport, Minnesota (*pro se* appellant)

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

Michael O. Freeman, Hennepin County Attorney, Jordan W. Rude, Assistant County
Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Rodenberg, Presiding Judge; Smith, Tracy M., Judge;
and Slieter, Judge.

UNPUBLISHED OPINION

SLIETER, Judge

Appellant Antonio Xavier Daniels appeals from the district court's denial of his second petition for postconviction relief, arguing that: (1) the district court erroneously concluded that his claims were procedurally barred and time-barred; and (2) his counsel

for his first petition for postconviction relief was ineffective. Based on the merits of Daniels's claims, the record supports the district court's conclusion that Daniels is not entitled to relief. However, based on our review of the record, we must reverse and remand to correct the sentencing order which shows that Daniels was improperly convicted and sentenced on two offenses when one was a lesser-included offense of the other.

FACTS

On August 26, 2013, the state charged Daniels with second-degree murder, in violation of Minn. Stat. § 609.19, subd. 1(1) (2012), following a shooting death at a Days Inn parking lot in Brooklyn Center. The matter proceeded to a ten-day jury trial. The jury found Daniels not guilty of the charged offense, but it found Daniels guilty of—and the district court convicted him of—two lesser-included offenses, second-degree felony murder, in violation of Minn. Stat. § 609.19, subd. 2(1) (2012), and second-degree manslaughter, in violation of Minn. Stat. § 609.205(1) (2012).

This court provided a detailed recitation of the evidence provided at Daniels's trial in his first postconviction appeal. *See Daniels v. State*, No. A17-0623, 2018 WL 817286, at *1-3 (Minn. App. Feb. 12, 2018), *review denied* (Minn. Apr. 25, 2018) (*Daniels II*). The key facts relevant to this appeal are that the district court instructed the jury, in addition to the charged offense, on two lesser-included offenses: second-degree manslaughter which was requested by Daniels, and second-degree felony murder as requested by the state. *Id.* at *3. The district court also instructed the jury on self-defense based on the standard instruction for self-defense – justifiable taking of life, which was requested by Daniels. *Id.*

The jury found Daniels not guilty of the second-degree murder charge and guilty of the second-degree felony murder and second-degree manslaughter charges. *Id.*

On June 30, 2015, the district court sentenced Daniels for second-degree felony murder to a 180-month prison sentence with 676 days of credit and entered a conviction on the second-degree manslaughter charge, noting “[s]entence combined with” the other count. Daniels filed a timely direct appeal from his conviction. On November 6, 2015, Daniels voluntarily dismissed his direct appeal. *See State v. Daniels*, No. A15-1573 (Minn. App. Nov. 9, 2015) (order) (*Daniels I*).

In 2016, Daniels, with the assistance of counsel, filed for postconviction relief before the district court. The district court denied Daniels’s petition on the merits. Daniels appealed to this court with the assistance of his counsel from the postconviction hearing. *See Daniels II*, 2018 WL 817286, at *3. On appeal, this court considered: (1) whether the state violated Daniels’s right to a speedy trial, *id.* at *3-5; (2) whether Daniels received ineffective assistance of trial counsel, *id.* at *5-7; (3) whether the prosecutor at trial committed prosecutorial misconduct, *id.* at *7-9; (4) whether the jury’s verdict was inconsistent, *id.* at *8-9; and (5) whether the state presented sufficient evidence to convict Daniels, *id.* at *9-11. We affirmed. *Id.* at *1. The supreme court denied Daniels’s petition for further review. *See Daniels v. State*, No. A17-0623 (Minn. Apr. 25, 2018) (order).

On April 26, 2019, Daniels filed a motion in the district court “[t]o suspend the Minnesota Rules of Civil Appellate Procedure” to “fix an inadequate and ineffective appeal issue that was not properly addressed by this Court with post-conviction appeal and is permissible under this Court’s inherent authority as described in *Powell v. Anderson*,

660 N.W.2d 107 (Minn. 2003).” Specifically, Daniels’s motion requested relief because (1) the appellate courts failed to follow precedent in addressing his appeal, (2) his “trial assistance and appellate counsel [made] errors,” (3) his due process rights were violated by using an improper self-defense instruction, and (4) his case should have been resolved under *State v. Pollard*, 900 N.W.2d 175 (Minn. App. 2017). The district court construed Daniels’s motion as a postconviction petition and found Daniels’s postconviction petition barred by *State v. Knaffla*, 243 N.W.2d 737 (Minn. 1976), and time-barred from relief. This appeal follows.

D E C I S I O N

I. The district court did not abuse its discretion by denying Daniels’s petition for postconviction relief.

Appellate courts “review a postconviction court’s summary denial of a petition for postconviction relief for an abuse of discretion.” *See Andersen v. State*, 913 N.W.2d 417, 422 (Minn. 2018). “A postconviction court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record.” *Riley v. State*, 819 N.W.2d 162, 167 (Minn. 2012) (quotation omitted).

Daniels asks us to reverse the district court and remand for a new trial, arguing that he received ineffective assistance of counsel because his counsel at his first postconviction hearing did not raise two specific challenges to his trial counsel’s actions. The state agrees that this case should be addressed on the merits, although the district court dismissed Daniels’s postconviction petition as procedurally barred and time-barred. We have considered the record and conclude that we can affirm the district court after considering

the merits of Daniels's claim. *See Hummel v. State*, 617 N.W.2d 561, 563 (Minn. 2000) (affirming the district court's postconviction decision on alternative grounds).

Pursuant to the Minnesota Constitution, a defendant is entitled to assistance of counsel for "one review of a criminal conviction, whether by direct appeal or a first review by postconviction proceeding." *Deegan v. State*, 711 N.W.2d 89, 98 (Minn. 2006). A party may present a proper "claim of ineffective assistance of postconviction counsel that is based on counsel's alleged failure to raise an ineffective assistance of trial counsel claim" by "first establish[ing] that trial counsel was ineffective." *Pearson v. State*, 891 N.W.2d 590, 600 (Minn. 2017). "Trial counsel is ineffective if her representation fell below an objective standard of reasonableness and a reasonable probability exists that, but for counsel's unprofessional errors, the result of the proceedings would have been different." *Id.*

Daniels asserts that his postconviction counsel was ineffective by failing to challenge the district court's jury instructions. First, he argues that his counsel should have challenged the district court's decision to provide a lesser-included offense instruction of second-degree felony murder to the jury. Second, he claims that his counsel should have challenged the district court's incorrect self-defense instruction provided to the jury.

Lesser-included-offense Instruction

Daniels argues that his postconviction counsel was ineffective by failing to assert an ineffective-assistance-of-trial-counsel claim based on his trial counsel permitting the district court to instruct the jury on second-degree felony murder. Daniels's claim lacks merit both factually and legally. To present a proper ineffective-assistance-of-counsel

claim, “[t]he defendant must affirmatively prove that his 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.” *Gates v. State*, 398 N.W.2d 558, 561 (Minn. 1987) (quotation omitted).

First, Daniels’s trial counsel did object to the lesser-included instruction requested by the state. Specifically, Daniels’s trial attorney asserted that the state did not elicit testimony that Daniels “was intentionally committing any felony, whether that be an assault or any other felony.” Daniels’s claim that trial counsel was ineffective for failing to object is belied by the record, which reveals that counsel did object. Daniels accordingly fails to meet the first prong for an ineffective-assistance-of-counsel claim.

Second, even if his counsel had not objected, and that was unreasonable representation, that would not end the analysis because Daniels would need to show that the unreasonable representation affected the verdict. Daniels’s claim on appeal is not legally supported because he cannot show purported unreasonable representation affected the verdict.

“The determination of what, if any, lesser offense to submit to the jury lies within the sound discretion of the [district] court, but where the evidence warrants an instruction, the [district] court must give it.” *Bellcourt v. State*, 390 N.W.2d 269, 273 (Minn. 1986) (citations omitted).

[W]hen evaluating whether to give a lesser-included offense instruction, trial courts must determine whether 1) the lesser offense is included in the charged offense; 2) the evidence provides a rational basis for acquitting the defendant of the

offense charged; and 3) the evidence provides a rational basis for convicting the defendant of the lesser-included offense.

State v. Dahlin, 695 N.W.2d 588, 595 (Minn. 2005).

“Upon prosecution for a crime, the actor may be convicted of either the crime charged or an included offense, but not both.” Minn. Stat. § 609.04, subd. 1 (2012). “In Minnesota, every lesser degree of murder is intended by [section] 609.04 to be characterized as an included offense.” *State v. Hannon*, 703 N.W.2d 498, 509 (Minn. 2005); *see also* Minn. Stat. § 609.04, subd. 1(1) (noting that a lesser offense includes a lesser degree of the same crime).

In *State v. Lory*, this court addressed the issue of whether second-degree felony murder is a lesser included offense to second-degree intentional murder and held that, “Second-degree felony murder is a lesser-included offense of second-degree intentional murder.” 559 N.W.2d 425, 426 (Minn. App. 1997), *review denied* (Minn. Apr. 15, 1997). Among other issues raised in *Lory*, Lory challenged the district court’s instruction on felony murder because he was indicted for second-degree intentional murder. *Id.* at 427. This court rejected the “theory that the intent element of second-degree intentional murder ‘negates’ the ‘lack of intent’ element of felony murder” as an erroneous claim because lack of intent is not an element of felony murder. *Id.* at 428. Further, “had the jury concluded that [Lory] committed second-degree intentional murder, then his crime of murder during the commission of felony assault with a dangerous weapon was necessarily proven because the intentional murder charge was based on evidence that [Lory] shot [the victim] in the chest after first wounding him.” *Id.*

Based on caselaw and Minn. Stat. § 609.04 (2012), Daniels's assertion that second-degree felony murder is not a lesser-included offense to second-degree intentional murder lacks merit. Because trial counsel objected to the instruction, and the district court did not give an erroneous instruction, Daniels fails to present a valid claim for ineffective assistance of counsel on this issue.¹

Self-defense Instruction

Daniels argues that his counsel was ineffective by failing to assert an ineffective-assistance-of-trial-counsel claim based on trial counsel's failure to object to the district court's self-defense instruction.

The district court provided to the jury an instruction on the justifiable-taking-of-life instruction on self-defense, *see 10 Minnesota Practice*, CRIMJIG 7.05 (2015), rather than the general instruction on self-defense, *see 10 Minnesota Practice*, CRIMJIG 7.06 (2015). The state concedes on appeal that the proper instruction in this case for self-defense should have been the general self-defense instruction. We must independently consider the legal

¹ Daniels also argues in part that he cannot be convicted of second-degree felony murder because he should be only convicted of the least serious offense, second-degree manslaughter, pursuant to Minn. Stat. § 611.02 (2018). Daniels misreads the statute. The statute reads,

Every defendant in a criminal action is presumed innocent until the contrary is proved and, in case of a reasonable doubt, is entitled to acquittal; and when an offense has been proved against the defendant, and there exists reasonable doubt as to which of two or more degrees the defendant is guilty, the defendant shall be convicted only of the lowest.

The jury found Daniels guilty beyond a reasonable doubt of both second-degree felony murder and second-degree manslaughter. Accordingly, Daniels is not entitled to relief pursuant to section 611.02 because there is no reasonable doubt to the degrees of offense.

issue even when a party concedes in this manner. *See State v. Hannuksela*, 452 N.W.2d 668, 673 n.7 (Minn. 1990) (holding that appellate courts have the responsibility to address cases based on the law). The district court’s justifiable-taking-of-life instruction is not proper when the self-defense claim raised by the defendant is claiming the death was not the intended result of the action. *See Pollard*, 900 N.W.2d at 179.

Though the self-defense instruction provided to the jury was improper and his postconviction counsel could have raised that claim, Daniels must demonstrate that his counsel was ineffective because the “representation fell below an objective standard of reasonableness and a reasonable probability exists that, but for counsel’s unprofessional errors, the result of the proceedings would have been different.” *Pearson*, 891 N.W.2d at 600. Because Daniels is challenging a jury instruction, he must satisfy “the ‘heavy burden’ of showing ‘there is a reasonable likelihood that giving the instruction in question had a significant effect on the jury verdict.’” *State v. Onyelobi*, 879 N.W.2d 334, 355 n.18 (Minn. 2016) (quoting *State v. Kelley*, 855 N.W.2d 269, 283 (Minn. 2014)).

“An erroneous jury instruction will not ordinarily have a significant effect on the jury’s verdict if there is considerable evidence of the defendant’s guilt.” *Kelley*, 855 N.W.2d at 283-84. As this court addressed in *Daniels II*, the evidence offered at trial included the following:

At trial, [Daniels] admitted that he carried a .22-caliber revolver and intentionally fired it without warning into a group of people that included [the victim]. Forensic results matched bullet fragments found inside [the victim’s] body to a .22-caliber bullet. Multiple witnesses testified that they saw [Daniels] shoot [the victim]. [Daniels] admitted that he discarded the revolver where the police later discovered a .22-

caliber revolver containing three spent cartridges. DNA that predominately matched [Daniels] was discovered on the revolver. This evidence is sufficient to permit the jury to conclude that [Daniels] committed an assault with a deadly weapon that resulted in [the victim's] death, which constitutes felony murder.

2018 WL 817286, at *10. Moreover, this court acknowledged the self-defense claim and concluded that the contrary evidence showed that:

[Daniels] did not use reasonable force, and that [Daniels] made false statements to the police about his role in [the victim's] death. Further, other witnesses testified that no one other than [Daniels] had a weapon and that no one else acted as if he had a firearm. There was also evidence that [Daniels] fired from behind a tree or shrubbery. [Daniels's] credibility was also impeached on cross-examination by his admission that he lied to the police after his arrest.

Id.

Daniels is required, in an ineffective-assistance-of-counsel claim, to establish that a purported wrong instruction that his counsel did not challenge impacted his substantial rights. *See State v. Carridine*, 812 N.W.2d 130, 144 (Minn. 2012) (“Although the justifiable-taking-of-life jury instructions were given in error, we conclude that [the appellant] failed to establish that his substantial rights were affected by these instructions.”). The jury found that Daniels did not intentionally cause the death of the victim but that Daniels caused the death while committing or attempting to commit a felony. In *Daniels II*, this court explained that Daniels did not use reasonable force, he lied to police, that no one else had a weapon—contrary to Daniels’s assertions—and no one else acted as though they had a weapon. 2018 WL 817286, at *10. Based on the jury’s finding and our prior explanation of the law, it is clear that Daniels fails to meet his burden

on appeal to establish an ineffective-assistance-of-counsel claim for not challenging the jury instruction. Daniels's counsel's decision not to raise this issue therefore does not constitute prejudicial error meriting reversal.

II. The district court erred by entering a conviction and sentence for second-degree felony murder and second-degree manslaughter.

Though not raised by either party before the district court or on appeal, the district court erred by entering convictions and sentences for both second-degree felony murder and second-degree manslaughter. *Hannuksela*, 452 N.W.2d at 673 n.7 (recognizing appellate court's obligation to decide cases according to the law). The district court noted on the sentencing order that the sentence for second-degree manslaughter "combined" with the sentence for second-degree felony murder. As this court has explained, "A 'merged' or 'combined' conviction or sentence is not a permissible disposition under Minnesota law." *State v. Walker*, 913 N.W.2d 463, 465 (Minn. App. 2018). Moreover, "A conviction or acquittal of a crime is a bar to further prosecution of any included offense, or other degree of the same crime." Minn. Stat. § 609.04, subd. 2 (2018). Because the second-degree manslaughter conviction is a lesser-included offense, *see Hannon*, 703 N.W.2d at 509, this court is compelled to reverse and remand for the district court to vacate the conviction and sentence for the second-degree manslaughter in accordance with Minn. Stat. §§ 609.035, subd. 1, .04, subd. 2 (2012), but permit the finding of guilt to remain, *see State v. Earl*, 702 N.W.2d 711, 723-24 (Minn. 2005) (recognizing a finding of guilt remains even when convictions are vacated by operation of Minn. Stat. § 609.04).

Affirmed in part, reversed in part, and remanded.