

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0467**

Charles Earl Strother, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed January 10, 2022
Affirmed; motion denied
Reilly, Judge**

Redwood County District Court
File No. 64-CR-17-616

Christopher X. Nguyen, Julie T. Le, Aberrant Law PLLC, Minneapolis, Minnesota (for appellant)

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

Jenna M. Peterson, Redwood County Attorney, Redwood Falls, Minnesota; and

Travis J. Smith, Special Assistant County Attorney, William C. Lundy (certified student attorney), Slayton, Minnesota (for respondent)

Considered and decided by Reilly, Presiding Judge; Jesson, Judge; and Kirk, Judge.*

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

NONPRECEDENTIAL OPINION

REILLY, Judge

Appellant challenges the district court's summary denial of his petition for postconviction relief, arguing that he received ineffective assistance of appellate counsel and that the district court abused its discretion by denying his petition without an evidentiary hearing. We affirm. Based on this ruling, we deny as moot respondent's motion to strike portions of appellant's brief.

FACTS

Appellant Charles Earl Strother was convicted of multiple counts of criminal sexual conduct, domestic abuse, witness tampering, and drug crimes. Appellant filed a direct appeal challenging his convictions. We affirmed appellant's convictions in July 2019, and the Minnesota Supreme Court denied further review. The factual background is summarized in our earlier opinion. *State v. Strother*, No. A18-1035, 2019 WL 3293459 (Minn. App. July 22, 2019), *rev. denied* (Minn. Oct. 15, 2019). Following his direct appeal, appellant petitioned for postconviction relief. The district court denied the petition without an evidentiary hearing. This appeal follows.

DECISION

A person convicted of a crime may petition the district court for relief based on a claim that "the conviction obtained . . . violated the person's rights under the Constitution or laws of the United States or of the state." Minn. Stat. § 590.01, subd. 1(1) (2020). We review the denial of postconviction relief for an abuse of discretion. *Gulbertson v. State*, 843 N.W.2d 240, 244 (Minn. 2014). "A [district] 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). We review issues of law de novo and issues of fact for sufficient evidence. *Leake v. State*, 737 N.W.2d 531, 535 (Minn. 2007). A district court may deny a postconviction petition without an evidentiary 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 (2020).

I. Appellant is not entitled to relief on his ineffective-assistance-of-appellate-counsel claim.

Appellant claims that he received ineffective assistance of appellate counsel. Unlike ineffective-assistance-of-trial-counsel claims, ineffective-assistance-of-appellate-counsel claims “are not barred by the *Knaffla* rule¹ in a first postconviction [petition] because they could not have been brought at any earlier time.” *Onyelobi v. State*, 932 N.W.2d 272, 280 (Minn. 2019). “To receive an evidentiary hearing on a postconviction claim of ineffective assistance of appellate counsel, a defendant is required to allege facts that, if proven by a fair preponderance of the evidence, would satisfy the two-prong test announced in *Strickland v. Washington*.” *Bobo v. State*, 820 N.W.2d 511, 516 (Minn. 2012) (citing *Strickland v. Washington*, 466 U.S. 668 (1984)). To prevail under the *Strickland* test, appellant must show that: (1) his counsel’s representation fell below an objective standard of reasonableness, and (2) there is a reasonable probability that, but for counsel’s errors, the result of the proceeding would have been different. 466 U.S. at 688,

¹ Under this rule, a postconviction court cannot consider claims that were known or should have been known at the time of a petitioner’s direct appeal but were not raised in that appeal. *State v. Knaffla*, 243 N.W.2d 737, 741 (Minn. 1976).

694. Appellant bears the burden of proving both prongs of this test. *Gates v. State*, 398 N.W.2d 558, 561 (Minn. 1987).

Under the first prong, we consider whether counsel’s representation was reasonable. “The objective standard of reasonableness is defined as representation by an attorney exercising the customary skills and diligence that a reasonably competent attorney would perform under similar circumstances.” *State v. Vang*, 847 N.W.2d 248, 266-67 (Minn. 2014) (quotation omitted). Counsel’s performance is presumed reasonable. *Zornes v. State*, 880 N.W.2d 363, 371 (Minn. 2016). Appellate counsel “is not ineffective for failing to raise issues that themselves have no merit.” *Evans v. State*, 788 N.W.2d 38, 45 (Minn. 2010). An appellate court presumes that counsel’s “judgment about which issues to raise falls within the wide range of reasonable professional assistance.” *Bobo*, 820 N.W.2d at 516 (quotation omitted).

Appellant asserted in his petition that appellate counsel failed to raise claims on direct appeal objecting to the testimony of certain trial witnesses, failed to object to aspects of opposing counsel’s closing argument, and failed to argue that there were cumulative errors at trial. The district court rejected these arguments, reasoning that it is not ineffective assistance of counsel to decline to bring arguments that the attorney did not believe would prevail.

On appeal, appellant focuses mainly on the burdensome workload of the public defender’s office. Appellant cites a report from the State Board of Public Defense that “the average full-time public defender has a case load in excess of 500 case units, where a case unit is approximately equal to a misdemeanor and the American Bar Association

recommends a maximum caseload of 400 case units.” Appellant argues that “[t]his is a matter of the people of Minnesota not having sufficient resources to allow counsel working for the public defender offices to take the time they need to be thorough to the detriment of their clients.” Thus, he contends that not granting a new trial will “embolden” prosecutors.

The Minnesota Supreme Court recently addressed a similar argument in *Odell v. State*, 931 N.W.2d 103 (Minn. 2019), *cert. denied*, 140 S. Ct. 544 (2019). The defendant based his ineffective-assistance claim, in part, on the workload of public defenders. *Id.* at 106. Relying on a law review article, the defendant argued that trial counsel was unconstitutionally ineffective “because, according to the article, public defenders are overworked and delegate too many responsibilities to their law clerks.” *Id.* at 106-07. The supreme court rejected this argument, stating that the defendant “[did] not provide any facts that would show that his public defenders were so overworked that they were unconstitutionally ineffective in *this* case.” *Id.*

Similarly, appellant has not established that his counsel was so overworked that the attorney provided ineffective assistance in his individual case. Yet appellant wants a new trial where his “counsel will not have the burden of being tasked with impossible caseloads.” But this is not the standard for an ineffective-assistance claim. Appellate counsel’s decisions related to which claims to bring on direct appeal were matters of strategy, which generally are not subject to review. *Nunn v. State*, 753 N.W.2d 657, 661 (Minn. 2008). Appellant does not explain how counsel’s decisions were unreasonable. And caselaw explicitly permits counsel to raise only those claims the attorney believes will

be most meritorious. *Id.* (noting that appellate counsel may only argue “the most meritorious claims” (quotation omitted)); *see also Morrow v. State*, 886 N.W.2d 204, 206 (Minn. 2016) (noting 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”).

Appellant has not shown that his counsel was so overworked that counsel’s representation fell below an objective standard of reasonableness. Because appellant failed to carry his burden of proof with respect to the first *Strickland* prong, we do not address the second prong. *See Nissalke v. State*, 861 N.W.2d 88, 94 (Minn. 2015) (“We may dispose of a claim on one prong without considering the other.”). Thus, the district court did not abuse its discretion by denying appellant’s postconviction petition without an evidentiary hearing on this claim.

II. Appellant’s remaining claims are *Knaffla*-barred.

Together with his ineffective-assistance claim, appellant argues that: (1) the district court erred by admitting testimonial evidence from the state’s expert witness, (2) the evidence was insufficient to support his conviction for tampering with a witness, (3) his sentence was cruel or unusual because it differed from the state’s plea deal, which he rejected, and (4) the cumulative errors deprived him of a fair trial.

Appellant’s claims are *Knaffla*-barred. A petition filed “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 (2020); *see also Knaffla*, 243 N.W.2d at 741 (recognizing that “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”). Claims are also *Knaffla*-barred when the claim was raised in an earlier proceeding, but on slightly different grounds. *Cooper v. State*, 745 N.W.2d 188, 193 (Minn. 2008) (applying *Knaffla* rule to claims presented in a different way than in first proceeding). We review the district court’s *Knaffla* decision for an abuse of discretion. *Quick v. State*, 692 N.W.2d 438, 439 (Minn. 2005).

Here, the district court determined that appellant’s “claims were either addressed on appeal or known at the time of appeal.” The district court stated:

[Appellant’s] claims of error related to the admissibility of expert testimony, whether there is sufficient evidence to convict [appellant] of [w]itness [t]ampering, and whether the difference between the State’s plea offer and the Court’s sentence following guilty verdicts constitutes cruel [or] unusual punishment were known but not raised during [his] direct appeal, and are therefore barred from consideration[.]

In its memorandum accompanying the postconviction order, the district court analyzed each of appellant’s claims under the *Knaffla* doctrine. We briefly address each in turn.

A. Challenge to admissibility of testimony of state’s expert witness

First, the district court found that appellant’s challenge to the admissibility of testimony from the state’s expert witness was barred because “the district court considered and evaluated those issues,” and “[t]he topic was very much known at the time of appeal.” In fact, appellant challenged the testimony of the state’s expert witness in his direct appeal. *Strother*, 2019 WL 3293459, at *10. Appellant argued that the witness “assigned a statistical probability to the likelihood” that the victim lied during her testimony. *Id.* We determined that the witness acknowledged that false accusations do occur but did not opine

about whether the victim was truthful. *Id.* Appellant raises different objections to the witness's testimony in his current postconviction petition. But the bases for these objections were known at the time of his direct appeal. Thus, the district court properly determined that appellant's claim related to the expert's testimony was *Knaffla*-barred.

B. Sufficiency of the evidence for witness tampering conviction

As for appellant's sufficiency challenge, the district court found that "[a] 'sufficiency of the evidence' issue, following any jury or court trial, is always available for review on appeal, and was certainly known to [appellant] and appellate counsel in this matter." The district court also recognized that this court even "touched upon" this issue on direct appeal. We agree that appellant's challenge to the witness-tampering conviction was known to appellant at the time of his appeal. *See Schleicher v. State*, 718 N.W.2d 440, 449 (Minn. 2006) (instructing that procedural bar applies to claims that could have been raised in previous appeal). In his direct appeal, while addressing a different issue, we also considered the strength of the evidence of his guilt. *Strother*, 2019 WL 3293459, at *7. We noted that together with the victim's testimony, the state also "presented very strong evidence corroborating [the victim's] testimony and proving [appellant's] guilt." *Id.* The state presented evidence from the victim's oldest child and the victim's mother, "both of whom corroborated [her] testimony." *Id.* Police officers and medical witnesses testified about their observations of the victim. *Id.* Lastly, we noted that the state "also introduced corroborating physical evidence." *Id.* Given the strength of this evidence, we determined that there was "very strong evidence" to support the convictions. *Id.* Appellant's sufficiency-of-the-evidence claim is therefore *Knaffla*-barred.

C. Cruel or unusual sentence

Appellant argues that his sentence was “cruel or unusual” under the Minnesota Constitution. *See* Minn. Const. art. I, § 5 (prohibiting cruel or unusual punishment).

Appellant concedes that his sentence is in line with the sentencing guidelines. But appellant argues that his sentence is cruel or unusual because it did not adopt the state’s suggested plea agreement. During plea negotiations before trial, the prosecutor offered appellant a stay of execution. Appellant rejected the proposed plea agreement. Appellant entered a plea of not guilty to each of the charged offenses and the matter went to trial. After the jury returned its verdict, the district court imposed a 48-month sentence for the criminal-sexual-conduct crime, and an 86-month sentence for the witness-tampering crime. The prosecutor’s offer during plea negotiations—which appellant rejected—has no binding effect now after the jury verdict. Further, appellant cites no authority suggesting either that the guidelines sentence imposed here was cruel or unusual, or that a district court should ignore the sentencing guidelines in favor of a rejected plea offer.

D. Cumulative effect of errors

Lastly, the district court rejected appellant’s claim that the cumulative effect of the errors deprived him of a fair trial. Because appellant failed to establish that an error occurred, this claim also fails.

E. No *Knaffla*-bar exception applies

Minnesota recognizes two exceptions to the *Knaffla* bar and permits further review when: (1) the petitioner presents a novel legal issue, or (2) the interests of justice require review. *Zumberge v. State*, 937 N.W.2d 406, 411-12 (Minn. 2019). Appellant has not

articulated why either exception should apply, “and we have previously declined to apply the exceptions in the absence of such reasons.” *Lee v. State*, 717 N.W.2d 896, 898 (Minn. 2006); *see also Buckingham v. State*, 799 N.W.2d 229, 233 (Minn. 2011) (placing burden of proof on petitioner). And an independent review of the record does not persuade us that either exception applies.

In sum, we determine that appellant’s arguments are barred under the *Knaffla* rule because they were raised or could have been raised on direct appeal and no exception applies. As a result, the district court did not abuse its discretion by summarily dismissing appellant’s postconviction petition.

III. The state’s motion to strike is moot.

The state moved to strike the statement of facts in appellant’s brief because appellant failed to include citations to the record and did not comply with the rules of civil appellate procedure. Because we affirm the district court’s order, we deny the state’s motion to strike as moot.

Affirmed; motion denied.