

*This opinion is nonprecedential except as provided by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
A21-1312**

Rondell Russell Camp, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed July 25, 2022
Affirmed
Bryan, Judge**

Hennepin County District Court
File No. 27-CR-17-2680

Eric L. Newmark, Newmark Storms Dworak LLC, Minneapolis, Minnesota (for appellant)

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

Michael O. Freeman, Hennepin County Attorney, Jonathan P. Schmidt, Assistant County Attorney, Lindsay Dreyer (certified student attorney), Minneapolis, Minnesota (for respondent)

Considered and decided by Cochran, Presiding Judge; Bryan, Judge; and Gaïtas, Judge.

NONPRECEDENTIAL OPINION

BRYAN, Judge

In this postconviction appeal, appellant asserts that he received ineffective assistance of appellate counsel in his direct appeal because counsel failed to challenge an erroneous self-defense jury instruction given at the close of appellant's trial for intentional

murder. Because the jury rejected Camp's testimony that he did not intend to kill the victim, appellant has not established the necessary prejudice to support his ineffective-assistance claim. We, therefore, affirm the denial of appellant's postconviction petition.

FACTS

On January 29, 2017, appellant Rondell Russell Camp fought with S.P., resulting in S.P.'s death. Respondent State of Minnesota charged Camp with one count of second-degree intentional murder, and the case proceeded to trial. The state presented evidence at trial that Camp attacked S.P. with multiple weapons, causing 38 distinct groups of injuries, rendering S.P. unconscious, and causing his death. Camp also testified at trial and claimed that he acted in self-defense. According to Camp, S.P. struck him in the head with a gun in an unprovoked attack. Camp explained that he fought back with a knife and a wrench, striking S.P. multiple times, before being able to leave for help. Camp testified that S.P. was awake when Camp left the garage, although this testimony conflicted with the state's expert medical testimony.

The trial court granted Camp's request to give the jury the model self-defense instruction regarding the justifiable taking of a life, which applies when a person "takes the life of another, even intentionally." 10 *Minnesota Practice*, CRIMJIG 7.06 (2017). The trial court did not instruct the jury using the model instruction regarding general self-defense, which applies to defensive actions resulting in the unintentional taking of a life. 10 *Minnesota Practice*, CRIMJIG 7.13 (2017). The jury found Camp guilty of second-degree intentional murder. The jury was asked to answer special interrogatories. The jury

found that Camp acted with particular cruelty, S.P. was particularly vulnerable, and Camp knew or should have known of that vulnerability.

The trial court imposed a 367-month term of imprisonment. Camp filed a direct appeal of his conviction, asserting, among other claims, that the state failed to disprove his claim of self-defense. *See State v. Camp*, No. A18-0329, 2019 WL 272879 (Minn. App. Jan. 22, 2019), *rev. denied* (Minn. March 19, 2019) (*Camp I*). Appellate counsel did not challenge the trial court's decision to provide the jury with the justifiable-taking-of-life instruction instead of the general self-defense instruction. In his supplemental brief, Camp asserted that he received ineffective assistance from trial counsel, but he did not argue that the ineffective assistance included trial counsel's request to give the justifiable-taking-of-life instruction.

This court affirmed the conviction, deciding that the evidence was sufficient to support the jury's verdict. After analyzing the elements of a justifiable-taking-of-life defense, we concluded that "the jury rejected [Camp's] testimony that S.P. continued to be the aggressor and remained conscious and talking even after the final blows were struck." *Id.* at *5. We also concluded that Camp's "testimony was inconsistent with the medical testimony that S.P. would have, at a minimum, been rendered unconscious by his injuries." *Id.* We determined that "[t]he circumstances are consistent with [Camp]'s guilt and inconsistent with self-defense." *Id.* at *4. Those circumstances were:

[T]he handgun was recovered from the passenger-side windshield of the car, away from S.P.'s body. The gun did not have blood on it, though there was a great deal of blood near S.P.'s body. Despite the lack of any firearm near S.P., the condition of S.P.'s body shows that appellant maintained a

sustained attack, at some point switched weapons, and then continued the attack, causing 38 cutaneous groups of injuries. The injuries were devastating and effectively pulpified the frontal bones of S.P.'s head, rendering him unconscious. In contrast, although appellant suffered a serious ankle injury, his injuries were otherwise superficial. Given the lack of an accessible firearm, there were not objectively reasonable grounds for appellant's sustained attack.

Id. at *5.

In March 2021, Camp filed a petition for postconviction relief. In his petition, Camp alleged that he was denied effective assistance of counsel from both his trial and appellate counsel because his trial counsel requested the justifiable-taking-of-life instruction instead of the general self-defense instruction and his appellate counsel failed to challenge this instruction in the direct appeal. At an evidentiary hearing, Camp withdrew the portion of his postconviction petition relating to ineffective assistance of trial counsel, and the parties agreed that Camp's appellate counsel's representation fell below an objective standard of reasonableness because the incorrect self-defense instruction was given to the jury and appellate counsel did not include this issue in the direct appeal. The parties contested whether appellate counsel's performance prejudiced Camp.

The postconviction court issued a written order denying Camp's petition. The postconviction court accepted the parties' agreement that the trial court gave the justifiable-taking-of-life jury instruction in error. The postconviction court agreed with the state that that based on *State v. Carridine*, 812 N.W.2d 130 (Minn. 2012), the erroneous instruction did not satisfy the prejudice prong of the two-part ineffective-assistance-of-counsel test identified in *Strickland v. Washington*, 466 U.S. 668 (1984):

[T]he State established that [Camp] intentionally caused S.P.'s death and there is not a rational basis for acquitting [Camp] of murder in the second degree. [Camp] has failed to establish that a reasonable probability exists that the jury's verdict would have been different had the general self-defense instruction been given instead of the erroneous justifiable-taking-of-life instruction. [Camp] has failed to establish that his substantial rights were affected by the erroneous instruction.

Camp appeals the denial of his postconviction motion.

DECISION

Camp asks us to reverse the postconviction court and remand for a new trial, arguing that he received ineffective assistance of appellate counsel on direct appeal because counsel did not challenge the jury instructions. Because Camp is unable to establish that the asserted error affected the outcome of his case, we affirm the postconviction court.

Under the federal and state constitutions, a criminal defendant is entitled to the assistance of counsel. U.S. Const. amend. VI; Minn. Const. art. I, § 6. This right means “the right to *effective* assistance of counsel.” *McMann v. Richardson*, 397 U.S. 759, 771 n.14 (1970) (emphasis added). To prove a constitutional violation occurred as a result of ineffective assistance of appellate counsel, Camp must show that his appellate counsel's performance on direct appeal “fell below an objective standard of reasonableness” and that “there is a reasonable probability that, but for his counsel's unprofessional errors,” he would have received a new trial. *Petersen v. State*, 937 N.W.2d 136, 139-40 (quoting and applying *Strickland*, 466 U.S. at 688, 694, to a claim of ineffective assistance of appellate counsel). Courts “may analyze the *Strickland* requirements in either order and may dispose of a claim on one prong without considering the other.” *Lussier v. State*, 853 N.W.2d 149,

154 (Minn. 2014). Ineffective-assistance-of-counsel claims are reviewed de novo, *State v. Rhodes*, 657 N.W.2d 823, 842 (Minn. 2003), as are questions of law embedded in an order denying postconviction relief, *Petersen*, 937 N.W.2d at 139.

Turning to the first *Strickland* prong, the state concedes that the trial court erred when it gave the justifiable-taking-of-life instruction instead of the general self-defense instruction.¹ The state charged Camp with second-degree intentional murder. Minnesota law “mandate[s] that the general self-defense instruction be given in cases where the defendant claims the death was an unintended or accidental consequence of actions taken in defense of self.” *State v. Pollard*, 900 N.W.2d 175, 180 (Minn. App. 2017); *State v. Marquardt*, 496 N.W.2d 806, 806 (Minn. 1993) (same); CRIMJIG 7.06, n.1 (“[The justifiable-taking-of-life instruction] should be given only when the death was intentional. When the death was unintentional . . . CRIMJIG 7.13 should be given”). Thus, the state only contests the prejudice prong of *Strickland*.

¹ This concession does not preclude our independent review of the first *Strickland* prong. See *State v. Hannuksela*, 452 N.W.2d 668, 673 n.7 (Minn. 1990) (recognizing that even when parties agree on appeal, appellate courts have the responsibility to “decide cases in accordance with the law” (quotation omitted)). It is well-settled that appellate courts do not second-guess appellate counsel’s decision not to raise a claim that constitutionally effective counsel could believe would not prevail. *Reed v. State*, 793 N.W.2d 725, 733 (Minn. 2010) (citing *Williams v. State*, 764 N.W.2d 21, 31 (Minn. 2009) (“[A]ppellate counsel is not required to raise claims on direct appeal that counsel could have legitimately concluded would not prevail.”) and *Case v. State*, 364 N.W.2d 797, 800 (Minn. 1985) (“[Appellate counsel] has no duty to include claims which would detract from other more meritorious issues.”)). Given our decision regarding the prejudice prong, we decline the invitation articulated in *Hannuksela* to review whether constitutionally effective appellate counsel here could have believed that *Carridine* foreclosed reversal. Nor do we need to address whether the postconviction court should have granted a hearing to determine the actual reasons, if any, why appellate counsel did not raise the issue.

In *Carridine*, the Minnesota Supreme Court concluded that providing the justifiable-taking-of-life instruction instead of the general self-defense instruction did not affect the outcome or prejudice the defendant because the jury necessarily rejected the elements of general self-defense when it convicted the defendant of intentional murder:

The district court [] explained to the jury that “[i]n order to have an intent to kill, the defendant must have acted with the purpose of causing death or the defendant must have believed that the act would have that result.” By finding Carridine guilty of first-degree premeditated murder, the jury necessarily rejected Carridine’s testimony that it “wasn’t [his] intent to hit anyone”—a factual predicate to his argument regarding the CRIMJIG 7.05 instruction. We thus conclude that CRIMJIG 7.05’s implication that “the defendant must believe it necessary to kill in order for the killing to be justified,” *Marquardt*, 496 N.W.2d at 806 n.1, did not affect the outcome of this case and therefore did not affect Carridine’s substantial rights.

812 N.W.2d at 144.

The prejudice analysis from *Carridine* applies to our prejudice analysis here. Although Carridine was charged with first-degree premeditated murder and Camp was charged with second-degree intentional murder, both offenses required the jury to determine whether the defendant intended to take the life of another person. In finding Camp guilty of an intentional murder, the jury necessarily found that Camp intended to cause S.P.’s death. Just as in *Carridine*, given this finding, the jury could not have acquitted Camp under the general law of self-defense.² Thus, Camp has not shown that he would have received a new trial but for appellate counsel’s failure to raise the issue.

² In addition, the list of circumstances proved in *Camp I* negate general self-defense. We previously concluded that “[t]he circumstances are consistent with [Camp]’s guilt and inconsistent with self-defense,” and we emphasized the condition of S.P.’s body which

To convince us otherwise, Camp directs our attention to *Pollard*, in which this court reversed a conviction on direct appeal because the trial court gave the justifiable-taking-of-life instruction instead of the general self-defense instruction. 900 N.W.2d at 182. We conclude, however, that *Pollard* does not apply. The jury in *Pollard* acquitted the defendant of intentional murder and convicted the defendant of unintentional murder. *Id.* at 178. By contrast, the jury in this case was asked to determine Camp’s intent and returned a guilty verdict on the charge of intentional murder, necessarily negating the claim of general self-defense. In addition, we must apply the *Strickland* prejudice standard and not the prejudice standard that the supreme court applied in *Pollard*, where trial counsel objected to the erroneous jury instruction. *Id.* at 181 (assessing whether the error at issue was “harmless beyond a reasonable doubt”). As noted above, Camp cannot show that there is a reasonable probability that he would have received a new trial but for appellate counsel’s error. For these reasons, we are not persuaded to rely on *Pollard* or to reverse the postconviction court.

Affirmed.

“shows that [Camp] maintained a sustained attack, at some point switched weapons, and then continued the attack, causing 38 cutaneous groups of injuries.” *Camp I*, 2019 WL 272879, at *4-5. We contrasted this with Camp’s “otherwise superficial” injuries and stated that “there were not objectively reasonable grounds for [Camp’s] sustained attack.” *Id.* at 5*. Camp cannot establish the second *Strickland* prong given these circumstances.