

*This opinion is nonprecedential except as provided by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
A21-1659**

Tywan Rulford, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed July 18, 2022
Affirmed
Worke, Judge**

Hennepin County District Court
File No. 27-CR-18-23182

Tywan Rulford, Faribault, Minnesota (pro se appellant)

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

Michael O. Freeman, Hennepin County Attorney, Adam E. Petras, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Frisch, Presiding Judge; Worke, Judge; and Reilly, Judge.

NONPRECEDENTIAL OPINION

WORKE, Judge

Appellant challenges the district court's denial of his petition for postconviction relief. We affirm.

FACTS

In 2019, appellant Tywan Rulford filed a direct appeal of his conviction for unlawful possession of ammunition. *See State v. Rulford*, No. A19-1483, 2021 WL 21501, at *1 (Minn. App. Jan. 4, 2021), *rev. denied* (Minn. Mar. 30, 2021). Rulford was represented by the Office of the Minnesota Appellate Public Defender (OMAPD). His attorney argued that the district court erred by failing to provide a unanimity jury instruction. *Id.* Rulford filed a pro se supplemental brief, claiming that: (1) the search warrant was not supported by probable cause, (2) his trial attorney was ineffective, and (3) the state violated his rights under the compulsory process clause. *Id.* at *3. This court affirmed Rulford's conviction but determined that the record was insufficient to resolve Rulford's ineffective-assistance-of-counsel claim. *Id.* at *3-4. This court stated that Rulford could pursue his ineffective-assistance claim in a postconviction petition. *Id.* at *4.

In May 2021, Rulford filed a petition for postconviction relief. Rulford renewed issues addressed on direct appeal, including: (1) probable cause, (2) the confrontation clause, (3) due process, (4) failure to disclose evidence, (5) the compulsory process clause, and (6) ineffective assistance of counsel. Along with his petition, Rulford included a statement from S.C. in which she claimed that the ammunition that Rulford was found guilty of possessing belonged to her. OMAPD declined to represent Rulford in the postconviction matter because it had provided representation in his direct appeal.

The district court concluded that all but one of Rulford's claims were procedurally barred. The district court granted Rulford an evidentiary hearing on that sole issue—whether Rulford's trial counsel was ineffective for failing to call S.C. as a witness.

At the evidentiary hearing, Rulford's trial counsel testified that he included S.C.'s name on his potential witness list. Counsel testified that he met with S.C. during the trial, and she stated that items found during the search may have been her property. Counsel testified that he was "left with the impression that . . . if called to testify [S.C. would] offer an admission to certain evidence." But counsel testified that he did not feel that S.C. "was an asset" to Rulford's defense because Rulford made a statement to police that he was aware of at least one item of contraband that was recovered during the search—a clip with bullets in it. Counsel believed that Rulford was the only witness who could overcome that statement. He did not feel that S.C.'s testimony that she possessed items recovered would be helpful when the jury instructions included joint and constructive possession. Counsel stated that he believed that Rulford testified credibly at trial regarding his statement to police and feared that S.C. could have testified inconsistently or revealed things not controlled by the defense, which could have been damaging.

S.C. testified that she would have provided the following testimony at Rulford's trial: "I think that was September 2018 I do remember . . . putting casings, 9 millimeter casings and a clip, a clip to the gun in the room that day. It was maybe like early September maybe." She continued: "The clip and the bullets, those are mine. I have a permit to purchase, a permit to carry for them. I was staying there. That was my address at the time. No one stayed in that room." But on cross-examination, S.C. admitted that certain items found during the search did not belong to her, that the room searched was Rulford's room, that she did not have proof that she lived at the home, and that the permit to purchase she submitted was issued after the trial.

The district court denied Rulford's petition for postconviction relief, concluding that counsel's decision to not call S.C. as a witness was a strategic decision. The district court stated: "[T]here is little reason to believe that the result of the trial would have been different had [S.C.] testified. It may have been worse." This appeal followed.

DECISION

This court reviews the denial of a petition for postconviction relief for an abuse of discretion. *Davis v. State*, 784 N.W.2d 387, 390 (Minn. 2010). "A 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*, 792 N.W.2d 831, 833 (Minn. 2011).

In his postconviction petition, Rulford raised the following: (1) a probable-cause issue, (2) a confrontation-clause issue, (3) a due-process issue, (4) failure to disclose evidence, (5) a compulsory-process-clause issue, and (6) ineffective assistance of counsel. On appeal, Rulford categorizes the probable-cause and due-process issues as "previously appealed." Although Rulford does not include the compulsory-process-clause issue in this category, that issue was also raised on direct appeal. Rulford makes no argument regarding his confrontation-clause and evidentiary issues, which are issues that could have been raised on direct appeal. The district court correctly ruled that these issues are procedurally barred. *See State v. Knaffla*, 243 N.W.2d 737, 741 (Minn. 1976) (stating that petitioner is not entitled to relief for claims raised on direct appeal or for claims not raised on direct appeal, but that could have been raised on direct appeal).

Rulford's remaining issue relates to the effectiveness of his trial counsel. Following an evidentiary hearing, the district court determined that Rulford's attorney was not

ineffective. When reviewing a district court's denial of postconviction relief based on an ineffective-assistance-of-counsel claim, this court considers the district court's factual findings that are supported in the record and reviews de novo the "legal implication of those facts." *State v. Nicks*, 831 N.W.2d 493, 503-04 (Minn. 2013).

To succeed on an ineffective-assistance-of-counsel claim, Rulford must establish that his "counsel's representation fell below an objective standard of reasonableness." *See Strickland v. Washington*, 466 U.S. 668, 688, 104 S. Ct. 2052, 2064 (1984). Under this prong, this court will not review conduct that "falls within trial strategy." *Andersen v. State*, 830 N.W.2d 1, 13 (Minn. 2013). Rulford must then show that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *See Strickland*, 466 U.S. at 694, 104 S. Ct. at 2068. If the ineffective-assistance claim fails under either prong, we do not need to address the other. *Carridine v. State*, 867 N.W.2d 488, 494 (Minn. 2015).

Here, Rulford's attorney explained his decision for not calling S.C. as a witness at Rulford's trial. The district court determined that Rulford's attorney exercised legitimate trial strategy. We agree. Counsel's representation did not fall below an objective standard of reasonableness because his choice of defense theory and decision on which witnesses to call fell under trial strategy, which is not reviewed on an ineffective-assistance-of-counsel claim. *See Andersen*, 830 N.W.2d at 13 (noting that trial strategy includes which witnesses to call and extent of investigation into theories). Because Rulford has not shown that his attorney's representation fell below an objective standard of reasonableness, we do not need to address prejudice.

Rulford also argues an “added” ineffective-assistance-of-appellate-counsel claim. Rulford did not raise this claim below; thus, we decline to consider it. *See Azure v. State*, 700 N.W.2d 443, 447 (Minn. 2005) (stating that petitioner may not raise issue for the first time on appeal from the denial of postconviction relief).

Rulford lastly argues that his postconviction evidentiary hearing was not fair because he did not receive notice of the hearing and he was not provided the assistance of counsel. But Rulford had his two witnesses testify at the hearing. And Rulford was not afforded counsel because OMAPD declined representation because they represented Rulford on direct appeal. Rulford fails to show that his hearing was not fair.

Affirmed.