STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0146

State of Minnesota,
Respondent,

vs.

William Mendoza,
Appellant.

Filed May 8, 2023
Affirmed; motion denied
Bryan, Judge

Anoka County District Court
File No. 02-CR-18-8189

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

Brad Johnson, Anoka County Attorney, Robert I. Yount, Assistant County Attorney, Anoka, Minnesota (for respondent)

Bruce Rivers, Rivers Law Firm, P.A., Minneapolis, Minnesota (for appellant)

Considered and decided by Jesson, Presiding Judge; Johnson, Judge; and Bryan, Judge.

NONPRECEDENTIAL OPINION

BRYAN, Judge

In this direct appeal from the final judgment of conviction and appeal from the denial of a postconviction petition without a hearing, appellant argues he received ineffective assistance of trial counsel. We affirm.

FACTS

On December 13, 2018, respondent State of Minnesota charged appellant William Mendoza with four counts of criminal sexual conduct for abuse perpetrated against his daughters, R.M.M. and I.M., between 2001 and 2012. The state later amended its complaint to add a fifth charge of criminal sexual conduct for abuse beginning in 1997. At trial, the state called the two victims, other family members of Mendoza, two interviewing detectives, and another responding police officer. The state also called an expert witness to testify about forensic interviews of minors and to explain the concept of delayed disclosure by minors who have experienced sexual assault. This witness testified that because sexual abuse can be confusing both psychologically and physiologically, and because the emotional or familial dynamics can be so difficult to navigate, it is not uncommon for children to keep the abuse a secret. Trial counsel for Mendoza cross-examined each of the state's witnesses and called eleven witnesses, including Mendoza, to testify for the defense. The case was submitted to the jury on August 31, 2021, and the jury returned guilty verdicts on all five counts that same day.

Mendoza filed his notice of direct appeal on February 3, 2021. He then sought a stay and remand to develop the record through postconviction proceedings. This court granted his motion, staying the appeal, and Mendoza filed a postconviction petition. Mendoza raised the following two ineffective-assistance-of-counsel claims in his postconviction petition: (1) trial counsel failed to call witnesses who lived with Mendoza during portions of the period of alleged abuse and witnesses who could testify to Mendoza's good character around children; and (2) trial counsel failed to include reports

or exhibits in support of a pretrial *Paradee* motion.[1] In support of the petition, Mendoza submitted three affidavits, two from Mendoza's wife regarding the *Paradee* motion and one from an attorney who opined that calling witnesses who lived in the same residence "would have caused doubt to the complainants' credibility if presented at trial and directly [related] to the issue of opportunity to commit the alleged acts." The petition was not accompanied by a memorandum of law, and the allegations in the petition did not mention specific witnesses who could have been called or include a proffer of the testimony that could have been given at trial. The district court denied the petition without an evidentiary hearing, reasoning that the allegations regarding additional witnesses amounted to conclusory statements unsupported by sufficient facts.

After appellate counsel failed to provide status updates to this court, this court dissolved its stay of Mendoza's direct appeal and set a briefing schedule. Mendoza filed a second motion to stay in order to file a second postconviction petition in district court. This court denied Mendoza's motion. Nevertheless, on that same day, Mendoza filed a second petition for postconviction relief in district court identifying the following seven specific instances of alleged ineffective assistance of counsel: (1) trial counsel failed to request an interpreter for Mendoza during the trial; (2) trial counsel failed to notice or pursue an alibi defense;[2] (3) trial counsel failed to move for judgment of acquittal; (4)

[1] A *Paradee* motion seeks in camera review of confidential records. *See State v. Paradee*, 403 N.W.2d 640, 642 (Minn. 1987).

[2] Specifically, Mendoza mentioned a potential witness who could have provided a partial alibi because, according to Mendoza, the witness was present at the Mendoza household every day between 10:00 a.m. and 10:00 p.m. during portions of 2005 and 2006. We observe that this testimony would not cover all of the charged time periods.

trial counsel failed to cross-examine or adequately rebut the state's expert witness; (5) trial counsel failed to file motions to introduce alternative perpetrator evidence; (6) trial counsel generally failed to investigate the case; and (7) trial counsel failed to effectively prepare trial witnesses. On August 16, 2022, the district court denied the second petition, concluding that it lacked jurisdiction due to the pending appeal.

On September 20, 2022, Mendoza filed his appellate brief, which included arguments regarding the claims in the second postconviction petition and the exhibits that accompanied it. The state moved to strike this brief, and on November 3, 2022, this court granted the state's motion, noting that "[a]ppellant's fact statement and arguments reference the exhibits submitted in support of the second postconviction proceeding that are not part of the record for this appeal." This court ordered Mendoza to file "a substitute brief that raises issues decided in the district court's June 21, 2022 postconviction order and issues appropriately raised in an appeal from the final judgment." Mendoza filed a substitute brief. The substitute brief still included arguments as to the first six of the seven issues raised in the second petition, but the substitute brief did not rely on any of the exhibits that accompanied the second petition. The state moved to strike the substitute brief, and on November 29, 2022, this court referred the motion to the merits panel.

DECISION

Mendoza contends that he received ineffective assistance of counsel in six of the seven instances identified in the second postconviction petition. We affirm the conviction because this court generally does not review matters involving trial strategy and because Mendoza has not established that the outcome of the trial would have been different but

for trial counsel's remaining alleged deficiencies. Mendoza also argues that we should reverse the district court's decision to deny the first postconviction petition without a hearing. We affirm that decision because the district did not abuse its discretion in deciding that the petition failed to allege facts that would entitle Mendoza to postconviction relief.

I. State's Motion to Strike Mendoza's Substitute Brief

As a threshold matter, we deny the state's motion to strike the substitute brief. We acknowledge that the first petition did not specifically include the arguments raised in the second petition, and that Mendoza does not challenge the district court's decision to deny the second petition for lack of jurisdiction. Contrary to the state's argument, however, a defendant can raise claims of ineffective assistance for the first time on direct appeal, and this court's November 3, 2022 order permitted Mendoza to brief issues appropriately raised on appeal from a final judgment of conviction. *See, e.g.*, *Carridine v. State*, 867 N.W.2d 488, 493 (Minn. 2015) (stating that "the claims of prosecutorial misconduct and ineffective assistance of trial counsel could have been raised on direct appeal because the claims are based on the trial record"). Therefore, we deny the state's motion, but note that the appellate record is limited to the trial record as submitted to this court because the decision denying Mendoza's second postconviction petition is not properly before us.

II. Ineffective Assistance of Counsel

On appeal, Mendoza argues that we should vacate his convictions because of the following six instances of ineffective assistance of counsel: (1) trial counsel failed to request an interpreter during the trial; (2) trial counsel failed to assert an alibi defense; (3) trial counsel failed to move for judgment of acquittal following trial; (4) trial counsel

failed to cross-examine or rebut the State's expert witness; (5) trial counsel failed to pursue introduction of alternative perpetrator evidence; and (6) trial counsel generally failed to investigate the case. We are not convinced by Mendoza's arguments because four of these instances of alleged ineffective assistance relate to trial strategy and because for the remaining two instances of alleged ineffective assistance, Mendoza has not shown that the outcome of the proceeding would have been different but for counsel's errors.

Criminal defendants have the right to effective assistance of counsel. *State v. Hokanson*, 821 N.W.2d 340, 357 (Minn. 2012); U.S. Const. amend. VI; Minn. Const. art. 1, § 6. To show ineffective assistance of counsel, an appellant must demonstrate that counsel's performance "fell below an objective standard of reasonableness, and . . . that a reasonable probability exists that the outcome would have been different but for counsel's errors." *Andersen v. State*, 830 N.W.2d 1, 10 (Minn. 2013) (describing the two-prong test for ineffective assistance of counsel established in *Strickland v. Washington*, 466 U.S. 668, 687 (1984)). If a claim fails to satisfy one of these prongs, we need not consider the other. *Swaney v. State*, 882 N.W.2d 207, 217 (Minn. 2016). Under the prejudice prong, a "defendant must show that counsel's errors 'actually' had an adverse effect in that but for the errors the result of the proceeding probably would have been different." *Gates v. State*, 398 N.W.2d 558, 562 (Minn.1987) (quoting *Strickland*, 466 U.S. at 693).

Initially, we conclude that the second, fourth, fifth, and sixth instances of alleged ineffective assistance of counsel all relate to matters of trial strategy, falling outside of a *Strickland* inquiry. *See, e.g.*, *Boitnott v. State*, 631 N.W.2d 362, 370 (Minn. 2001) (noting that appellate courts "generally will not review" any "matters of trial strategy"). Mendoza

argues that constitutionally effective trial counsel would have pursued an alibi defense at trial, called an expert witness or more thoroughly cross-examined the state's expert, sought to introduce alternative perpetrator evidence, and conducted a more effective pretrial investigation of the case. Such conduct relates to trial strategy. *State v. Allwine*, 963 N.W.2d 178, 190 n.19 (Minn. 2021), (noting that "[u]nder well-established law," failure to pursue an alternative perpetrator defense "is a matter of trial strategy that we do not scrutinize" (citing *Opsahl v. State*, 677 N.W.2d 414, 421. (Minn. 2004))), *cert. denied*, 142 S. Ct. 819 (2022); *State v. Davis*, 820 N.W.2d 525, 539 n.10 (Minn. 2012) (noting that "decisions about which witnesses to interview are typically matters of trial strategy that we will not review"); *Francis v. State*, 781 N.W.2d 892, 898 (Minn. 2010) (noting that whether to cross-examine the state's expert witness and failure to call alibi witnesses were matters of trial strategy that could not constitute ineffective assistance of counsel); *State v. Pearson*, 775 N.W.2d 155, 165 (Minn. 2009) (noting that whether to cross-examine witness was a matter of trial strategy that could not constitute ineffective assistance of counsel); *Ives v. State*, 655 N.W.2d 633, 636 (Minn. 2003) (noting that failure to investigate and failure to call a witness were matters of trial strategy and could not constitute ineffective assistance of counsel); *Hodgson v. State*, 540 N.W.2d 515, 518 (Minn.1995) (noting that failure to present alternative perpetrator evidence and failure to investigate leads were matters of trial strategy and could not constitute ineffective assistance of counsel); *State v. Jones*, 392 N.W.2d 224, 236 (Minn. 1986) (noting that challenges to counsel's investigation were matters of trial strategy and could not constitute ineffective assistance of counsel).

In addition, we conclude that Mendoza has not established the prejudice prong of *Strickland* for the first and third instances of alleged ineffective assistance of counsel. Mendoza argues that his trial counsel should have requested an interpreter for the trial. On the trial record alone, however, we cannot conclude that the outcome would have been different. In his trial testimony, Mendoza was able to understand and respond to the questions asked. It is true that at one point, Mendoza stated that he sometimes confused words and had difficulty with verb tenses when speaking English. After Mendoza made this statement, Trial counsel immediately requested to approach the bench, and a conversation was held off the record. The appellate record submitted to this court does not include a transcript or any statements regarding this conversation, and there was no evidentiary hearing requested on this issue in Mendoza's first postconviction petition. On this limited record, we cannot determine what trial counsel said during this conversation or what motivated trial counsel to request a conversation with the district court. In addition, Mendoza does not specifically state what aspects of the trial or Mendoza's testimony would have been different if an interpreter was used during the trial.

Mendoza also contends that trial counsel provided ineffective assistance by failing to move for judgment of acquittal. Mendoza, however, makes no challenge to the sufficiency of the state's evidence in this appeal. Instead, Mendoza makes passing references to a lack of DNA evidence and general inconsistencies in the trial testimony. Mendoza does not explain why he believes that the district court would have granted a motion for judgment of acquittal or how the outcome would have otherwise been different

had trial counsel made such a motion. Absent such an explanation, Mendoza has failed to establish prejudice.

III. Denial of the First Postconviction Petition without a Hearing

In his first postconviction petition, Mendoza argued that he received ineffective assistance of trial counsel because trial counsel failed to call character witnesses and witnesses who lived with the family during some portion of the alleged abuse.[3] We discern no abuse of discretion in the district court's denial of the first petition without a hearing.

"If the postconviction court concludes there are no material facts in dispute that preclude dismissal, and the state is entitled to dismissal of the petition as a matter of law, the court is not required to hold an evidentiary hearing." *State v. Nicks*, 831 N.W.2d 493, 506 (Minn. 2013) (quotation omitted); *see also Greer v. State*, 836 N.W.2d 520, 522 (Minn. 2013) ("When a petitioner alleges facts that, if true, are legally insufficient to entitle him to the requested relief, the postconviction court need not hold an evidentiary hearing." (quotation omitted)). An appellant seeking postconviction relief "must do more than offer conclusory, argumentative assertions, without factual support." *State v. Turnage*, 729 N.W.2d 593, 599 (Minn. 2007); *see also Wilson v. State*, 726 N.W.2d 103, 107 (Minn. 2007) (stating that the petitioner has the burden "to allege facts that, if proven, would entitle him to the requested relief." (quotation omitted)). We review the denial of a petition without an evidentiary hearing for an abuse of discretion. *Caldwell v. State*, 853 N.W.2d 766, 770 (Minn. 2014).

[3] At oral argument, Mendoza withdrew his arguments regarding the *Paradee* motion.

The first postconviction petition contained only broad allegations of error without any factual specificity or legal analysis. For example, the first postconviction petition does not provide any information regarding who the witnesses could have been, when they lived with Mendoza, or what relationship the witnesses may have had with Mendoza, the victims, and other residents. The petition also made no specific proffer of what the testimony would have included or any explanation of how this testimony would have changed the outcome of the trial. Given the conclusory statements in the first postconviction petition, the district court did not abuse its discretion when it determined that Mendoza had not alleged sufficient facts. Absent such allegations, the district court "need not hold an evidentiary hearing." *Greer*, 836 N.W.2d at 522.

Affirmed; motion denied.