

*This opinion is nonprecedential except as provided by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
A22-0567**

State of Minnesota,
Respondent,

vs.

Kiprono Korir,
Appellant.

**Filed August 21, 2023
Affirmed
Ross, Judge**

Scott County District Court
File No. 70-CR-20-18292

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

Ronald Hocesvar, Scott County Attorney, Todd P. Zettler, Assistant County Attorney,
Shakopee, Minnesota (for respondent)

Ira W. Whitlock, Whitlock Law Office, LLC, St. Paul, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Ross, Judge; and Bjorkman,
Judge.

NONPRECEDENTIAL OPINION

ROSS, Judge

A mother reported to police that her eight-year-old daughter, who had previously suffered unexplained labial scratches, told her that family friend Kiprono Korir sexually assaulted her. Korir appeals from his first-degree criminal-sexual-conduct convictions and

summary denial of his petition for postconviction relief. Because the child's testimony of Korir's genital-to-genital abuse and other evidence amply supports the guilty verdict, we reject his insufficient-evidence challenge. And because he does not attempt to explain how the alleged deficiencies in his trial attorney's performance might have led to a different outcome, we reject his ineffective-assistance-of-counsel challenge. We therefore affirm the conviction and the district court's summary denial of postconviction relief.

FACTS

A jury found appellant Kiprono Geoffrey Korir guilty of two counts of first-degree criminal sexual conduct after hearing testimony that he repeatedly sexually assaulted a young girl in or before May 2020 when she was eight years old. The jury learned that the child's mother had occasionally noticed scratches on the child's labia and that one or two weeks after having a good-touch, bad-touch talk with the child, the child told her that Korir had touched her inappropriately. The child told the jury that Korir—a family friend who frequently babysat her—would tell her to go upstairs to his guest bedroom, direct her to lie down and close her eyes, and touch inside her “choo choo.” The jury learned that her “choo choo” was her vagina. The jury also heard from the child that she knew that Korir touched her with his “private part” because he touched her with something “wet.” She said that when she opened her eyes, she saw Korir pulling up his pants.

The jury also heard testimony from a nurse and two police investigators about the timing of the child's report. Korir's trial counsel made an opening statement and challenged the state's witnesses through cross-examination. He offered no evidence, but he challenged the state's evidence in his closing argument. The jury found Korir guilty of two counts of

first-degree criminal sexual conduct. The district court convicted him on both counts and sentenced him to serve 144 months in prison.

Korir petitioned the district court for postconviction relief, maintaining that he was deprived of his right to effective assistance of counsel. The petition vaguely alleged four supposed failures. It specifically cited trial counsel's failure to subpoena the child's father as a witness, maintaining that trial counsel "was aware of Petitioner's friendship with the victim's father and the fact that the victim's father had challenged the victim and her mother concerning the mother coaching the victim to lie about various things." The petition was not accompanied by any supporting affidavit, and the district court summarily denied it. Korir appeals.

DECISION

Korir argues that the trial evidence cannot support his convictions. And he maintains that he should have been granted a new trial or a hearing on his postconviction claim that he received ineffective assistance of trial counsel. Neither argument prevails.

I

Korir unpersuasively asserts that the state offered insufficient evidence to support his convictions. We review whether the state offered sufficient evidence by considering whether the record includes evidence of facts, including reasonable inferences favoring the guilty verdict, that would permit a jury to reasonably decide beyond a reasonable doubt that the appellant was guilty. *State v. Boldman*, 813 N.W.2d 102, 106 (Minn. 2012). Korir's assertion fails under this standard.

The direct evidence supports the guilty verdict. To establish Korir’s guilt for first-degree criminal sexual conduct, the state had to prove that Korir engaged in sexual penetration or “sexual contact with a person under 13 years of age,” and that Korir is 36 months older than the complainant. *See* Minn. Stat. § 609.342, subds. 1, 1(a) (Supp. 2019). “Sexual contact with a person under 13 [years of age]” includes genital-to-genital contact. Minn. Stat. § 609.341, subd. 11(c) (Supp. 2019). The age elements are met, as Korir is about 25 years older than the child, and the child was under 13 in May 2020. The sexual-contact or penetration element is met, as the child’s detailed testimony informed the jury that Korir penetrated the child vaginally with his penis. Korir’s arguments can be summarized as a general attack on the child’s credibility. He complains that “the victim’s testimony was not corroborated by any evidence,” was imprecise as to date, time, and location, and included inconsistencies. But we assume that the jury believed the evidence that favors the state’s case, *Boldman*, 813 N.W.2d at 106, and the victim’s testimony alone can support a guilty verdict, Minn. Stat. § 609.347, subd. 1 (2022). Korir’s insufficient-evidence argument fails.

II

Korir argues that the district court erred by summarily denying his postconviction petition without affording him an evidentiary hearing. He maintains that his trial counsel was ineffective, warranting a new trial. An evidentiary hearing is not required on a postconviction petition 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 (2022). We review *de novo* a district court’s denial of a postconviction hearing on an

ineffective-assistance-of-counsel claim. *Opsahl v. State*, 677 N.W.2d 414, 420 (Minn. 2004). Because Korir’s petition fails on its face, the district court appropriately denied his request for an evidentiary hearing.

A petitioner will prevail on his ineffective-assistance-of-counsel claim only if he establishes both that his attorney’s performance fell below an objective standard of reasonableness and that there is a reasonable probability his attorney’s deficient performance impacted the jury’s verdict. *Strickland v. Washington*, 466 U.S. 668, 687–88, 694 (1984); *State v. Rhodes*, 657 N.W.2d 823, 842 (Minn. 2003). We need not address both elements where, as here, resolving only one resolves the claim. *Strickland*, 466 U.S. at 697. Korir’s petition alleged that his trial counsel failed to investigate, to interview or subpoena favorable witnesses, to advise Korir that he should testify, and to present a defense. We need not discuss whether these alleged failures amount to deficient performance, because Korir failed in the district court, and on appeal, to show how the alleged deficiencies might have impacted the jury’s verdict. He does not explain or cite evidence to show how avoiding any of the asserted failures might have resulted in raising any doubt about his guilt. The extent of Korir’s prejudice argument before the district court was, “If trial counsel had provided Petitioner a reasonable level of competency, the outcome of Petitioner’s trial would have likely been different.” How the outcome would have been different, he does not say. Postconviction relief is unwarranted when the allegations raised are “argumentative assertions without factual support.” *Greer v. State*, 836 N.W.2d 520,

522 (Minn. 2013) (quotation omitted). Korir provides no reason for us to reverse the district court's decision denying his petition without a hearing.

Affirmed.