STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0955

Antonio Terrell Beasley, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed February 6, 2023
Affirmed
Smith, Tracy M., Judge

Olmsted County District Court
File No. 55-CR-17-3966

Beau D. McGraw, McGraw Law Firm, P.A., Lake Elmo, Minnesota (for appellant)

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

Mark A. Ostrem, Olmsted County Attorney, James E. Haase, Senior Assistant County Attorney, Rochester, Minnesota (for respondent)

Considered and decided by Smith, Tracy M., Presiding Judge; Worke, Judge; and Wheelock, Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

After his conviction was affirmed on direct appeal, appellant Antonio Terrell Beasley sought postconviction relief, asserting claims of ineffective counsel by his trial and appellate attorneys. The district court denied relief on the ground that the petition for

postconviction relief was untimely. Beasley appeals, arguing that his petition was not time-barred and that he is entitled to relief on the merits of his claims. Respondent State of Minnesota counters that the petition was time-barred, that the claims are procedurally barred under *Knaffla*, and that the claims fail on their merits. We conclude that (1) the district court erred by determining that Beasley's petition was untimely, (2) Beasley's ineffective-assistance-of-trial-counsel claim is *Knaffla*-barred but his ineffective-assistance-of-appellate-counsel claim is not, and (3) his ineffective-assistance-of-appellate-counsel claim fails on the merits. We therefore affirm.

FACTS

In 2017, Rochester police began investigating Beasley for importing heroin into the state and selling it. Between April and June 2017, officers monitored and recorded five controlled heroin transactions between Beasley and an informant. In June 2017, the police learned that Beasley planned to travel to Illinois to restock his drug supply. While Beasley and the informant were on the road to Illinois, the police obtained a warrant to arrest Beasley and to search his car. When Beasley returned to Minnesota, the police arrested him and searched his car, finding approximately 200 grams of heroin, cash, and two cell phones. Police questioned Beasley, and he admitted to selling drugs and transporting heroin across state lines.

Police then applied for and obtained a search warrant to search the data and downloads on Beasley's two cell phones. They executed the search warrant and identified a phone number associated with one of the cell phones. The state used the phone number,

along with the testimony of officers and the informant and the recordings of the controlled buys, to tie Beasley to the five controlled buys with the informant.

In an amended complaint, the state charged Beasley with aggravated first-degree controlled substance crime (sale of heroin), Minn. Stat. § 152.021, subd. 2b(2) (2016) (count I); importing heroin across state borders, Minn. Stat. § 152.0261, subd. 1 (2016) (counts II and III); and tax-stamp violation, Minn. Stat. § 297D.04 (2016) (count IV). Beasley moved to suppress evidence found pursuant to the warranted search of his car, but the motion was denied. Beasley did not challenge the search warrant for his cell phones or seek suppression of the evidence found on the cell phones. Following a jury trial, Beasley was acquitted of count II but found guilty of counts I, III, and IV. The district court convicted Beasley on counts I and IV and sentenced him to 192 months in prison.

Beasley appealed his convictions, arguing that he should receive a new trial because the warrant authorizing the search of his car was invalid. *See State v. Beasley*, No. A18-1470, 2019 WL 3541720, at *1 (Minn. App. Aug. 5, 2019), *rev. denied* (Minn. Oct. 15, 2019). Beasley did not raise any issue regarding the search warrant for his cell phones. We affirmed Beasley's convictions, concluding that he was unable to demonstrate that the search warrant for his car was invalid. *Id.* at *2-3.[1] The Minnesota Supreme Court denied review on October 15, 2019, and this court entered judgment on October 16, 2019.

[1] Beasley also argued that his convictions should be reversed because certain evidence had been improperly admitted and the state failed to timely turn over information about the informant. We rejected those arguments as well. *Id.* at *1-2, *8.

On January 13, 2020, in a separate criminal case against Beasley involving evidence obtained from the warranted search of his cell phones in this matter, the district court issued an order concluding that the search warrant was invalid because it was unconstitutionally overbroad. It therefore suppressed the resulting evidence in that case.

On January 11, 2022, Beasley filed his petition for postconviction relief in this case, asserting that he was denied his Sixth Amendment right to effective assistance of counsel when his trial and appellate counsel failed to challenge the search warrant for his cell phones. The district court summarily denied the petition as untimely without reaching the merits of Beasley's ineffective-assistance-of-counsel claims. It decided that Beasley's petition had to be filed within two years after this court's entry of judgment on October 16, 2019, unless an exception applied, and that Beasley had failed to identify an exception.

This appeal follows.

DECISION

We review the denial of postconviction relief for an abuse of discretion. *See Matakis v. State*, 862 N.W.2d 33, 36 (Minn. 2015). Appellate courts will not reverse an order denying postconviction relief "unless the postconviction court exercised its discretion in an arbitrary or capricious manner, based its ruling on an erroneous view of the law, or made clearly erroneous factual findings." *Reed v. State*, 793 N.W.2d 725, 729 (Minn. 2010).

Beasley asserts that his petition for postconviction relief was timely, that his postconviction-relief claims based on ineffective assistance of trial and appellate counsel are not *Knaffla*-barred, and that his ineffective-assistance claims are successful on the merits. We address each argument in turn.

I. Time Bar

Beasley argues that the district court abused its discretion by determining that his postconviction-relief petition was time-barred. We agree.

A petition for postconviction relief may not be filed "more than two years after the later of: (1) the entry of judgment of conviction or sentence if no direct appeal is filed; or (2) an appellate court's disposition of petitioner's direct appeal." Minn. Stat. § 590.01, subd. 4(a) (2020). "[A] petition for postconviction relief filed after the two-year statute of limitations runs is generally time-barred." *Rickert v. State*, 795 N.W.2d 236, 239 (Minn. 2011). There are exceptions to the two-year statute of limitations, including an exception for when a petition is not frivolous and hearing the petition is in the interests of justice. Minn. Stat. § 590.01, subd. 4(b)(5) (2020).

The district court decided that Beasley's petition was time-barred because it was filed more than two years after the date that judgment was entered following disposition of his direct appeal and Beasley had cited no exception to the statute of limitations. In his brief to this court, Beasley argued that the district court erred because the interests-of-justice exception applies. In his oral argument to this court, however, Beasley changed his position—contending that his petition was actually timely because, under the postconviction statute, the limitations period did not begin to run until 90 days after the final disposition of his direct appeal.

Beasley's latter argument is correct. When a direct appeal is filed, the two-year limitations period begins when an appellate court's disposition of a petitioner's direct appeal becomes final. *Hannon v. State*, 957 N.W.2d 425, 435 (Minn. 2021). And "[a]

conviction is final under [Minnesota Statutes section 590.01, subdivision 4] when the time for filing a petition for a writ of certiorari with the United States Supreme Court has expired." *Id.*; *see also Jackson v. State*, 929 N.W.2d 903, 905 (Minn. 2019) (explaining that the defendant's conviction became final 90 days after the Minnesota Supreme Court's decision because the defendant did not file a petition for certiorari with the United States Supreme Court). The time for filing a petition for a writ of certiorari is 90 days from the date of the entry of judgment by a state court of last resort or 90 days from the entry of the order denying discretionary review. Sup. Ct. R. 13(1). Thus, a conviction is final, and the two-year statute of limitations begins to run, 90 days after an appellate court's disposition of a petitioner's direct appeal becomes final. *See Hannon*, 957 N.W.2d at 435.

We issued our decision on Beasley's direct appeal on August 5, 2019. The Minnesota Supreme Court denied review on October 15, 2019. The disposition of the direct appeal became final 90 days later—on January 13, 2020—when the time for filing a petition for a writ of certiorari with the United States Supreme Court expired. As a result, the two-year limitations period for Beasley's petition for postconviction relief began to run on January 13, 2020, and ended on January 13, 2022. Beasley's petition was filed on January 11, 2022. Thus, Beasley's petition was not time-barred.

II. *Knaffla* Bar

The state contends that, even if the petition for postconviction relief was timely, it was still properly dismissed because Beasley's ineffective-assistance claims are procedurally barred under *Knaffla*. Beasley argues that the claims are not procedurally barred because they could not be resolved on the trial record alone and thus were not

required to be brought on direct appeal. He also contends that, in any event, two exceptions to the *Knaffla* rule apply. We conclude that the ineffective-assistance claim regarding trial counsel is *Knaffla*-barred but the ineffective-assistance claim regarding appellate counsel is not.

"[W]here 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." *State v. Knaffla*, 243 N.W.2d 737, 741 (Minn. 1976). When a claim of ineffective assistance of trial counsel can be adjudicated on the basis of the trial record, it must be brought on direct appeal or it will be *Knaffla*-barred if raised in a postconviction petition. *Torres v. State*, 688 N.W.2d 569, 572 (Minn. 2004); *Robinson v. State*, 567 N.W.2d 491, 494 (Minn. 1997).

Beasley argues that his claims for ineffective assistance of counsel are not *Knaffla*-barred because he was not aware of his counsels' ineffective assistance until January 13, 2020, when the district court, in a separate criminal prosecution against Beasley, issued its order concluding that the search warrant for his cell phones was invalid. Beasley contends that the trial record therefore was insufficient to resolve Beasley's claims and he was thus not required to bring his claims on direct appeal.

Beasley further cites two exceptions to the *Knaffa* rule, which he suggests apply: (1) an exception for claims so novel that the legal basis was not reasonably available at the time of direct appeal; and (2) a narrow exception for claims that should be heard in the interest of fairness when the petitioner did not deliberately and inexcusably fail to raise the claims on direct appeal. *See Thoresen v. State*, 965 N.W.2d 295, 304 (Minn. 2021).

Beasley's arguments are unavailing as to his claim of ineffective assistance of trial counsel. That claim could have been adjudicated based on the trial record. It is founded on his trial counsel's failure to raise a particularity challenge to the search warrant. The particularity challenge could have been determined based on the face of the warrant, the supporting application and affidavit, and the factual circumstances in the trial record. *See State v. Fawcett*, 884 N.W.2d 380, 387 (Minn. 2016).

Moreover, Beasley's suggestion that an exception to *Knaffla* applies is unpersuasive. Regardless of what happened in a separate, later prosecution, Beasley knew that his trial counsel did not challenge the search warrant for his cell phones at the time of trial. He learned from the January 13, 2020 order that a challenge to the search warrant may have been successful. But the legal issue of whether a search warrant for an electronic device is unconstitutionally overbroad is not a novel issue. *See, e.g.*, *State v. Keodouangdy*, A16-0121, 2016 WL 7438712, at *2 (Minn. App. Dec. 27, 2016) (addressing an unpreserved challenge to the particularity of a cell-phone search warrant), *rev. denied* (Minn. Mar. 14, 2017); *State v. Bachman*, No. A14-0996, 2015 WL 46547, at *1 (Minn. App. Jan. 5, 2015) (holding that a search warrant was overbroad and lacked particularity). As a result, the district court's January 13, 2020 order did not create a legal claim so novel that its legal basis was not reasonably known at the time of Beasley's direct appeal. And Beasley does not provide legal or factual support explaining why fairness requires that his ineffective-assistance-of-trial-counsel claim be heard. Because Beasley knew of but did not raise his claim of ineffective assistance of trial counsel on direct appeal and that claim could have been adjudicated on the basis of the trial record, it is *Knaffla*-barred.

The same conclusion does not apply to Beasley's claim for ineffective assistance of appellate counsel. Although the state asserts that this claim, too, is *Knaffla*-barred, claims of ineffective assistance of appellate counsel on direct appeal are not *Knaffla*-barred in a subsequent postconviction petition because they could not have been brought at any earlier time. *Leake v. State*, 737 N.W.2d 531, 536 (Minn. 2007). Therefore, Beasley's claim for ineffective assistance of appellate counsel is not *Knaffla*-barred because it could not have been raised in his direct appeal.

III. Ineffective Assistance of Appellate Counsel

Because Beasley's ineffective-assistance-of-appellate-counsel claim is neither time-barred nor *Knaffla*-barred, we turn to the merits of that claim.

The Sixth Amendment guarantees a defendant the right to reasonably effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 684-86 (1984). To establish ineffective assistance of counsel, the petitioner has the burden of showing that (1) counsel's performance was not objectively reasonable and (2) there is a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different. *Id.* at 669, 688-89, 694; *State v. Nicks*, 831 N.W.2d 493, 504 (Minn. 2013). If one *Strickland* prong is determinative, we need not review the other. *See Chavez-Nelson v. State*, 948 N.W.2d 665, 671 (Minn. 2020). We review a claim under *Strickland* de novo because it involves a mixed question of law and fact. *See State v. Mosley*, 895 N.W.2d 585, 591 (Minn. 2017).

Beasley asserts that his appellate counsel was ineffective for failing to raise trial counsel's ineffective assistance in not challenging the validity of the search warrant and seeking suppression of the resulting evidence. When a claim for ineffective assistance of

appellate counsel is predicated on asserted error by the trial counsel, rather than an independent error by appellate counsel, a petitioner must establish a claim of ineffective assistance of trial counsel. *Sullivan v. State*, 585 N.W.2d 782, 784 (Minn. 1998).

Beasley's claim fails because, even if his trial counsel should have challenged the warrant—a determination that we do not make here—he has not established prejudice under the second prong of *Strickland*. Beasley asserts that the cell phones provided "key evidence" that resulted in his conviction. That assertion is unsupported by the record. There was significant direct evidence, unrelated to the cell phones, supporting Beasley's convictions. Beasley was arrested in a car with approximately two hundred grams of heroin; he admitted to transporting heroin across state lines; he admitted to buying and selling heroin; there were five recordings of controlled buys between Beasley and the informant; and there was extensive testimony from both the informant, who traveled with Beasley across state lines with the heroin, and from the officers that monitored the controlled buys and arrested Beasley.

The sole use of the cell phone evidence at trial was to further connect Beasley to the five controlled buys with the informant for count I, first-degree sale of drugs. But each of those controlled buys was monitored and recorded, and both the informant and the officers who monitored them testified at trial. Given the extensive evidence supporting Beasley's convictions, and the minimal use of the cell phone evidence at trial, there is no reasonable probability that the result of the proceeding would have been different had trial counsel succeeded in challenging the warrant and getting the evidence suppressed.

Because a claim for ineffective assistance of trial counsel fails, Beasley's claim for ineffective assistance of appellate counsel likewise fails. The district court therefore did not abuse its discretion by denying postconviction relief.

Affirmed.