STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1385

Kristopher Lee Roybal, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed May 8, 2023
Affirmed
Frisch, Judge

Cass County District Court
File No. 11-CR-18-1104

Kristopher Roybal, Bayport, Minnesota (pro se appellant)

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

Benjamin T. Lindstrom, Cass County Attorney, Walker, Minnesota (for respondent)

Considered and decided by Frisch, Presiding Judge; Bjorkman, Judge; and Jesson, Judge.

NONPRECEDENTIAL OPINION

FRISCH, Judge

Appellant challenges the denial of his petition for postconviction relief, arguing that the postconviction court abused its discretion in determining that his petition was untimely

and procedurally barred and that he is not entitled to relief on the merits. Because we discern no abuse of discretion by the postconviction court, we affirm.

FACTS

In June 2018, respondent State of Minnesota charged appellant Kristopher Lee Roybal with driving after cancellation in violation of Minn. Stat. § 171.24, subd. 5 (2016), and with first-, third-, and fifth-degree controlled-substance-possession crimes in violation of Minn. Stat. §§ 152.021, subd. 2(a)(1), .023, subd. 2(a)(3), .025, subd. 2(1) (2016), after a deputy found controlled substances in Roybal's vehicle following a traffic stop.

Roybal moved to suppress evidence discovered during the stop, arguing that the stop and inventory search of his vehicle were unlawful because law enforcement had no basis to stop Roybal or tow his vehicle. The district court denied Roybal's motion to suppress.

Roybal discharged his counsel and proceeded pro se. Roybal moved for reconsideration of the district court's suppression ruling, arguing that the district court had applied the incorrect legal standard to assess the validity of the inventory search. The district court denied Roybal's motion for reconsideration.

In January 2019, the state filed an amended complaint, adding one count of second-degree possession of a controlled substance in violation of Minn. Stat. § 152.022, subd. 2(a)(1) (2016). Pursuant to Minn. R. Crim. P. 26.01, subd. 4, the parties submitted the case to the district court and Roybal stipulated to the evidence in support of the state's case in order to obtain appellate review of the district court's denial of his motion to suppress. The district court found Roybal guilty of second-degree possession of a

controlled substance, entered a judgment of conviction, and sentenced him to 95 months in prison.

Roybal appealed and we affirmed the district court's denial of Roybal's motion to suppress. *State v. Roybal*, No. A19-0733, 2020 WL 994990, at *1 (Minn. App. Mar. 2, 2020), *rev. denied* (Minn. May 27, 2020).

Petition for Postconviction Relief

On September 28, 2021, Roybal filed a petition for postconviction relief. On June 16, 2022, Roybal filed an amended petition. In the amended petition, Roybal asserted five grounds for relief: (1) a discovery violation under *Brady v. Maryland*, 373 U.S. 83 (1963); (2) a violation of Minn. Stat. § 168B.035, subd. 2(a) (2016); (3) judicial bias; (4) a violation of Minn. R. Crim. P. 26.01, subd. 4; and (5) ineffective assistance of counsel.

On September 6, 2022, the postconviction court denied Roybal's petition for postconviction relief.[1] The postconviction court stated that Roybal "advised the Court that he was seeking postconviction relief of the five (5) issues raised in his June 16, 2022, amended petition." The postconviction court determined that Roybal's petition was untimely under Minn. Stat. § 590.01, subd. 4(a)(2) (2020), because the amended petition was filed more than two years after the Minnesota Supreme Court denied review of his direct appeal.

[1] The postconviction court's order indicates that it held a hearing on Roybal's petition in July 2022, but there is no transcript of this proceeding in the appellate record. Roybal notified this court that he elected to proceed with his appeal without ordering transcripts.

Nevertheless, the postconviction court determined that Roybal is not entitled to postconviction relief because his claims are also procedurally barred and relief is not warranted on the merits.

Roybal appeals.

DECISION

Roybal argues that the postconviction court abused its discretion in determining that his petition was untimely and that his claims are procedurally barred and in denying his petition on the merits. Even if Roybal's claims were timely and are not procedurally barred, we agree with the postconviction court that none of the claims in the petition are meritorious.[2]

We review the denial of postconviction relief for an abuse of discretion. *Matakis v. State*, 862 N.W.2d 33, 36 (Minn. 2015). We 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). "We

[2] A postconviction petition must be filed no more than two years after an appellate court's disposition of a direct appeal, if such an appeal occurred. Minn. Stat. § 590.01, subd. 4 (2020). When a direct appeal is filed, "[a] conviction is final under [Minnesota Statutes section 590.01, subdivision 4(a)(2)] when the time for filing a petition for a writ of certiorari with the United States Supreme Court has expired," *Hannon v. State*, 957 N.W.2d 425, 435 (Minn. 2021), which is 90 days from the date of the entry of judgment by a state court of last resort or, if subject to discretionary review by the state court of last resort, 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.

review issues of law de novo." *Id.* A petition for postconviction relief may be denied without an evidentiary hearing if the files and records conclusively show that the petitioner is not entitled to relief. *See* Minn. Stat. § 590.04, subd. 1 (2020).

Brady Violation

Roybal asserts that the state withheld evidence showing that the deputy had run Roybal's license plate twice prior to the time the deputy testified he first ran Roybal's license plate. Roybal argues this evidence is important to the pretext argument he presented to the district court in his motion to suppress.

To establish a *Brady* violation, "(1) the evidence must be favorable to the defendant because it would have been either exculpatory or impeaching; (2) the evidence must have been suppressed by the prosecution, intentionally or otherwise; and (3) the evidence must be material." *Walen v. State*, 777 N.W.2d 213, 216 (Minn. 2010). "[I]n other words, the absence of the evidence must have caused prejudice to the defendant." *Id.* "Evidence is material under *Brady* if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *Zornes v. State*, 903 N.W.2d 411, 418 (Minn. 2017) (quotation omitted). "A reasonable probability is one that is sufficient to undermine confidence in the outcome." *Id.* (quotation omitted). The evidence Roybal references does not constitute a *Brady* violation. Roybal has not alleged facts establishing that the evidence was suppressed by the prosecution intentionally or otherwise, or that the evidence was material. The evidence is not material because there is no reasonable probability that it would have changed the outcome of the proceeding. *See id.* The stipulated facts provide that the deputy stopped Roybal because of an inoperative

rear license-plate light *and* that he was speeding after 1:00 a.m. Thus, the deputy had a reasonable basis to stop Roybal even in the absence of any facts involving the vehicle license-plate light. Accordingly, there is no reasonable probability that the outcome of the district court's decision on Roybal's motion to suppress would have been different had such license-plate evidence been disclosed.

Because Roybal failed to prove all three elements to establish a *Brady* violation, the postconviction court did not abuse its discretion in determining that Roybal is not entitled to relief on this claim. *See Walen*, 777 N.W.2d at 216-17.

Minnesota Statutes Section 168B.035, Subdivision 2(a)

Roybal seems to allege that law enforcement violated Minn. Stat. § 168B.035, subd. 2(a), which sets forth certain requirements for a towing authority to tow a vehicle.[3] On appeal, Roybal does not explain how this law was allegedly violated or why he is entitled to relief on that basis, and so we decline to consider this claim. *See State v. Butcher*, 563 N.W.2d 776, 780-81 (Minn. App. 1997) (concluding appellant waived an issue when their brief did not make or develop any argument), *rev. denied* (Minn. Aug. 5, 1997).

Even so, this argument has no merit because we already concluded on direct appeal that the inventory search was reasonable and not pretextual because law enforcement was motivated, at least in part, "by a desire to move Roybal's vehicle because it was a traffic

[3] Specifically, subdivision 2(a) provides that a towing authority is not allowed to tow a motor vehicle from public property "unless a peace officer . . . has prepared . . . a written towing report describing the motor vehicle and the reasons for towing." Roybal seems to have argued to the district court that law enforcement did not write the requisite report under section 168B.035 and that this is evidence the inventory search was pretextual and unreasonable.

hazard." *Roybal*, 2020 WL 994990, at *4-5 (explaining that a search is invalid if a police officer's sole motivation in conducting the search is to discover evidence of a crime and concluding that the search was valid and not pretextual because the sole motive was not investigatory). "Issues determined in a first appeal will not be relitigated in the trial court nor re-examined in a second appeal." *State v. Bailey*, 732 N.W.2d 612, 623 (Minn. 2007) (quotation omitted) (applying law-of-the-case doctrine); *Lynch v. State*, 749 N.W.2d 318, 321 (Minn. 2008) (concluding law-of-the-case doctrine barred a postconviction claim that had been decided on direct appeal). Thus, the postconviction court did not abuse its discretion in determining that Roybal is not entitled to relief based on his claim that law enforcement allegedly violated section 168B.035, subdivision 2(a).

Judicial Bias

Roybal seems to argue that the district court demonstrated judicial bias when it applied a probable-cause standard to assess the search; made improper "additional findings" in concluding the deputy had substantial evidence justifying the traffic stop; did not focus on whether the deputy followed department procedures in filling out an inventory form; did not consider the deputy's subjective reasons for the search; and pointed out that Roybal did not provide certain details related to alternative arrangements for towing his vehicle. Roybal also seems to argue the district court's order denying his motion to reconsider demonstrated bias because the district court concluded the probable-cause standard was not improper and the district court cited authority "beyond the scope" of the police department's policies on inventory searches.

We presume that a judge properly discharged their duties. *State v. Mems*, 708 N.W.2d 526, 533 (Minn. 2006). "Previous adverse rulings by themselves do not demonstrate judicial bias." *Hannon v. State*, 752 N.W.2d 518, 522 (Minn. 2008). Judicial bias "must be proved in light of the record as a whole." *Id.* Roybal's claim of judicial bias is based entirely on adverse rulings. Thus, Roybal has not established judicial bias, and the postconviction court did not abuse its discretion in determining that Roybal is not entitled to relief on this claim.

Minnesota Rule of Criminal Procedure 26.01, Subdivision 4

Roybal seems to argue that the district court "committed plain error" in its articulation of what issue was preserved for appeal, and that this error "precluded review of the issues presented in this petition."[4] We also construe Roybal's argument as an assertion that his jury-trial waiver is invalid because he was not aware that other nondispositive pretrial errors would be ineligible for appellate review. Because the exact nature of Roybal's claim is unclear, we address both arguments.

Roybal did not object to any aspect of the stipulated trial at the district court, and we therefore review the proceeding for plain error. *See State v. Myhre*, 875 N.W.2d 799, 805-06 (Minn. 2016) ("[P]lain error analysis applies to unobjected-to errors committed under Rule 26.01, subdivision 4."). Under the plain-error doctrine, a defendant must establish (1) an error, (2) that is plain, and (3) the error must affect substantial rights. *State*

[4] Roybal specifically asserts the district court "committed plain error as it relates to the plea agreement." We construe Roybal's reference to "the plea agreement" as meaning Roybal's agreement to a stipulated trial under the Rule 26.01, subdivision 4 procedures.

v. Griller, 583 N.W.2d 736, 740 (Minn. 1998). If these three prongs are met, then we assess whether we should "address the error to ensure fairness and the integrity of the judicial proceedings." *Id.* A "plain" error is an error that is "clear or obvious" at the time of appeal. *State v. Peltier*, 874 N.W.2d 792, 799 (Minn. 2016) (quotation omitted). "An error is clear or obvious if it contravenes case law, a rule, or a standard of conduct." *State v. Little*, 851 N.W.2d 878, 884 (Minn. 2014) (quotation omitted).

To the extent that Roybal is challenging the district court's articulation of the issue preserved for appeal, Roybal does not identify any error that contravenes caselaw, a rule, or a standard of conduct. Further, we have already concluded that, as required under Rule 26.01, subdivision 4, Roybal "acknowledged that the dispositive pretrial issue that would be preserved for appeal was the district court's ruling on the validity of the inventory search." *Roybal*, 2020 WL 994990, at *5. That conclusion is law of the case, and we cannot revisit this issue. *See Bailey*, 732 N.W.2d at 623.

To the extent Roybal argues that his jury-trial waiver was invalid, a defendant cannot withdraw a jury-trial waiver after the conclusion of the stipulated-facts trial. *State v. Johnson*, 689 N.W.2d 247, 253 (Minn. App. 2004), *rev. denied* (Minn. Jan. 20, 2005); *see also* Minn. R. Crim. P. 26.01, subd. 1(3) ("The defendant may withdraw the waiver of a jury trial any time before trial begins.").[5] In addition, Roybal was fully advised of his

[5] Roybal cites *Myhre* for the proposition that "appeals [are allowed] to proceed as if the defendant['s] plea had fully complied with the *Lothenbach* [stipulated trial] procedure." 875 N.W.2d at 803. *Myhre* applied plain-error analysis to conclude that the appellant was not entitled to a new trial based on the district court's failure to fully comply with the provisions of Rule 26.01, subdivision 4. *Id.* at 803-09. But *Myhre* is not instructive here. Roybal does not seem to assert that the district court failed to comply with the provisions

rights and, in stipulating to evidence to enable appellate review, acknowledged that he was foregoing appellate review of any other issue apart from the stop. *Roybal*, 2020 WL 994990, at *2, *5 (concluding that Roybal waived his trial rights on the record, that the issue preserved for appeal was the validity of the inventory search, and that consequently, "Roybal's argument[] that the traffic stop was invalid . . . [is] beyond the agreed-upon scope of this appeal"). Thus, the postconviction court did not abuse its discretion in determining that Roybal is not entitled to relief on his claim that the district court violated Rule 26.01, subdivision 4, or that his jury-trial waiver was invalid.

Ineffective Assistance of Counsel

Roybal argues that his counsel was constitutionally ineffective because counsel failed to investigate whether law enforcement followed standard police-department procedure in conducting the inventory search and failed to impeach the deputy's testimony regarding the exact moment when the deputy observed the equipment violation that prompted the traffic stop.

To prevail on his ineffective-assistance-of-counsel claim, Roybal must demonstrate "(1) that his counsel's representation 'fell below an objective standard of reasonableness'; and (2) 'there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'" *Nissalke v. State*, 861 N.W.2d 88, 94 (Minn. 2015) (quoting *Strickland v. Washington*, 466 U.S. 668, 694 (1984)). An attorney provides reasonable assistance when they exercise "the customary skills and

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of Rule 26.01, subdivision 4; he instead disagrees with the scope of the issue that was preserved for appellate review.

diligence that a reasonably competent attorney would perform under the circumstances." *Dukes v. State*, 621 N.W.2d 246, 252 (Minn. 2001) (quotation omitted). "[T]here is a strong presumption that counsel's performance fell within a wide range of reasonable assistance." *Gail v. State*, 732 N.W.2d 243, 248 (Minn. 2007).

When reviewing the denial of a petition for postconviction relief based on a claim of ineffective assistance of counsel, we "will consider the court's factual findings that are supported in the record, conduct a de novo review of the legal implication of those facts on the ineffective assistance claim, and either affirm the court's decision or conclude that the court abused its discretion because postconviction relief is warranted." *State v. Nicks*, 831 N.W.2d 493, 503-04 (Minn. 2013).

Roybal's current complaints about his trial counsel's decisions regarding the scope of cross-examination of a state's witness and the scope of investigation are unreviewable issues of trial strategy. *See Opsahl v. State*, 677 N.W.2d 414, 421 (Minn. 2004) (stating appellate courts generally do not review issues of trial strategy and declining to review, in part, the depth of counsel's investigation into alternative suspects); *Francis v. State*, 781 N.W.2d 892, 898 (Minn. 2010) (concluding in part that whether to cross-examine an expert witness was trial strategy); *see also Leake v. State*, 737 N.W.2d 531, 539 (Minn. 2007) ("Decisions about which witnesses to call at trial and what information to present to the jury are questions of trial strategy that lie within the discretion of trial counsel."); *Chavez-Nelson v. State*, 948 N.W.2d 665, 674 n.6 (Minn. 2020) (stating that a claim based on trial counsel's alleged failure to "elicit favorable testimony from a witness" is "unreviewable trial strategy"). Applying these principles, counsel's decision not to cross-examine the

deputy on the exact time he observed the equipment violation and not to investigate whether law enforcement followed police procedure are unreviewable trial strategy.

And even if counsel's conduct fell below an objective standard of reasonableness, there is no reasonable probability that the outcome would have been different but for counsel's alleged errors. Roybal does not set forth—beyond mere conclusory assertions—whether such questioning would have elicited information that would have altered the district court's omnibus decision. Thus, the postconviction court did not abuse its discretion in determining that Roybal is not entitled to relief on his ineffective-assistance-of-counsel claim.

Affirmed.