STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1550

Richard Theodore Knoll, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed April 24, 2023
Affirmed
Gaïtas, Judge

Isanti County District Court
File No. 30-CR-17-154

Richard Theodore Knoll, Mora, Minnesota (self-represented appellant)

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

Jeffrey R. Edblad, Isanti County Attorney, Nicholas J. Colombo, Assistant County Attorney, Cambridge, Minnesota (for respondent)

Considered and decided by Gaïtas, Presiding Judge; Ross, Judge; and Wheelock, Judge.

NONPRECEDENTIAL OPINION

GAÏTAS, Judge

Appellant Richard Theodore Knoll challenges the district court's denial of his postconviction petition without an evidentiary hearing after this court affirmed his conviction for third-degree burglary on direct appeal. Because the district court did not

abuse its discretion when it determined that Knoll's claims lack merit and Knoll was not entitled to a postconviction evidentiary hearing, we affirm.

FACTS

Knoll was arrested in March 2017, when police officers responding to a burglary report found him inside a locked garage on private property. Respondent State of Minnesota charged Knoll with third-degree burglary, Minn. Stat. § 609.582, subd. 3 (2016), fifth-degree drug possession, Minn. Stat. § 152.025, subd. 2(1) (2016), and attempted misdemeanor theft, Minn. Stat. §§ 609.52, subd. 2(a)(1), .17, subd. 1 (2016). The district court granted Knoll conditional release pending trial.

Knoll was represented by multiple different public defenders throughout the pretrial and trial proceedings in his case. On two occasions, Knoll requested continuances to consult with his preferred public defenders about settlement offers and his defense strategy. Both times, Knoll assured the district court that he wanted to waive his right to have a speedy trial.

The case was tried on October 5, 2018; a jury found Knoll guilty of the third-degree burglary offense, and not guilty of the remaining charges. At sentencing, the district court stayed execution of a 15-month sentence and placed Knoll on probation for five years.

Represented by an appellate public defender, Knoll filed a direct appeal to this court. He argued that the district court committed plain error by allowing the prosecutor to introduce evidence of an accomplice's guilty plea to the burglary offense. We affirmed Knoll's conviction. *State v. Knoll*, A19-0764, 2020 WL 1129872, at *3 (Minn. App. Mar. 9, 2020).

On May 13, 2022, Knoll filed a pro se petition for postconviction relief, asking the district court to vacate his conviction "to correct the manifest injustice inflicted through procedural error and the mismanagement of the case [as] required by law." Knoll's petition argued that he was entitled to relief on four grounds: (1) violation of his constitutional right to a speedy trial, (2) ineffective assistance of both trial and appellate counsel, (3) prosecutorial misconduct, and (4) the jury's legally inconsistent verdicts. In a separate motion, Knoll moved for an evidentiary hearing to develop his postconviction claims.

On September 7, 2022, the district court denied Knoll's postconviction petition and motion for an evidentiary hearing. The district court determined that Knoll's speedy-trial, prosecutorial-misconduct, and inconsistent-verdict claims were *Knaffla*-barred[1] because Knoll knew or should have known of these claims at the time of his direct appeal. Alternatively, the district court ruled that, even if these claims were not *Knaffla*-barred, they lacked merit. Although the district court determined that Knoll's ineffective-assistance-of-counsel claims were not procedurally barred, it concluded that there was no "evidence in the record to suggest that either trial counsel, or appellate counsel was ineffective." The district court denied Knoll's request for an evidentiary hearing for the same reason.

Knoll appeals.

[1] *See State v. Knaffla*, 243 N.W.2d 737, 741 (Minn. 1976) ("[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.").

DECISION

I. The district court did not abuse its discretion in denying Knoll's petition for postconviction relief.

An appellate court reviews "the denial of a petition for postconviction relief for an abuse of discretion." *Pearson v. State*, 891 N.W.2d 590, 596 (Minn. 2017). "A postconviction court abuses its discretion when it has 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." *Id.* (quotation omitted).

Initially, we agree with the district court's determination that Knoll's speedy-trial, prosecutorial-misconduct, and inconsistent-verdict claims were *Knaffla*-barred. *See Knaffla*, 243 N.W.2d at 741. When a postconviction petitioner has had a direct appeal, the petitioner cannot subsequently raise claims that were known at the time of the direct appeal in a petition for postconviction relief. *Id.* Because the bases for Knoll's speedy-trial, prosecutorial-misconduct, and inconsistent-verdict claims were known to him at the time of his direct appeal, but were not included in his direct appeal, he is barred from raising them in a subsequent petition for postconviction relief. *See id.* Moreover, because the basis for Knoll's claim that his trial counsel provided ineffective assistance was also known to him at the time of the direct appeal, we conclude that this claim—which was first raised in the postconviction petition—is also *Knaffla*-barred.

However, Knoll's postconviction petition also alleged that his appellate attorney provided ineffective assistance of counsel by failing to raise his speedy-trial, prosecutorial-misconduct, and inconsistent-verdict claims on direct appeal. In this appeal, Knoll does

not pursue his argument that appellate counsel should have raised the issue of prosecutorial misconduct on direct appeal. But he argues that his appellate counsel was ineffective for failing to raise the speedy-trial and inconsistent-verdict claims on direct appeal, and for failing to bring a claim of ineffective assistance of trial counsel. He contends that the district court erred by concluding otherwise and denying his petition for postconviction relief. Because Knoll's claim of ineffective assistance of appellate counsel was not known to him at the time of his direct appeal, this issue is not *Knaffla*-barred. We therefore consider whether the district court abused its discretion in denying Knoll's request for postconviction relief based on ineffective assistance of appellate counsel.[2]

Under the federal and state constitutions, a criminal defendant is entitled to the assistance of counsel. U.S. Const. amend. VI; Minn. Const. art. I, § 6. This right means "the right to the *effective* assistance of counsel." *McMann v. Richardson*, 397 U.S. 759, 771 n.14 (1970) (emphasis added). The threshold for assessing any ineffective-assistance-of-counsel claim is "whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984). To prevail on a claim that counsel was ineffective, a defendant must show that (1) counsel was deficient and (2) the deficient performance prejudiced the defense. *Id.* at 687. "If a claim fails to satisfy one of the

[2] Because Knoll's brief to this court does not argue that the appellate attorney was ineffective for failing to pursue a claim of prosecutorial misconduct on direct appeal, we do not consider this issue.

Strickland requirements, [an appellate court] need not consider the other requirement." *State v. Mosley*, 895 N.W.2d 585, 591 (Minn. 2017).

To prove that counsel's performance was deficient, a defendant must show it "fell below an objective standard of reasonableness." *Strickland*, 466 U.S. at 687-88. A petitioner alleging ineffective assistance of counsel must overcome the "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). An attorney meets the objective reasonableness standard when the attorney "provides [the] client with the representation of an attorney exercising the customary skills and diligence that a reasonably competent attorney would perform under the circumstances." *State v. Doppler*, 590 N.W.2d 627, 633 (Minn. 1999) (quotation omitted). "Appellate counsel does not have a duty to raise all possible issues, and may choose to present only the most meritorious claims on appeal." *Zumberge v. State*, 937 N.W.2d 406, 413 (Minn. 2019) (quotation omitted). Nor does appellate counsel "act unreasonably by not raising issues that he or she could have legitimately concluded would not prevail." *Zornes v. State*, 880 N.W.2d 363, 371 (Minn. 2016). To prove prejudice, the defendant must show that, but for counsel's deficient performance, there is a reasonable probability that the outcome of the proceeding would have been different. *Strickland*, 466 U.S. at 694; *Andersen v. State*, 830 N.W.2d 1, 10 (Minn. 2013).

Because the *Strickland* test involves mixed questions of law and fact, an appellate court reviews a district court's determinations de novo. *State v. Mouelle*, 922 N.W.2d 706, 715 (Minn. 2019). "[T]o determine whether [a defendant's] appellate counsel was

ineffective, [a reviewing court] must look to the merits of [the defendant's] underlying claims." *Onyelobi v. State*, 932 N.W.2d 272, 280 (Minn. 2019).

Knoll argues that his appellate attorney provided ineffective assistance of counsel by failing to argue on direct appeal that delays in commencing his trial deprived him of his constitutional right to a speedy trial, by failing to challenge the jury's verdicts as legally inconsistent, and by failing to pursue a claim of ineffective assistance of trial counsel. To evaluate Knoll's claim of ineffective assistance of appellate counsel, we address the merits of these three issues.

A. Right to Speedy Trial

The United States and Minnesota Constitutions provide criminal defendants the right to a speedy trial. U.S. Const. amends. VI, XIV; Minn. Const. art. I, § 6. The Minnesota Rules of Criminal Procedure also provide that:

> A defendant must be tried as soon as possible after entry of a plea other than guilty. On demand of any party after entry of such plea, the trial must start within 60 days unless the court finds good cause for a later trial date.
>
> Unless exigent circumstances exist, if trial does not start within 120 days from the date the plea other than guilty is entered and the demand is made, the defendant must be released under any nonmonetary conditions the court orders under Rule 6.01, subd. 1.

Minn. R. Crim. P. 11.09(b).

Appellate courts review alleged violations of the Sixth Amendment right to a speedy trial de novo. *State v. Griffin*, 760 N.W.2d 336, 339 (Minn. App. 2009). To determine whether a delay rises to the level of a violation of the constitutional speedy-trial right,

reviewing courts use the balancing test set forth by the United States Supreme Court in *Barker v. Wingo*, 407 U.S. 514 (1972). *State v. Mikell*, 960 N.W.2d 230, 244-45 (Minn. 2021); *State v. Windish*, 590 N.W.2d 311, 315 (Minn. 1999). To determine whether there was a violation of a defendant's speedy-trial right, an appellate court considers four nonexclusive factors: (1) the length of the delay, (2) the reason for the delay, (3) the defendant's assertion of his right to a speedy trial, and (4) the prejudice to the defendant. *State v. Paige*, 977 N.W.2d 829, 837 (Minn. 2022).

A 60-day delay is presumptively prejudicial and requires a weighing of the latter three factors. *Windish*, 590 N.W.2d at 315-16. None of the factors alone is "either a necessary or sufficient condition to the finding of a deprivation of the right of speedy trial." *Barker*, 407 U.S. at 533. An evaluation of the factors "is not a check-the-box, prescriptive analysis," and instead involves an assessment of "how the factors interact with each other in a difficult and sensitive balancing process." *Mikell*, 960 N.W.2d at 245 (quotation omitted). Reviewing courts may also consider "other circumstances as may be relevant." *Barker*, 407 U.S. at 533.

We agree with Knoll that the 581 days he waited for a trial was a lengthy delay, which requires us to consider the three other factors. But those three factors do not establish a constitutional speedy-trial violation. Much of the delay was attributable to Knoll. The record shows that he requested two continuances knowing that those continuances would significantly delay his trial. Knoll twice waived his right to a speedy trial. And the record shows that he never demanded a speedy trial. While awaiting trial, Knoll was on conditional release. The delay did not violate his rule 11.09(b) right to release

from custody, and he was not prejudiced by having to endure a lengthy pretrial detention. Finally, Knoll's postconviction petition and brief do not explain how his defense was prejudiced by the delay.

The pretrial delay in Knoll's case did not amount to a violation of his constitutional right to a speedy trial. Because the speedy-trial claim lacks merit, Knoll's appellate attorney did not provide ineffective assistance of counsel by failing to raise the claim on direct appeal.

B. Inconsistent Jury Verdict

We next consider whether Knoll's appellate attorney provided ineffective assistance of appellate counsel by failing to argue on direct appeal that the jury's verdicts were legally inconsistent, and therefore invalid. "Nothing in the constitution requires consistent verdicts." *State v. Leake*, 699 N.W.2d 312, 325 (Minn. 2005) (citing *United States v. Powell*, 469 U.S. 57, 64-66 (1984)). Generally, a defendant who is found guilty of one count of a two-count complaint is not entitled to a new trial or dismissal solely because a jury acquitted of the second count, even if the verdicts are logically inconsistent. *Id.* (quoting *State v. Juelfs*, 270 N.W.2d 873, 873-74 (Minn. 1978)). Appellate courts "reverse[] convictions based upon legal inconsistency only in cases involving multiple guilty verdicts that are inconsistent with one another, not in cases of alleged conflict between guilty and not-guilty verdicts." *State v. Bahtuoh*, 840 N.W.2d 804, 821 (Minn. 2013).

Citing *State v. Moore*, 458 N.W.2d 90, 94 (Minn. 1990), Knoll argues that he is entitled to a new trial because the jury's verdicts in his case were legally inconsistent.

Legally inconsistent verdicts occur "when proof of the elements of one offense negates a necessary element of another offense." *Steward v. State*, 950 N.W.2d 750, 755 (Minn. 2020) (quotation omitted). In *Moore*, for example, the supreme court ordered a new trial for the appellant who was found guilty of both first-degree premeditated murder and second-degree manslaughter—verdicts that required to jury to find that the appellant "caused the death of his wife with premeditation and intent and at the same time caused that death through negligence or reckless conduct." 458 N.W.2d at 94. But since *Moore*, the supreme court has clarified that jury verdicts are only legally inconsistent if they are guilty verdicts. *Leake*, 699 N.W.2d at 326. When a jury acquits of one count and renders a guilty verdict on another count, there may be logical inconsistency. *Id.* But a logical inconsistency alone does not require a new trial. *Id.*

Knoll argues that the verdicts in his case were legally inconsistent because the jury found him guilty of third-degree burglary and not guilty of attempted misdemeanor theft. But because one of these verdicts was an acquittal, the verdicts were not legally inconsistent. And given that the inconsistent-verdicts issue has no merit, Knoll's appellate attorney did not provide ineffective assistance of counsel by electing not to raise it in Knoll's direct appeal.

C. Ineffective Assistance of Trial Counsel

Finally, Knoll argues that his appellate attorney provided ineffective assistance of counsel by not challenging the performance of his trial attorney. Knoll contends that the attorney who ultimately represented him at trial was unprepared and performed poorly. He identifies two specific instances of deficient performance: the attorney's decision to

stipulate to the admission of forensic evidence and the attorney's failure to impeach Knoll's codefendant on cross-examination.

However, because Knoll cannot establish that he was prejudiced by the attorney's conduct in either of the instances he alleges, his ineffective-assistance-of-trial-counsel claim lacks merit. *See Mosley*, 895 N.W.2d at 591 (stating that a court may reject a claim of ineffective assistance of counsel if the postconviction petitioner fails to establish prejudice). The forensic evidence that was the subject of the attorney's stipulation concerned a drug charge that resulted in a not-guilty verdict. Thus, the stipulation did not affect the outcome of Knoll's trial. Moreover, even without the codefendant's testimony acknowledging that the codefendant and Knoll entered the garage without permission, the evidence of Knoll's guilt of third-degree burglary was strong. At trial, the jury saw video evidence of Knoll squeezing through a padlocked door to exit the garage when the police ordered Knoll and his codefendant to come out. Given the strong evidence of Knoll's guilt, any shortcoming in the trial attorney's cross-examination of the codefendant would not have prejudiced Knoll. Because an ineffective-assistance-of-trial-counsel claim would have failed on the *Strickland* prejudice requirement, Knoll's appellate attorney did not provide ineffective assistance of counsel in opting not to pursue such a claim.

We conclude that the district court did not abuse its discretion in denying Knoll's postconviction claims. Knoll's claims were *Knaffla*-barred because he knew of them at the time of his direct appeal but did not raise them. And because Knoll's claims have no merit,

his appellate attorney did not provide ineffective assistance of counsel by not pursuing them on direct appeal.[3]

II. The district court did not abuse its discretion in denying Knoll's request for a postconviction evidentiary hearing.

A postconviction petitioner is entitled to an evidentiary hearing "[u]nless 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 (2020). A petitioner's allegations in support of a hearing "must be more than argumentative assertions without factual support." *Brocks v. State*, 753 N.W.2d 672, 674 (Minn. 2008) (quotation omitted). An appellate court reviews "the ultimate decision by the postconviction court to grant or deny an evidentiary hearing for an abuse of discretion." *Caldwell v. State*, 853 N.W.2d 766, 770 (Minn. 2014). Under an abuse-of-discretion standard, the appellate court reviews the postconviction court's "underlying factual findings for clear error and its legal conclusions de novo." *Id.*

The district court determined that Knoll was not entitled to an evidentiary hearing because there was no "evidence in the record to suggest that either trial counsel, or appellate counsel was ineffective." We discern no abuse of discretion in this determination. As noted, Knoll's postconviction claims lack legal merit. Because the record conclusively

[3] The state argues for the first time on appeal that Knoll's postconviction petition was untimely. *See* Minn. Stat. § 590.01, subd. 4(a)(2) (2020) ("[N]o petition for postconviction relief may be filed more than two years after . . . an appellate court's disposition of petitioner's direct appeal."). Because Knoll's postconviction claims fail on their merits, we do not address this issue.

shows that Knoll is not entitled to relief on those claims, no evidentiary hearing was warranted.[4]

Affirmed.

[4] Knoll alleges several additional errors by the district court: (1) the 119-day delay between the filing of his postconviction petition and the district court's order violated due process, (2) the district court failed to remain impartial, and (3) the district court created a "quasi-judicial" hearing process when it analyzed his claims. But Knoll does not provide any legal authority for those arguments. An appellate court "will not consider pro se claims on appeal that are unsupported by either arguments or citations to legal authority." *State v. Bartylla*, 755 N.W.2d 8, 22 (Minn. 2008). Accordingly, we do not address these claims of error.