STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1848

William Demont White, Jr., petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed September 5, 2023
Affirmed
Ross, Judge

Benton County District Court
File No. 05-CR-18-617

Zachary A. Longsdorf, Longsdorf Law Firm, PLC, Inver Grove Heights, Minnesota (for appellant)

Keith Ellison, Attorney General, Peter Magnuson, Assistant Attorney General, St. Paul, Minnesota; and

Karl L. Schmidt, Benton County Attorney, Foley, Minnesota (for respondent)

Considered and decided by Reyes, Presiding Judge; Ross, Judge; and Smith, John, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

ROSS, Judge

A jury found William White Jr. guilty of second-degree intentional murder, second-degree murder while committing assault with a dangerous weapon, first-degree assault, and second-degree arson for his role in the shooting of two individuals and in a related vehicular arson. We affirmed his convictions in a prior appeal. White now appeals the district court's denial of his petition for postconviction relief without a hearing. Because none of the issues he raises persuades us to reverse, we affirm the postconviction court's order.

FACTS

Appellant William White Jr. and four others traveled from St. Cloud to St. Paul in February 2018 to go to a bar. The men returned to Sauk Rapids early the following morning and became embroiled in a confrontation outside a home. One man was hit in the face with a firearm and then shot, but he survived. Another man was shot and killed. Police were called to a car fire about 90 minutes after the shooting and discovered one of the victims' cars burning. The state accused White and two of the other men, Nokomis Jefferson and Vance Laster, of participating in the shootings and fire. A grand jury indicted White on 15 counts related to the events: two counts of first-degree murder; three counts of second-degree murder; second-degree attempted murder; first-degree assault; second-degree arson; and seven counts of crimes committed for the benefit of a gang. Laster pleaded guilty, and White's and Jefferson's cases were joined for trial over their objections.

Testimony at trial revealed that White held the gun. The surviving victim testified that he punched White in the face during the ensuing melee and that he was then hit in the

head with a handgun and shot. During an interview at the hospital, he identified White in a photograph as the person who shot him, but at trial he refused to identify his assailant. Laster testified that White and the other victim had been fighting over a gun. Another witness testified that after he warned the men outside of the St. Paul bar that weapons were not allowed inside, White returned to the car to put something away.

Trial testimony also established that White, Jefferson, and Laster fled the scene of the shooting, leaving the two victims without aid. Gas-station security-camera footage captured White about two hours after the shooting filling a gasoline can. The timing of White's gas purchase corresponded roughly with firefighters being called to the car fire and discovering one of the victims' cars ablaze. A firefighter opined that an accelerant had been used in the fire, and the investigating fire marshal found a bullet casing inside the torched car. Cellphone data that police obtained on an executed search warrant placed White at the scene of both the shooting and the fire.

Thirty-two witnesses, including Laster, testified for the state. Laster recounted his gang affiliation, but the district court dismissed all charges involving crimes committed for the benefit of a gang based on insufficient evidence. Neither defendant presented evidence.

Although the parties and the district court had discussed concerns about juror access to media coverage of the case, transportation challenges made sequestering the jury infeasible. The jury deliberated late into the night, but jurors informed the district court that they were at an impasse. The jury then returned a verdict just after midnight on all but one of the charges against White. It found White guilty of second-degree intentional murder; second-degree murder while committing assault; first-degree assault; and second-degree

arson. It found him not guilty of first-degree murder while committing aggravated robbery or a drive-by shooting and second-degree murder while committing a drive-by shooting. And it did not render a verdict on second-degree attempted murder.

White moved posttrial for acquittal, a new trial, or a *Schwartz* hearing to determine what happened between the jury's declaring it was at an impasse and its rendering a verdict soon after that. White's counsel claimed that he learned from Jefferson's counsel that one of her staff members heard from a juror's family member that "two of the women jurors were holdouts," and his counsel informed the court that one of his other clients said that he worked with one of the jurors and he knew her to be "troubled by what had occurred" at the end of trial. The district court denied the motion. It convicted White and sentenced him to 306 months in prison for the second-degree murder conviction; a consecutive 86 months for the assault conviction; and a concurrent 38 months for the arson conviction.

White appealed, and we affirmed his convictions in a nonprecedential opinion. *State v. White*, No. A19-1398, 2020 WL 4743517 (Minn. App. Aug. 17, 2020), *rev. denied* (Minn. Oct. 20, 2020). White then petitioned for postconviction relief. He raised six issues: that he was denied his Sixth Amendment right to trial before an impartial jury; that his Fourth Amendment rights were violated because the warrant to search his phone lacked probable cause; that his right to a fair trial was violated by improper joinder with Jefferson; that he received ineffective assistance of trial and appellate counsel; that he obtained evidence that Laster was on parole at the time of the incident, which he claimed the prosecution withheld from him; and that he should be granted a new trial in the interests of

justice based on the lack of evidence and trial errors. The district court denied his petition without a hearing.

White appeals the denial of his petition for postconviction relief.

DECISION

White appeals the postconviction court's order denying him relief or a hearing. He contends that his appellate counsel on direct appeal was ineffective for failing to properly raise his impartial-jury argument; for failing to adequately argue that his trial was improperly joined with Jefferson's; and for failing to bring an ineffective-assistance-of-trial-counsel claim. He contends that his appellate counsel's general lack of communication with him is also grounds to reverse. He challenges the postconviction court's determination that his *Brady* claim lacked merit. And he asks us to grant him a new trial based on these alleged errors. We review a postconviction court's order summarily denying a postconviction-relief petition for an abuse of discretion, examining factual findings for clear error and legal conclusions *de novo*. *Riley v. State*, 819 N.W.2d 162, 167 (Minn. 2012). The district court need not hold a hearing 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 address each of White's arguments in turn.

I

We first address White's contention that his appellate counsel was ineffective for not properly raising his Sixth Amendment claim that his right to an impartial jury was violated. The postconviction court determined that White's claim was procedurally barred and also doubted its merits. Because White's trial counsel moved for a *Schwartz* hearing

after trial based on the same facts that White now offers to support his impartial-jury claim, it is self-evident that the facts bearing on this claim were known to White at the time of his direct appeal. This would ordinarily mean that his claims are procedurally barred. *See* Minn. Stat. § 590.01, subd. 1 (2022) ("A petition for postconviction relief after a direct appeal has been completed may not be based on grounds that could have been raised on direct appeal of the conviction or sentence."); *State v. Knaffla*, 243 N.W.2d 737, 741 (Minn. 1976). But White framed his postconviction-relief claim as one of ineffective assistance of appellate counsel, alleging that his counsel was ineffective for having failed to raise an impartial-jury claim on direct appeal. Because the circumstances giving rise to the ineffective-appellate-counsel claim could not have been known by White until after his direct appeal, *see Wright v. State*, 765 N.W.2d 85, 90–91 (Minn. 2009), we will consider the merits of his ineffective-assistance argument.

White's ineffective-assistance argument fails on the merits. A criminal defendant has a right to reasonably effective assistance of counsel. *State v. Rhodes*, 657 N.W.2d 823, 842 (Minn. 2003); *Strickland v. Washington*, 466 U.S. 668, 684–86 (1984). To prevail on a claim of ineffective assistance of counsel, an appellant must show both that his counsel's performance was below an objective standard of reasonableness and that there is a reasonable probability of a different outcome without the errors of counsel. *Rhodes*, 657 N.W.2d at 842; *see also Fields v. State*, 733 N.W.2d 465, 468 (Minn. 2007) (applying *Strickland* to ineffective-appellate-counsel claims). Because White's claim that his appellate counsel was ineffective rests on his assertion that his appellate counsel should

have argued that he was denied a fair trial by an impartial jury, we will first consider whether an impartial-jury argument might have succeeded.

We are satisfied that an impartial-jury argument in White's direct appeal would have failed, which leaves his current ineffective-assistance argument groundless. The issue is a bit complicated. White contends that the district court should have conducted a so-called *Schwartz* hearing to determine what occurred between the jury's stating it was deadlocked and its returning a verdict. A defendant may challenge a jury verdict through a *Schwartz* hearing. Minn. R. Crim. P. 26.03, subd. 20(6); *see also Schwartz v. Minneapolis Suburban Bus Co.*, 104 N.W.2d 301, 303 (Minn. 1960). The district court in a *Schwartz* hearing questions jurors about some alleged improper influence to determine whether it tainted their impartial deliberations. *State v. Greer*, 635 N.W.2d 82, 93 (Minn. 2001). But even if White had asserted on direct appeal that the district court should have conducted a *Schwartz* hearing, we would have reviewed only for an abuse of discretion. *State v. Benedict*, 397 N.W.2d 337, 340 n.1 (Minn. 1986). And even if White prevailed in showing an abuse of discretion, we would not have reached the underlying issue of whether a new trial is required but instead remanded the case for the district court to conduct a *Schwartz* hearing to decide whether a new trial is necessary. *See id.* So we add yet another layer. Even if White now shows that his appellate counsel was ineffective by having failed to raise the *Schwartz* issue, he must show that the failure prejudiced him.

The circumstances here are clear enough at the center of the onion, however, that we need not peel away every layer; it is certain that no *Schwartz* hearing was warranted in the first place. A defendant must present evidence compelling the conclusion that a juror

engaged in misconduct, *State v. Church*, 577 N.W.2d 715, 720 (Minn. 1998), and any evidence about the mental state of jurors that is unrelated to outside influences is inadmissible, *State v. Pederson*, 614 N.W.2d 724, 731 (Minn. 2000). White identifies no evidence that could have possibly compelled the district court to conclude that juror misconduct occurred. He highlights two statements, neither of which is at all alarming.

The first is difficult to follow. That White's trial counsel heard "in speaking with counsel for Nokomis Jefferson [that] her staff may have had contact with a family member of a juror who said two women jurors were hold outs" is so tenuous that one must strain to conceive how it even remotely suggests juror misconduct. We cannot imagine why the district court would be the least bit troubled that White's attorney heard from Jefferson's attorney who heard from someone in that attorney's office who heard from some other person who heard from a juror that two other jurors "were hold outs." And what does it mean to be a "hold out?" The jury unanimously rendered a guilty or not-guilty verdict on every count except one. One might suppose from the protracted string of hearsay that the two alleged "hold outs" prevented White from being convicted on that count. So even if being a juror "hold out" is misconduct (it's not), and even if the hearsay within hearsay within hearsay within hearsay constituted compelling evidence of that misconduct (it doesn't), the party harmed could be the state, not White.

The second statement is no more revealing of misconduct than the first. Here the district court learned that another client of White's trial counsel "told counsel he worked with a juror who told him she was troubled by how the case concluded." Two men were shot. One was seriously injured. One was killed. Two men stood trial for murder. They

faced many charges that the jurors had to sort out to determine whether either defendant was guilty of any or some or all of them. Some charges resulted in a unanimous guilty verdict. Some resulted in a unanimous not-guilty verdict. One was undecided. The jurors worked until after midnight. That one of them was "troubled" by the outcome is not surprising. Perhaps she was bothered that her colleagues on the jury convinced her to find White not guilty when she thought him guilty on one or more of the charges. Perhaps she was bothered that they left one charge unresolved. Judging another human being guilty, or not guilty, is a difficult duty that jurors will naturally take very seriously. Knowledge that one of them was left somehow troubled by the outcome is not even slight evidence of juror misconduct.

White also points to the "strange ending" to jury deliberations and implies that an expected snowstorm the next day impacted deliberations. He says too that a juror slept during trial (but he fails to discuss the mitigating fact that this juror was also dismissed and did not participate in deliberations). These concerns amount to nothing. The record contains no evidence that the jury was influenced by an improper source, and the jurors were polled after their verdict to reveal that all stood by their vote as to each count charged. Because the record includes no evidence on which the district court would ever conduct a *Schwartz* hearing, White's appellate counsel in the direct appeal was not ineffective for having failed to argue that the district court abused its discretion by not holding one.

II

White maintains, as he did on direct appeal, that the district court improperly joined his trial with Jefferson's. The postconviction court held that this claim is barred because

White raised it in his direct appeal. Although White may not directly reraise his joinder argument again in this appeal, we consider this challenge in light of White's alleging that his appellate counsel was ineffective by failing to raise the argument properly. White must demonstrate that his appellate counsel's failure to raise his joinder argument properly fell below a reasonable standard and that a different approach would have changed the result of his appeal. *See Rhodes*, 657 N.W.2d at 842. We hold that White is entitled to no relief because his trial would have come to the same result regardless of its joinder with Jefferson's trial.

White argues that his case was improperly joined with Jefferson's because the two had antagonistic defenses and because Laster's gang-related testimony would not have been admissible if not for Jefferson's alleged gang ties. Improper prejudice resulting from joinder occurs when codefendants present antagonistic defenses, meaning that the defenses are inconsistent, the defendants blame each other, or the jury must choose between two defense theories. *Santiago v. State*, 644 N.W.2d 425, 446 (Minn. 2002). We will remand only when joinder was prejudicial, considering

> (1) whether, in separate trials of the defendants, the theory of the defense would have been the same as it was at the joint trial, (2) the likelihood that the results of the joint trial would have been any different from a separate trial of defendants, and (3) whether evidence that would otherwise be inadmissible became admissible because of the joinder.

Id. at 450–51. We concluded in White's direct appeal that White and Jefferson did not have antagonistic defenses:

> Here, the jury was not in the position of having to choose between contradictory defense theories offered by the

> defendants. Instead, the jury had to decide between the state's theory of the case and each defendant's own theory of the case. [Jefferson]'s theory of the case was that the state failed to prove that he was the shooter. And [White] did not claim that [Jefferson] was the shooter or try to place the blame squarely on [Jefferson] . . . . In fact, during closing argument, [White]'s counsel argued that another person, [Laster], was the shooter.

White, 2020 WL 4743517, at *3. And we observed that White did not present an offer of proof or cite evidence supporting his argument that the defenses were antagonistic. *Id.* White contends that our statement demonstrates that his appellate counsel was ineffective in failing to cite the record to support the joinder argument.

We can resolve White's contention by assuming that it was unreasonable for White's counsel to fail to cite the record in his direct appeal, because White has not shown that his trial outcome would have been different if the trials were not joined. White cites portions of the transcript in which Jefferson's counsel made statements adverse to White to show that record evidence was available to his prior appellate counsel to have relied on to demonstrate the allegedly antagonistic defenses. It is true that Jefferson's counsel's opening statement represented that she expected the evidence to show that White held the gun used in the shooting and that he purchased the gas can used in the arson. But White cannot show prejudice because the state did provide evidence proving those two facts and White does not suggest that the state would have failed to produce the same evidence in a separate trial. We are also not persuaded that White was prejudiced by any logistical difficulties in proceeding with a joint trial—such as confusion about which defense attorney would present opening argument first or how cross-examination of the state's

witnesses would occur—because White does not explain how any clumsiness in managing these challenges, which were ultimately resolved, harmed his defense.

White contends unconvincingly that Laster's gang testimony would have been inadmissible if not for Jefferson's presence at trial and that this testimony significantly prejudiced White's defense. The district court dismissed all charges against White related to crimes committed for the benefit of a gang because the charges lacked sufficient evidence. And White does not suggest how the evidence might otherwise have affected his defense on the charges for which the jury found him guilty. We conclude that the postconviction court did not abuse its discretion by denying White's postconviction petition based on joinder.

III

White challenges the effectiveness of both his trial and appellate counsel. The postconviction court determined that White's ineffective-trial-counsel claim was procedurally barred and failed on the merits and that his ineffective-appellate-counsel claim failed to meet the *Strickland* element of unreasonableness. We conclude that both theories fail on the merits.

White's ineffective-trial-counsel argument would ordinarily be procedurally barred, but he raises it through his ineffective-appellate-counsel argument. To prevail, then, he must show that his trial counsel was ineffective and that his trial would have resulted in a different outcome if not for his trial counsel's errors. *See Fields*, 733 N.W.2d at 468. White does not meet this burden. White maintains that his trial counsel was ineffective for having failed to make an offer of proof for his *Schwartz* hearing and for failing to adequately

address joinder. As we have concluded, White's *Schwartz* claim failed to appropriately allege any misconduct on the supposed evidence advanced now, and White fails to identify any more-convincing proof that might have been offered. And because White's joinder claim is likewise unpersuasive, it also cannot provide the basis for postconviction relief based on the ineffective assistance of his trial counsel. White also argues that his trial counsel was ineffective for failing to request a *Franks* hearing, but he makes no argument about the merit of this contention on appeal, so we do not address it. *See State v. Andersen*, 871 N.W.2d 910, 915 (Minn. 2015) (holding that arguments not supported by argument are generally forfeited). White's trial counsel was not ineffective for having failed to make the arguments that White now says should have been made.

Also unavailing is White's contention that his trial counsel was ineffective for having failed to interact with White and to pay adequate attention to the case. The contention fails because White does not explain how his trial would have resulted differently or what his counsel would have learned through better interaction with White. *See Rhodes*, 657 N.W.2d at 842; *Thoresen v. State*, 965 N.W.2d 295, 309–10 (Minn. 2021). We reach the same conclusion regarding White's similar argument about his appellate counsel. White does not say what information his attorney would have gained or how the information might have been used in the appeal for a more favorable outcome. White did not point to circumstances sufficient to meet the *Strickland* test.

IV

We turn to White's assertion that the district court abused its discretion by rejecting his claim that the state withheld information about Laster's parole status, arguing that he

could have used the information to impeach Laster at trial. Due process requires the state to disclose material, exculpatory evidence to the defendant, and this includes evidence affecting witness credibility. *See Brady v. Maryland*, 373 U.S. 83, 87 (1963); *Giglio v. United States*, 405 U.S. 150, 153–54 (1972); *Walen v. State*, 777 N.W.2d 213, 216 (Minn. 2010). White argues that the prosecutor knew—but did not inform him—that Laster was on parole at the time of the February 2018 shooting. He contends that he acquired information after trial proving Laster's parole status. But as the postconviction court reasoned, White could have discerned Laster's parole status based on Laster's criminal-history information that the prosecution disclosed to him before trial. And the record suggests that the information he now claims is newly discovered was in fact available to him before his trial. We add that White also does not convincingly show that he was prejudiced by any inability to use Laster's parole status to impeach him. The jury heard about Laster's criminal convictions and his favorable plea deal in this case. His parole status would have added little weight to the information already available to impeach Laster's credibility.

V

White finally asks us to reverse in the interests of justice based on the cumulative effect of the alleged errors. Because none of White's claims of error prevail on the merits, we necessarily reject his cumulative-error theory.

Affirmed.