

*This opinion is nonprecedential except as provided by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
A23-1961**

Jerome Deshawn Misters, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed August 12, 2024
Affirmed
Jesson, Judge***

Dakota County District Court
File No. 19HA-CR-20-2183

Jerome D. Misters, Bayport, Minnesota (pro se appellant)

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

Kathryn M. Keena, Dakota County Attorney, Heather Pipenhagen, Assistant County Attorney, Hastings, Minnesota (for respondent)

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

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

NONPRECEDENTIAL OPINION

JESSON, Judge

Appellant Jerome DeShawn Misters repeatedly shot two individuals.¹ One died and the other spent time in the hospital recovering from multiple gunshot wounds. A Dakota County jury found Misters guilty of second-degree murder and attempted second-degree murder. This court affirmed the convictions but reversed and remanded for resentencing in the order that the offenses occurred. Misters then pursued postconviction relief, arguing that he received ineffective assistance of appellate counsel during his direct appeal. The postconviction court denied the petition. Because Misters did not receive ineffective assistance of counsel, we affirm.

FACTS

On August 17, 2020, police officers responded to a report of shots fired in South St. Paul. Officers observed two individuals on the ground with apparent gunshot wounds. One individual survived and the other was pronounced dead at the hospital. Officers took Misters into custody the same day. Two days later, the state charged Misters with murder and attempted murder.

In June 2021, a Dakota County jury found Misters guilty of one count of second-degree murder and one count of attempted second-degree murder. The district court

¹ The case caption in the district court identified appellant as “Jerome Deshawn Misters.” But appellant identifies himself in his appellate brief as “Jerome DeShawn Misters.” The caption of this opinion conforms to the caption used in the district court. *See* Minn. R. Civ. App. P. 143.01. But we use appellant’s preferred name throughout the body of the opinion.

imposed consecutive sentences of 480 and 185 months, resulting in a total of 665 months of imprisonment.

In December 2021, Misters filed a direct appeal of his convictions, arguing insufficient evidence and error in the order of sentencing the convictions. This court affirmed the sufficiency of the evidence to convict Misters. *State v. Misters*, No. A21-1654, 2022 WL 13711631, at *5 (Minn. App. Oct. 24, 2022), *rev. denied* (Minn. Jan. 17, 2023). But we reversed and remanded for resentencing in the order in which the offenses occurred. *Id.* at *6-7. On remand, the district court consecutively sentenced Misters to 367 and 240 months, a total of 607 months of imprisonment.

In July 2023, Misters filed a pro se petition for postconviction relief arguing ineffective assistance of appellate counsel for failing to raise an argument in his direct appeal related to the admission of USB drives into evidence at trial.

The postconviction court denied his petition for relief without an evidentiary hearing. The court reasoned that the jury never viewed the evidence at issue and therefore Misters's appellate counsel was reasonable in concluding that raising an argument related to the admission of the evidence would not prevail on appeal.

Misters appeals.

DECISION

Misters contends that his appellate counsel was ineffective for failing to raise an argument on direct appeal related to the admission of USB drives into evidence. He argues that if his appellate counsel had raised the evidentiary argument on direct appeal, he would

have received a new trial because the error violated his constitutional right to a complete defense.

To address this claim, we turn first to the Sixth Amendment of the United States Constitution, which guarantees criminal defendants the right to effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 684-86 (1984). We review claims of ineffective assistance of counsel de novo. *Taylor v. State*, 887 N.W.2d 821, 823 (Minn. 2016). We review the postconviction court’s decision using the same standard we would apply to a direct appeal. *State v. Maurstad*, 733 N.W.2d 141, 146 (Minn. 2007).

A defendant must satisfy the two-pronged *Strickland* test to prove a claim of ineffective assistance of counsel: (1) that “counsel’s representation fell below an objective standard of reasonableness,” and (2) that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Zumberge v. State*, 937 N.W.2d 406, 413 (Minn. 2019) (quotations omitted). If a claim does not satisfy one of the *Strickland* prongs, the claim fails and we need not reach the other prong. *Swaney v. State*, 882 N.W.2d 207, 217 (Minn. 2016).

When applying the *Strickland* test to appellate counsel, we begin by observing that counsel “is not required to raise all possible claims on direct appeal.” *Arredondo v. State*, 754 N.W.2d 566, 571 (Minn. 2008). Appellate counsel need not raise a claim if they “could have legitimately concluded that it would not prevail.” *Id.* (quotation omitted). To determine whether appellate counsel could have legitimately concluded that Mistrs would not prevail on the claim of the erroneous evidentiary ruling, we turn to an examination of the merits of that claim. *See id.*

Misters claims that his trial counsel objected to admission of the USB drives based on discovery and non-disclosure violations. Misters argues that he was deprived of his right to receive evidence relevant to his guilt because his trial attorney did not have an opportunity to view the contents of the USB drives before trial and therefore could not prepare a defense accordingly. He also argues that the USB drives were not properly authenticated and deprived him of the right of cross-examination. Given these errors at trial, Misters contends that his appellate counsel failed to protect his rights by not raising an argument related to admission of the USB drives into evidence. He does not explain how the result of his trial would have been different if he or his trial counsel examined the USB drives prior to trial or if the USB drives had not been introduced into evidence.²

Here, we need not decide whether Misters's appellate counsel's performance fell below an objective standard of competence because our review of the record convinces us that Misters did not prove that the result of the proceeding would have been different had the USB drives not been admitted into evidence at trial. *See Zumberge*, 937 N.W.2d at 413.

We so conclude because the record supports that the jury did not view the contents of the USB drives during witness testimony or during deliberations. The contents of the USB drives were not published to the jury during witness testimony. The district court told

² The state disputes that trial counsel objected for the same reason that Misters now raises on appeal. For purposes of this opinion, we need not resolve whether Misters raises the same basis for objecting to the admission of the USB drives on appeal because we conclude that the jury's verdict was surely unattributable to the admission of the USB drives into evidence.

the jury that the jury room would not have a computer, and asking for a computer would be the only way to view the contents of the USB drives. The jury did not ask for a computer during the two hours of deliberations. Therefore, appellate counsel could legitimately conclude that the evidentiary argument would not prevail because the verdict was surely unattributable to the admission of the USB drives.

Affirmed.