

*This opinion is nonprecedential except as provided by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
A24-0264**

Derrick Lemar Forest, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed November 4, 2024
Affirmed
Wheelock, Judge**

Hennepin County District Court
File No. 27-CR-19-32094

Derrick Lemar Forest, Bayport, Minnesota (pro se appellant)

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

Mary F. Moriarty, Hennepin County Attorney, Adam E. Petras, Senior Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Slieter, Presiding Judge; Reyes, Judge; and Wheelock, Judge.

NONPRECEDENTIAL OPINION

WHEELOCK, Judge

In this appeal from the postconviction court's denial of his second petition for postconviction relief, appellant contends that his arguments are not *Knaffla* barred, he

received ineffective assistance of appellate counsel, and he should have received an evidentiary hearing on the petition. We affirm.

FACTS

The details of appellant Derrick Lemar Forest’s conviction for second-degree intentional murder in December 2019 are set forth in a previous opinion from this court, *State v. Forest*, No. A20-1382, 2022 WL 1446924, at *1-2 (Minn. App. May 9, 2022), *rev. denied* (Minn. Aug. 9, 2022). We therefore recite only the facts relevant to this appeal.

In the summer of 2020, Forest appeared for a jury trial and the district court instructed the jury on the following offenses: first-degree premeditated murder, second-degree intentional murder, and first-degree manslaughter while acting in the heat of passion. *Id.* A jury found Forest guilty of second-degree intentional murder and not guilty of the other charges, and the district court entered a judgment of conviction and sentenced Forest to 386 months in prison for his second-degree intentional-murder conviction. *Id.* at 2. Forest appealed, and we stayed the appeal so that he could file a petition for postconviction relief. *Id.* The postconviction court denied his first petition, which alleged ineffective assistance of trial counsel, determining that (1) the evidence at trial was insufficient for a jury instruction on second-degree unintentional murder and (2) the evidence of Forest’s intent provided through the opinion testimony of a passenger in the car at the time of the murder was admissible. We then dissolved the stay and affirmed Forest’s conviction, concluding that he did not receive ineffective assistance of trial counsel because (1) the evidence proving Forest’s intent to commit the murder was “overwhelming,” and thus, the lack of an unintentional-murder instruction was not

prejudicial; (2) the evidentiary rules permitted the passenger’s testimony about Forest’s intent; (3) the trial evidence would not have supported a self-defense argument or instruction; (4) trial counsel did not coerce Forest into waiving his right to testify; (5) the heat-of-passion defense was rational given the evidence; and (6) the trial evidence did not support an accomplice instruction. *Id.* at *3, *5-6, *8.

In August 2023, Forest filed a second petition for postconviction relief and requested an evidentiary hearing. In January 2024, the postconviction court denied Forest’s petition without an evidentiary hearing because it determined that most of Forest’s claims were *Knaffla* barred and that none had merit.

Forest appeals.

DECISION

A person convicted of a crime may seek postconviction relief by filing a petition alleging that the conviction “violated the person’s rights under the Constitution or laws of the United States or of the state.” Minn. Stat. § 590.01, subd. 1(1) (2022). Appellate courts review a postconviction court’s denial of a petition for an abuse of discretion. *Pearson v. State*, 891 N.W.2d 590, 596 (Minn. 2017). A postconviction court abuses its discretion if it exercises it “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).

Although Forest is self-represented, he is held to the same standard as an attorney. *State v. Gillespie*, 710 N.W.2d 289, 299 (Minn. App. 2006), *rev. denied* (Minn. May 16, 2006). Forest presents three arguments on appeal: (1) his claim of ineffective assistance of trial counsel was not *Knaffla* barred; (2) his appellate counsel provided ineffective

assistance of counsel; and (3) the postconviction court abused its discretion by summarily denying his petition without an evidentiary hearing. We address each issue in turn.

I. Forest’s ineffective-assistance-of-trial-counsel claim is *Knaffla* barred.

Forest argues that the postconviction court abused its discretion when it determined that his ineffective-assistance-of-trial-counsel claim is *Knaffla* barred and that no exception applies because the “precise claims” he raises now—that his counsel did not interview witnesses, pursue leads, and consider additional theories of defense—is based on evidence that was withheld from him and therefore could not have been raised previously.

Arguments are *Knaffla* barred if they could have been raised in a direct appeal from conviction. *State v. Knaffla*, 243 N.W.2d 737, 741 (Minn. 1976); *see also* 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.”). There are two exceptions to this rule: (1) “if the claim’s novelty was so great that its legal basis was not reasonably available when direct appeal was taken” and (2) in the interests of justice, “when fairness so requires and when the petitioner did not deliberately and inexcusably fail to raise the issue on direct appeal.” *Lynch v. State*, 749 N.W.2d 318, 321 (Minn. 2008) (quoting *State v. Leake*, 737 N.W.2d 531, 535 (Minn. 2007)).

The postconviction court did not abuse its discretion when it determined that Forest’s claim of ineffective assistance of trial counsel was *Knaffla* barred and that neither exception applied because Forest’s arguments could have been raised in his direct appeal or first postconviction petition. Forest does not dispute that his claims are *Knaffla* barred

but asserts that both exceptions apply. We disagree. The first exception to *Knaffla* does not apply because Forest's arguments do not arise from a novel legal basis that was not available at the time of his previous appeal; indeed, Forest already made similar assertions of error by his trial counsel in his first postconviction petition and on direct appeal. The second exception also does not apply because Forest did not prove that he could not have made these arguments previously. To support his argument, Forest asserts that he did not obtain his trial counsel's files until now, but he neither asserts nor demonstrates that it was not possible for him to obtain those files prior to his first postconviction petition and direct appeal. Therefore, the postconviction court did not abuse its discretion when it dismissed this claim as *Knaffla* barred.

II. Forest's ineffective-assistance-of-appellate-counsel claim fails on the merits.

Forest next argues that the postconviction court abused its discretion by determining that his ineffective-assistance-of-appellate-counsel claim failed on the merits because appellate counsel did not investigate and present additional defenses and did not properly review the evidence Forest presented, including interviewing witnesses. The postconviction court determined that Forest's claim could not prevail because he provided no evidence to support it.

Criminal defendants subject to prosecution have the right to the assistance of counsel. U.S. Const. amend. VI; Minn. Const. art. I, § 6. We review claims of ineffective assistance of counsel de novo. *Taylor v. State*, 887 N.W.2d 821, 823 (Minn. 2016). To prove a claim of ineffective assistance of counsel, a defendant must satisfy the two-pronged *Strickland* test by demonstrating that (1) 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.” *Zumberge v. State*, 937 N.W.2d 406, 413 (Minn. 2019) (quoting *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984)). If a claim does not satisfy one of the *Strickland* prongs, the claim fails and the analysis ends. *Swaney v. State*, 882 N.W.2d 207, 217 (Minn. 2016).

There is a “strong presumption that counsel’s performance was reasonable.” *Andersen v. State*, 830 N.W.2d 1, 10 (Minn. 2013). Counsel’s representation is objectively reasonable when counsel exercises 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 may legitimately conclude that a claim will not prevail, and thus, counsel need not raise all possible claims on appeal. *Leake*, 737 N.W.2d at 536. Therefore, a claim of ineffective assistance of appellate counsel will fail if “appellate counsel could have legitimately concluded that the claim would not prevail.” *Id.*

Forest’s ineffective-assistance-of-appellate-counsel claim is not *Knaffla* barred because it could not have been brought prior to his second postconviction petition, *id.*, but his claim fails on its merits because he has not demonstrated that his counsel’s representation fell below an objective standard of reasonableness. Forest asserts that his appellate counsel should have investigated other theories of defense, including manslaughter and unintentional murder, and questioned his trial counsel about this strategy. But these theories are the same arguments he raised to this court in his first postconviction petition, albeit against his trial counsel, and we have already concluded that these

arguments do not demonstrate ineffective assistance of counsel because “the evidence of Forest’s intent to kill the decedent is overwhelming” and, therefore, he cannot demonstrate prejudice. *Forest*, 2022 WL 1446924, at *3. Additionally, our previous opinion demonstrates that appellate counsel reviewed the record and presented multiple theories for the ineffective-assistance-of-trial-counsel claim, and though there may have been others, appellate counsel does not have to raise every possible theory on appeal. Because his appellate counsel’s representation did not fall below an objective standard of reasonableness, Forest cannot prove that he received ineffective assistance of counsel and the postconviction court did not abuse its discretion by dismissing his claim.

III. The postconviction court did not abuse its discretion by denying Forest’s petition without an evidentiary hearing.

Forest argues that the postconviction court abused its discretion by denying his request for an evidentiary hearing because a hearing would have permitted him to question his attorneys for evidence to support his claims.

“We review 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). A request for a hearing on a postconviction petition may be denied when the petition, files, and record from the proceeding “conclusively show that the petitioner is entitled to no relief.” Minn. Stat. § 590.04, subd. 1 (2022); *accord Lynch*, 749 N.W.2d at 320. When determining whether the petitioner is entitled to an evidentiary hearing, the postconviction court is required to consider the facts alleged in the petition as true and construe them in the light most favorable to the petitioner. *Andersen v. State*, 913 N.W.2d

417, 422-23 (Minn. 2018). “[T]he burden is on a petitioner to show facts entitling the petitioner to relief.” *Allwine v. State*, 994 N.W.2d 528, 541 (Minn. 2023).

The record supports the postconviction court’s denial of Forest’s request for a hearing. Even when we review the facts alleged in Forest’s petition as true and in the light most favorable to relief, Forest did not meet his burden to show that his claims against his trial counsel were not *Knaffla* barred or that his appellate counsel provided ineffective assistance. Therefore, the postconviction court did not abuse its discretion by denying an evidentiary hearing on these claims.

Affirmed.