

*This opinion is nonprecedential except as provided by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
A26-0068**

State of Minnesota,
Respondent,

vs.

Dylan Robert Simmons,
Appellant.

**Filed August 10, 2026
Reversed and remanded
Smith, John, Judge ***

Washington County District Court
File No. 82-CR-23-2464

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

Kevin Magnuson, Washington County Attorney, Stillwater, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jessica Merz Godes, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Harris, Presiding Judge; Wheelock, 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NONPRECEDENTIAL OPINION

SMITH, JOHN, Judge

We reverse and remand to the district court solely to reconsider the issue of restitution owed by the appellant because appellant was denied effective assistance of counsel when his attorney did not timely file an affidavit detailing the restitution issues he was contesting.

FACTS

In December 2024, a jury found appellant Dylan Robert Simmons guilty of second-degree unintentional murder under Minn. Stat. § 609.19, subd. 2(1) (2024), and criminal vehicular homicide—leaving the scene under Minn. Stat. § 609.2112, subd. 1(a)(7) (2024).¹ The district court adjudicated Simmons guilty on the second-degree unintentional murder count,² imposed a 234-month prison sentence, and left restitution open for 90 days.

Before trial, the state filed a notice that the Crime Victims Reparations Board (CVRB) awarded \$7,500.00 to the victim’s mother (mother), for funeral expenses. After trial, mother timely filed an affidavit for restitution, requesting \$143,067.86 for “damage to vehicle,” “cultural funeral expenses,” and “loss of wages” for herself and the victim’s father. The district court promptly notified the parties of mother’s restitution request.

¹ The jury found Simmons guilty of three counts of second-degree assault involving three other victims; those victims did not request restitution.

² Because these counts were based on “the same course of conduct,” the district court did not adjudicate Simmons guilty of criminal vehicular homicide. *See* Minn. Stat. § 609.04, subd. 1 (2024).

Simmons’s defense counsel timely requested a contested restitution hearing. Simmons challenged restitution based on his ability to pay and his assertion that mother’s restitution request was “inflated and inappropriate.” The district court granted Simmons’s request and scheduled a restitution hearing for August 14, 2025.

On August 11, 2025, the state moved to strike the restitution hearing because Simmons had not filed a sworn affidavit detailing his restitution challenge, as required by Minn. Stat. § 611A.045, subd. 3 (2024).³ Two days later, Simmons filed an *untimely* affidavit detailing his restitution challenge. Simmons objected to both “the amount requested and [his] ability to pay.”

The district court granted the state’s motion, striking the contested restitution hearing. The district court then ordered Simmons to pay \$150,567.86 in restitution. Simmons’s defense counsel sought reconsideration of the district court’s decision to strike the hearing, which the state opposed.

On October 6, 2025, the district court held a motion hearing which was “limited” to “considering . . . Simmons’s ability to pay [restitution] versus the challenged amount” because Simmons’s affidavit was untimely. Following the hearing, the district court reaffirmed its order requiring Simmons to pay \$150,567.86 in restitution: \$7,500.00 to the CVRB and \$143,067.86 to mother and the victim’s father.

³ Under Minn. Stat. § 611A.045, subd. 3(a), if an offender challenges restitution, the offender must submit “a detailed sworn affidavit . . . setting forth all challenges to the restitution or items of restitution,” and this affidavit “must be served on the prosecuting attorney and the court at least five business days before the hearing.”

DECISION

Here, Simmons argues that he received ineffective assistance of counsel when his defense counsel failed to timely file an affidavit in support of his motion challenging restitution, thereby forfeiting his ability to contest the amount of restitution requested. Because Simmons's ineffective-assistance claim can be decided based upon the district court record, his claim is appropriately raised on direct appeal. *See Torres v. State*, 688 N.W.2d 569, 572 (Minn. 2004) (“A claim of ineffective assistance of trial counsel that can be decided on the basis of the trial court record must be brought on direct appeal.”).

When reviewing whether counsel provided ineffective assistance, we use the two-prong test articulated in *Strickland v. Washington*, 466 U.S. 668, 687 (1984). *State v. Cram*, 718 N.W.2d 898, 906-07 (Minn. 2006) (applying *Strickland* to an ineffective-assistance claim regarding restitution). Under this test, Simmons has the burden of showing: (1) that his “attorney’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.” *State v. King*, 990 N.W.2d 406, 417 (Minn. 2023) (quotations omitted).

Generally, defense counsel’s performance is given high deference for legal strategy, but in *Roe v. Flores-Ortega*, the United States Supreme Court held that,

a lawyer who disregards specific instructions from the defendant to file a notice of appeal acts in a manner that is professionally unreasonable . . . because a defendant who instructs counsel to initiate an appeal reasonably relies upon counsel to file the necessary notice. Counsel’s failure to do so cannot be considered a strategic decision; filing a notice of

appeal is a purely ministerial task, and the failure to file reflects inattention to the defendant's wishes.

528 U.S. 470, 477 (2000). Applying *Roe*, we have addressed counsel's failure to file an affidavit challenging restitution in prior decisions that are persuasive here.⁴

In *Jones v. State*, the appellant challenged the denial of her postconviction petition, claiming her counsel was ineffective by failing to timely file her restitution affidavit. No. A20-1297, 2021 WL 1604344, at *1 (Minn. App. Apr. 26, 2021). The appellant had completed the affidavit and delivered it to her counsel before the statutory deadline. *Id.* at *4. Citing *Roe*, we reversed and remanded for an evidentiary hearing. *Id.* We concluded that counsel's "oversight in failing to timely serve and file the affidavit resulted in a procedural bar to challenge the restitution order," and "[c]ounsel's failure to act within the deadline . . . amounts to conduct falling below an objective standard of reasonableness." *Id.*

Then, in *State v. Shea*, we addressed this question again on direct appeal under circumstances similar to the present case. No. A23-1523, 2024 WL 4115377, at *8 (Minn. App. Sept. 9, 2024). In *Shea*, the appellant challenged restitution, contesting the amount requested and asserting that he did not have the ability to pay the requested amount. *Id.* at *3. The appellant timely filed a motion but failed to file the required affidavit. *Id.* Because there was no timely affidavit filed, the district court dismissed the appellant's challenge to restitution. *Id.* We concluded that the appellant was denied effective assistance of counsel

⁴ We may cite nonprecedential opinions as persuasive authority. See Minn. R. Civ. App. P. 136.01, subd. 1(c).

because counsel’s failure “to timely file . . . the affidavit resulted in a procedural bar to [appellant’s] ability to challenge the restitution order,” and therefore, “amount[ed] to conduct falling below an objective standard of reasonableness.” *Id.* at *8.⁵

Here, although Simmons had “part of a restitution hearing” in October 2025, this hearing was expressly limited to considering Simmons’s ability to pay. And a review of the record confirms that no arguments were made challenging *the amount requested*.⁶ Thus, Simmons was procedurally barred from challenging the amount of restitution requested due to the untimely filing of his affidavit.

As such, we conclude that Simmons’s defense counsel’s representation fell below an objective standard of reasonableness. Like in *Jones* and *Shea*, Simmons filed a timely motion to challenge the district court’s restitution decision.⁷ And in that motion, Simmons objected to the amount of restitution requested—not only based upon his ability to pay but specifically objecting to “the actual economic loss sustained . . . as a result of the offense.” However, because there was no timely affidavit filed, the district court cancelled the

⁵ *In re Welfare of K.A.A.*, we reached the same conclusion regarding this restitution issue and an ineffective-assistance-of-counsel claim raised in a juvenile case. No. A25-0811, 2025 WL 3750552, at *6 (Minn. App. Dec. 29, 2025).

⁶ During the October 2025 hearing, when asked if there was a “specific number” Simmons felt was “more fair,” Simmons’s defense counsel declined to offer a number because the focus was on the defendant’s “ability to pay,” but defense counsel stated that, had they been able to “challeng[e] the amounts presented, [they] ha[d] some specific numbers in mind as it relates to what’s appropriate.”

⁷ We note that unlike in *Jones*, Simmons did not complete his affidavit before the statutory deadline—his affidavit was “[e]xecuted . . . on August 12, 2025.” However, in *Shea*, there is no indication as to whether appellant timely completed the affidavit; instead, the decision focused on the fact that the appellant’s motion was timely filed but the affidavit was not, which is similar to the circumstances of this case.

restitution hearing and barred Simmons from challenging the amount of restitution requested at the October 2025 hearing. Thus, Simmons was denied effective assistance of counsel at his restitution hearing because his counsel's failure to file the required affidavit resulted in a procedural bar to Simmons challenging the *amount of restitution* requested.

Further, there is a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *King*, 990 N.W.2d at 417 (quotations omitted). Simmons challenged restitution arguing that the amount requested was "inflated and inappropriate." "Had the affidavit been timely filed, the state would have been required to bear the burden of demonstrating the amount of loss sustained . . . and to show the appropriateness of the restitution." *Shea*, 2024 WL 4115377, at *8 (citing Minn. Stat. § 611A.045, subd. 3(a)). Although we may not speculate as to whether the state could have satisfied that burden, we agree with Simmons that there is a "reasonable probability . . . the result of the proceeding would have been different." *King*, 990 N.W.2d at 417 (quotations omitted).

Because Simmons was denied effective assistance of counsel and because there is a reasonable probability that the result of the restitution hearing would have been different had counsel timely filed the required affidavit, we reverse and remand for the district court to issue an order establishing a reasonable timeline for Simmons to file a motion and affidavit to challenge the restitution decision *solely* with regard to the amount of restitution requested, and not his ability to pay. If any such motion and affidavit are filed, the district court shall hold a hearing on the motion, similarly limited in scope.

Reversed and remanded.