This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2016).

STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0526

State of Minnesota,
Respondent,

vs.

Anthony Lee Stands,
Appellant.

Filed October 29, 2018
Affirmed
Connolly, Judge

Otter Tail County District Court
File No. 56-CR-15-3021

Lori Swanson, Attorney General, Edwin W. Stockmeyer, Assistant Attorney General, St. Paul, Minnesota; and

Michelle Eldien, Otter Tail County Attorney, Fergus Falls, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jenna Yauch-Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Worke, Judge; and Johnson, Judge.

U N P U B L I S H E D   O P I N I O N

CONNOLLY, Judge

Appellant was convicted of third-degree criminal sexual conduct and challenges the denial of his request for postconviction relief. He argues that the postconviction court abused its discretion when it denied him a new trial or an evidentiary hearing because he produced sufficient evidence that the victim had lied about the allegations. The postconviction court found that appellant failed to produce evidence of false testimony. We affirm.

FACTS

Appellant Anthony Lee Stands was charged with and convicted of third-degree criminal sexual conduct in violation of Minn. Stat. § 609.344, subd. 1(c) (2014).

In October 2014, appellant and his friend visited the victim, E.P., at her house. E.P. testified that while the three were in her bedroom, appellant engaged in nonconsensual intercourse with her and did not stop despite her request. Appellant testified in his own defense and stated that the intercourse was consensual.

Appellant filed a petition for postconviction relief, alleging that he had discovered evidence that E.P. had lied about the allegations against him. In support of his petition, appellant presented three affidavits from individuals indicating that the victim's mother, S.W., told them that E.P. had lied about the allegations. In two of the affidavits, witnesses stated that S.W. told them E.P. admitted she made up the allegations.

The postconviction court held a hearing on the matter to determine if there should be an evidentiary hearing. The court permitted appellant to take testimony from S.W., at

the hearing, in lieu of an affidavit. The postconviction court explained that if the victim did admit to her mother that her allegations were false, an evidentiary hearing would be held. The postconviction court did not allow the three affiants to testify because their statements were based solely on information learned from the victim's mother.

S.W. testified that E.P. had not told her that she lied or that the intercourse was consensual. In fact, S.W. testified that E.P. would not talk to her about the allegations at all. S.W. also testified that she did not believe E.P.'s allegations to be true, because in her view E.P. was bipolar, and was perhaps being dishonest because of retaliation or middle-child syndrome. Finally, S.W. testified that she did not tell the affiants that E.P. had said the allegations were false, but only that she did not believe E.P.

The postconviction court denied appellant's motion without an evidentiary hearing because no witness had firsthand knowledge that E.P. had falsified her testimony or lied in any way. This appeal follows.

D E C I S I O N

This court "reviews the denial of a petition for postconviction relief, as well as a request for an evidentiary hearing, for an abuse of discretion." *Colbert v. State*, 870 N.W.2d 616, 621 (Minn. 2015). A court "abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record." *Riley v. State*, 819 N.W.2d 162, 167 (Minn. 2012). An appellant seeking postconviction relief has the burden of establishing, by a fair preponderance of the evidence, facts that would warrant relief. *Ferguson v. State*, 645 N.W.2d 437, 442 (Minn. 2002).

1. New Trial Claim

Appellant argues that he is entitled to a new trial because the victim provided false testimony at trial. This court applies a three-prong test, known as the *Larrison* test, to claims of newly discovered evidence of false testimony. *Williams v. State*, 692 N.W.2d 893, 896 (Minn. 2005). A new trial based on newly discovered false testimony should be granted when,

> (1) the court is reasonably well-satisfied that the testimony given by a material witness was false; (2) that without that testimony the jury might have reached a different conclusion; and (3) that the party seeking a new trial was taken by surprise when the false testimony was given and was unable to meet it or did not know of its falsity until after the trial.

Id. The first two prongs are mandatory, but the third prong, while relevant, is not. *Ortega v. State*, 856 N.W.2d 98, 103 (Minn. 2014).

The postconviction court denied appellant's petition, concluding that the first *Larrison* prong had not been met. The court concluded that appellant had failed to show that the victim herself recanted in any way, emphasizing the hearsay nature of the third-party affidavits and noting that the "testimony of the third-party witnesses could not constitute substantive evidence showing that [the victim] lied on the stand."

Appellant's argument that the postconviction court abused its discretion in depriving him a new trial fails. First, under the first *Larrison* prong, the "court must be reasonably certain that the alleged recantation is genuine." *Opsahl v. State*, 710 N.W.2d 776, 782 (Minn. 2006) (quotation omitted) (*Opsahl II)*. Here, S.W., the only individual who claimed personal knowledge that E.P. gave false testimony, stated that she had never heard E.P. recant or say she lied. S.W. did state that she believed E.P. gave false testimony

because she might be bipolar or retaliating or have middle-child syndrome, but could not be sure. But an opinion regarding a witness's general reliability, as opposed to evidence of actual dishonesty, is an insufficient basis for a new trial. *Martin v. State*, 865 N.W.2d 282, 290 (Minn. 2015).

Second, S.W.'s opinion that E.P.'s testimony was false would be inadmissible evidence and could not be the basis for granting a new trial, because it is improper "for the defense to elicit direct opinion testimony on the specific question of whether the complainant is telling the truth in his or her testimony." *State v. Maurer*, 491 N.W.2d 661, 662 (Minn. 1992). A postconviction court does not abuse its discretion in denying a claim of newly discovered evidence of false testimony when the appellant fails to "present any admissible evidence of . . . recantation." *Dobbins v. State*, 845 N.W.2d 148, 155 (Minn. 2013).

Third, appellant's affidavits are also inadmissible to prove E.P. testified falsely. Two affiants assert that they learned from S.W. that E.P. said she had testified falsely. These affidavits reflect two levels of hearsay, that S.W. said that E.P. said she testified falsely, but "hearsay evidence is [never] sufficient to warrant a new trial under the first prong of *Larrison*." *Campbell v. State*, 916 N.W.2d 502, 507 (Minn. 2018). The third affidavit also contains hearsay.

Appellant's evidence that E.P. gave false testimony is based solely on S.W.'s opinion and hearsay affidavits derived from that opinion. There is no evidence that any individual has personally heard E.P. recant. The postconviction court did not abuse its discretion in finding that it was not reasonably well satisfied that E.P.'s testimony was

false. Because appellant failed to meet the first *Larrison* prong, we decline to address the remaining elements.

2. Evidentiary Hearing Claim

Appellant argues in the alternative that he is at least entitled to an 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 (2016). The *Larrison* test is applicable when addressing whether the claim requires an evidentiary hearing. *See Caldwell v. State*, 853 N.W.2d 766, 775 (Minn. 2014) (the *Larrison* standard applies broadly to *all* allegations of false trial testimony, not just to witness recantations). When applying the *Larrison* test, the court must assume the truth of the allegations in the petition. *Ortega*, 856 N.W.2d at 103. The court then asks whether the allegations, assuming they are true, would be legally sufficient to entitle a defendant to relief. *Caldwell*, 853 N.W.2d at 772.

Appellant argues that the postconviction court abused its discretion when it denied the hearing because there was no "admissible" evidence of false testimony. Appellant relies exclusively on *Ferguson* for the proposition that a petitioner does not need to provide admissible evidence in order to receive a hearing. 645 N.W.2d at 443, 446. Appellant's reliance on *Ferguson* is misplaced.

In *Ferguson*, the court held that it is not proper to deny an evidentiary hearing simply because the evidence of false testimony may be hearsay. *Id.* at 446. In that case, however, the hearsay witness had personal knowledge from a key witness that the witness gave false testimony. *Id.* Because the witness may have invoked his right to remain silent at the

evidentiary hearing, there was the potential for the hearsay evidence to become admissible.[1] *Id.*

This is not the case here. In this case, there is no witness with personal knowledge that E.P. gave false testimony. There is only hearsay within hearsay evidence, derived from an individual who admitted to never having spoken with E.P. *See id.* at 447 (suggesting that an evidentiary hearing would not be necessary because the claim "does not present the possibility of a witness recanting his testimony; instead, there is only a possibility that another witness would testify that [the witness] was lying and had changed his story."). Thus, because there is only hearsay within hearsay evidence, there is not substantive evidence potentially admissible to prove that E.P. gave false testimony.

Appellant also argues that "there was a material factual dispute," and that an evidentiary hearing is necessary "whenever material facts are in dispute that . . . must be resolved in order to determine the issues raised on the merits." *Opsahl v. State*, 677 N.W.2d 414, 423 (Minn. 2004) (quotation omitted) (*Opsahl I).* Appellant argues that, taking the two affidavits as true, there is a genuine factual dispute. But the affidavits, because they rely on hearsay within hearsay, cannot be used to show that E.P. testified falsely. In addition, S.W. testified to the fact that E.P. did not tell her she lied. There is no substantive evidence potentially admissible to prove E.P. testified falsely and there is no potential dispute.

---

[1] In such a case, the witness would become "unavailable" so that the "testimony falls under the hearsay exception for statements against penal interest." *Id.*

Appellant finally argues that the court abused its discretion in denying an evidentiary hearing because the petition for relief requires an assessment of witness credibility. It is true that a "postconviction hearing is exactly the forum in which the court can examine and compare each witnesses' account for truthfulness and elicit details about each witnesses' knowledge." *Wilson v. State*, 726 N.W.2d 103, 107 (Minn. 2007). In addition, a court "considers the facts alleged within the petition as true, and construes them in the light most favorable to the petitioner" before determining whether an evidentiary hearing is required. *Anderson v. State*, 913 N.W.2d 417, 422-23 (Minn. 2018). Here, however, there is no witness who claims to have heard from E.P. that she gave false testimony or lied about the allegations. Thus, there is no substantive evidence that E.P. gave false testimony and no facts that even if true, would require a credibility determination.

The district court did not abuse its discretion when it denied appellant an evidentiary hearing.

Affirmed.