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STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0253

John Stephen Woodward, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed December 24, 2018
Affirmed
Hooten, Judge

Rice County District Court
File No. 66-CR-10-2907

Robert D. Miller, Minneapolis, Minnesota; and

Christopher J. Perske, Jordan, Minnesota (for appellant)

Lori Swanson, Attorney General, St. Paul, Minnesota; and

John Fossum, Rice County Attorney, Terence Swihart, Assistant County Attorney, Faribault, Minnesota (for respondent)

Considered and decided by Hooten, Presiding Judge; Halbrooks, Judge; and Bjorkman, Judge.

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

HOOTEN, Judge

In his appeal from the district court's denial of his petition for postconviction relief, appellant argues that the district court abused its discretion by failing to grant an

evidentiary hearing on his petition and by failing to consider his second amended petition for relief. We affirm.

FACTS

Appellant John Woodward was convicted of several counts of controlled-substance crime in November 2007. In prison, he met fellow inmate T.J. Woodward found out that T.J. was soon to be released, and on June 5, 2010, they formulated a plan for T.J. to murder the Dakota County Attorney in exchange for $10,000. On June 30, T.J. reported his conversation with Woodward to a prison official and agreed to wear a recording device in future conversations with Woodward. The two met again on July 30 and August 9, 2010, and though Woodward wavered on whether to go through with the plan, he ultimately confirmed that he wanted T.J. to go forward with the murder.

The state charged Woodward with two counts of conspiracy to commit first-degree murder for the plan to kill the county attorney and for a conversation where he mentioned that he also wanted the district court judge who presided over his case dead. And, the state charged him with conspiracy to commit first-degree assault against a confidential informant. The district court granted a judgment of acquittal for the murder charge related to the judge. On December 7, 2012, a jury acquitted Woodward of the assault charge, but convicted him of conspiracy to commit first-degree murder related to the county attorney.

Woodward was sentenced to 192 months in prison. He appealed to this court, and we affirmed. His petition for review to the supreme court was initially granted and stayed, but was ultimately denied on August 11, 2015. Woodward then petitioned for postconviction relief on August 1, 2017. He filed an amended petition on October 20 and

a second amended petition on November 30. The district court issued an order on December 5 "disregarding" the second amended petition and filed an order on December 14 denying Woodward postconviction relief without a hearing. This appeal follows.

D E C I S I O N

I. Evidentiary Hearing

Woodward first argues that the district court erred by not granting him an evidentiary hearing on his petition for postconviction relief. Under Minn. Stat. § 590.04, subd. 1 (2016), a postconviction court shall hold a hearing "[u]nless the petition and the files and records of the proceeding conclusively show that the petitioner is entitled to no relief." "An evidentiary hearing is required whenever material facts are in dispute that have not been resolved in the proceedings resulting in conviction and that must be resolved in order to determine the issues raised on the merits." *Hodgson v. State*, 540 N.W.2d 515, 517 (Minn. 1995). If the question of whether to grant a hearing is a close one, a hearing should be granted. *Opsahl v. State*, 677 N.W.2d 414, 423 (Minn. 2004). But a petitioner "must do more than offer conclusory, argumentative assertions, without factual support" to be entitled to relief. *State v. Turnage*, 729 N.W.2d 593, 599 (Minn. 2007); *see also Rossberg v. State*, 874 N.W.2d 786, 791 (Minn. 2016) ("Because Rossberg's postconviction petition consisted of conclusory allegations without factual support, the petition failed to satisfy the requirements of the postconviction statute.").

We review the denial of a petition for postconviction relief without an evidentiary hearing for an abuse of discretion. *State v. Nicks*, 831 N.W.2d 493, 503 (Minn. 2013). "A postconviction 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." *Id.* (quotation omitted). We review factual findings for clear error and legal questions de novo. *Id.*

a. Audio/visual evidence

Woodward's first basis for relief in his petition was that the state committed a *Brady* violation. For there to be a *Brady* violation, there must be evidence that was: (1) favorable because it was impeaching or exculpatory; (2) suppressed; and (3) material because its absence prejudiced the defendant. *Walen v. State*, 777 N.W.2d 213, 216 (Minn. 2010).

Woodward claims that the state suppressed exculpatory audio/video evidence of his conversations with T.J. The state played two recordings at trial of conversations between Woodward and T.J. that took place on July 30 and August 9. The audio from the recordings came from a recording device that T.J. kept in his pocket, and the video came from security cameras within the prison. The audio and video were then apparently combined and presented to the jury together. But there are portions of what was shown to the jury where there is only audio playing and no video. This apparently corresponds to the portions of the conversations where Woodward and T.J. were not within view of the cameras used for the recordings. Woodward states in his petition that, through separate defense counsel, he received copies from the Minnesota Department of Corrections (DOC) of the audio and video recordings of his conversations with T.J. He had a forensic firm analyze the recordings. And the firm executed an affidavit stating that the audio and video could not be aligned, that 18 minutes of audio were missing from the audio recording, and that someone had tampered with the recording.

The postconviction court denied Woodward relief on this claim for three reasons. First, it determined that Woodward's claim was *Knaffla*-barred because he knew that the audio recordings were modified from the originals and failed to raise the issue on direct appeal through appellate counsel or in his pro se supplemental brief. *State v. Knaffla*, 243 N.W.2d 737 (Minn. 1976). Second, it determined that Woodward had "failed to demonstrate that the audio obtained from the DOC post-trial is the same as the audio played at trial." And third, it determined that Woodward failed to allege facts that the missing audio contains impeaching or exculpatory evidence and that any such allegations only came from Woodward's self-serving affidavit.

Under *State v. Knaffla*, "where direct appeal has once been taken, all matters raised therein, and all claims known but not raised, will not be considered upon a subsequent petition for postconviction relief." 243 N.W.2d at 741. In his affidavit, Woodward stated, "I believed the audio recordings entered at trial against me . . . were modified from the original text. I notified my trial counsel and the trial Court. I became aware of these issues during trial when they were presented to the jury." Woodward also states in the affidavit that he informed his appellate counsel about the problem with the audio recordings. But the record indicates that Woodward's trial counsel was given the unredacted version of the audio in discovery, meaning Woodward had access to any potentially exculpatory recordings prior to trial.[1] Because Woodward's counsel was given the unredacted audio

[1] The unredacted version of the audio is not included in the record so we are unable to assess whether anything exculpatory was removed from the original audio recording. But it appears from the record that Woodward's trial counsel was aware that the audio was

recordings which contained the alleged exculpatory information, there can be no *Brady* violation since no evidence was suppressed. Furthermore, Woodward's claim is *Knaffla*-barred since it was "known but not raised" in his direct appeal. *Id.*

Woodward argues that his claim should survive under an exception to *Knaffla*. There are two recognized exceptions to the *Knaffla* bar. *Perry v. State*, 731 N.W.2d 143, 146 (Minn. 2007). First, the "claim is so novel that the legal basis was not available on direct appeal." *Id.* And second, "the interests of justice require review." *Id.* "The second exception applies if fairness requires it and the petitioner did not deliberately and inexcusably fail to raise the claim on direct appeal." *Id.* Woodward relies on the interests-of-justice exception. We are not convinced. Woodward provides no proof that the missing audio is exculpatory outside of self-serving statements in his affidavit, and he had ample opportunity to raise and explore the issue but failed to do so.[2]

b. Information about government witnesses

Woodward's second basis for relief in his petition is that the state committed *Brady* violations by not disclosing important information about two key government witnesses. He alleges that the state should have disclosed to him that a detective working on his case, R.V., did not testify at trial because he was forced to resign. Woodward asserts in his petition that R.V. was the chief investigator on his case, working directly with T.J. to use

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redacted and that it was done so to cut out what Woodward's trial counsel referred to as "dead spots" in the audio where there was no communication between Woodward and T.J.

[2] We note that the Minnesota Supreme Court has pointed out that it is unclear whether the exceptions to *Knaffla* remain applicable to petitions for postconviction relief in light of the 2005 amendments to Minn. Stat. § 590.01. *See Fox v. State*, 913 N.W.2d 429, 433 n.2 (Minn. 2018); *Hooper v. State*, 838 N.W.2d 775, 787 n.2 (Minn. 2013).

him as a confidential informant, and that he resigned after being investigated for inappropriate sexual conduct with a female confidential informant in a separate case. He also argues that T.J.'s prior history of acting as an informant should have been disclosed.

The postconviction court determined that, with regard to R.V., Woodward had alleged insufficient facts to warrant relief and that his allegations did not meet the *Brady* requirements because he did not demonstrate that the evidence would have been favorable to him. With regard to T.J., the postconviction court denied Woodward's claim because he did not supply any evidence, outside of his own self-serving affidavit, showing that T.J. had previously given information leading to convictions. The district court also determined that T.J.'s claim failed the *Brady* requirements because Woodward did not demonstrate that T.J.'s history would be impeaching or exculpatory, and even if it were, he did not show that he was prejudiced by the failure to disclose.

For a *Brady* claim to be successful, the suppressed evidence must be material, meaning that its suppression caused prejudice to the defendant. *Walen*, 777 N.W.2d at 216. Evidence is only material "if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *Id.* (quotation omitted). We analyze the materiality of the evidence by considering the effect it "would have had in the context of the whole trial record." *Id.* But "a new trial is not required simply because a defendant uncovers previously undisclosed evidence that would have been possibly useful to the defendant but unlikely to have changed the verdict." *Id.*

We conclude that the postconviction court was correct that Woodward alleged insufficient facts to warrant relief with regard to R.V. The petition asserts that the state did

not disclose the information about R.V.'s misconduct, but it does not explain why this is significant. It does not allege, for example, that R.V. gave T.J. improper benefits in exchange for his cooperation, like he had with a previous confidential informant. Even if that were the allegation, there is nothing in the petition or affidavits that would support it. For that reason, Woodward's claim also fails under *Brady*; he did not demonstrate that exculpatory or impeaching evidence had been withheld or that there would have been a different result at trial if he had presented evidence of R.V.'s misconduct with a different confidential informant.

The postconviction court was also correct with regard to T.J.'s history as an informant. Woodward's petition fails to even allege that the confidential-informant evidence was material. But even if it had, his claim would fail because, considering "the facts alleged in the petition as true and construe[ing] them in the light most favorable to the petitioner," Woodward cannot show that the allegedly-suppressed evidence was material. *Andersen v. State*, 913 N.W.2d 417, 422–23 (Minn. 2018). There was audio evidence played at trial that implicated Woodward in a conspiracy to murder the county attorney. Considering the strong evidence against Woodward, we cannot say that there is a reasonable probability that the outcome at trial would have been different if Woodward had presented evidence about T.J.'s history of working as an informant.

c. Ineffective assistance of counsel

Woodward's third basis for relief in his petition is ineffective assistance of trial counsel. He specifically asserts that his attorney's "conduct in challenging the witnesses and foundation of evidence admitted was not sufficient."

The postconviction court determined that this claim was *Knaffla*-barred because Woodward had already raised it in his pro se brief on direct appeal. A review of *State v. Woodward*, A13-0703, 2014 WL 2921837 at *7 (Minn. App. June 30, 2014), *review granted* (Minn. Sept. 16, 2014) *and appeal dismissed* (Minn. Aug, 11, 2015) confirms that Woodward previously raised ineffective assistance of trial counsel, though on slightly different grounds. *Knaffla* tells us that "where direct appeal has once been taken, all matters raised therein, and all claims known but not raised, will not be considered upon a subsequent petition for postconviction relief." 243 N.W.2d at 741. To the extent that Woodward's current claim is different, he had the opportunity to argue those grounds previously but failed to do so. This claim is barred.

We hold that the postconviction court did not abuse its discretion by not holding an evidentiary hearing on any of Woodward's claims.

II. Second Amended Petition

Woodward indicates in the "Statement of the Issues" of his brief that the postconviction court "erred in disregarding the second amended petition for post-conviction relief." The only difference between his first and second amended petitions for postconviction relief is one paragraph in the ineffective assistance of trial counsel section:

> Based upon the arguments of the State in its memorandum and second memorandum, if the State is to be believed that the issues before the Court are barred by Knaffla, then Petitioner sets forth, in the alternative, that appellate counsel was ineffective and that issue is still ripe for review in a post conviction proceeding.

Woodward addresses ineffective assistance of both trial and appellate counsel in three pages of his brief. But at no point does he set forth any caselaw discussing how this court is to review a postconviction court's refusal to consider an amended petition or actually argue that the postconviction court erred. His only relevant citation is to Minn. Stat. § 590.03 (2016) for the proposition that a postconviction court may permit amendments to a petition. "Arguments are forfeited if they are presented in a summary and conclusory form, do not cite to applicable law, and fail to analyze the law when claiming that errors of law occurred." *State v. Bursch*, 905 N.W.2d 884, 889 (Minn. App. 2017). Woodward has presented his argument in a summary and conclusory form, and he has failed to analyze the applicable law. His argument is forfeited.

Even if he had not forfeited his argument, it would fail on the merits. Under Minn. Stat. § 590.03, a postconviction court "may at any time prior to its decision on the merits . . . permit amendments" to a petition for postconviction relief. The word "may" indicates that this is a discretionary decision. Woodward was already given the opportunity to amend his petition once before. And there is no indication that the argument he added in his second petition—that appellate counsel was ineffective—had recently been discovered or that there was some other reason to accept its late inclusion. Rather, Woodward clearly indicates in the second amended petition itself that this new claim was added in response to the state's own arguments: "if the State is to be believed that the issues . . . are barred by *Knaffla*, then Petitioner sets forth, in the alternative, that appellate counsel was ineffective."

We hold that the district court did not abuse its discretion by not considering Woodward's second amended petition.

Affirmed.