STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0758

Raymond Joseph Traylor, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed December 4, 2017
Affirmed
Reyes, Judge

Ramsey County District Court
File No. 62-CR-14-3082

Raymond Traylor, Rush City, Minnesota (pro se appellant)

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

John Choi, Ramsey County Attorney, Adam E. Petras, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Considered and decided by Cleary, Chief Judge; Bjorkman, Judge; and Reyes, Judge.

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

REYES, Judge

Appellant challenges the district court's denial of his petition for postconviction relief on his convictions of first-degree criminal sexual conduct, arguing that the district

court judge who presided at his jury trial and an earlier postconviction proceeding should have been disqualified. We affirm.

FACTS

Following a 2014 jury trial, appellant Raymond Joseph Traylor was convicted of two counts of first-degree criminal sexual conduct. This court affirmed his convictions on direct appeal, rejecting numerous claims of trial and sentencing errors, prosecutorial misconduct, and other pro se claims. *State v. Traylor*, No. A15-0029, 2016 WL 854578, at *2-11 (Mar. 7, 2016). Appellant brought his first petition for postconviction relief in 2016, requesting forensic testing that was purportedly unavailable at the time of trial. The postconviction court ruled that the claim was procedurally barred and lacked merit. He did not appeal the first postconviction decision. Appellant filed a second petition for postconviction relief in February 2017, alleging that the district court judge who presided at trial was a "disqualified adjudicator." Separately, appellant moved to have the same district court judge removed from presiding over this postconviction matter.

Just after conducting pretrial proceedings on the 2014 charges, the district court judge wrote a letter to the parties to disclose his likely involvement in a 2003 criminal case in which appellant was the defendant. The judge stated in the letter that, while he was working as an assistant county attorney in 2003, he represented the state in an appeal before the Minnesota Supreme Court to argue a pretrial evidentiary issue in appellant's case. The judge was not the charging or trial attorney in that case. Nevertheless, the judge interpreted the judicial code of conduct to require his disqualification in the 2014 case if his impartiality might reasonably be questioned because of his participation in the 2003 matter.

In the letter, the judge informed the parties of the potential conflict and sought their input, writing, "To be clear, if either party has an objection to me handling this case, I will recuse and have the matter assigned to a different judge." The letter was filed in district court on July 3, 2014. The district court record also includes defense counsel's response to the letter, which states that appellant "has no objection to having [the judge preside] on [the 2014] matter."

The postconviction court summarily denied appellant's petition without a hearing, ruling that the claim was procedurally barred and without merit. The district court also rejected appellant's request that the judge recuse himself from presiding over the postconviction proceeding. This appeal follows.

D E C I S I O N

Appellant argues that the postconviction court abused its discretion by summarily dismissing his second postconviction petition. We disagree.

"A petition for postconviction relief is a collateral attack on a conviction that carries a presumption of regularity." *Greer v. State*, 673 N.W.2d 151, 154 (Minn. 2004). Under the well-recognized rule of *State v. Knaffla*, once a petitioner has had a direct appeal of a conviction, "all matters raised therein, and all claims known but not raised, will not be considered upon a subsequent petition for postconviction relief." 309 Minn. 246, 252, 243 N.W.2d 737, 741 (1976); *see* Minn. Stat. § 590.01, subd. 4 (2016) (codifying *Knaffla* rule). We review postconviction decisions for an abuse of discretion. *Moua v. State*, 778 N.W.2d 286, 288 (Minn. 2010). "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." *Riley v. State*, 819 N.W.2d 162, 167 (Minn. 2012) (quotation omitted).

We first note that the district court judge followed proper procedure by disclosing his involvement in the 2003 criminal matter, seeking input from the parties, and offering to recuse from hearing the case if requested to do so. *See* Minn. Code Jud. Conduct Rule 2.11(A) ("A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned. . . ."); *State v. Yaeger*, 399 N.W.2d 648, 652 (Minn. App. 1987) (requiring "affirmative showing of prejudice" to disqualify a substituted judge for claimed bias). In this case, the district court judge's impartiality cannot be reasonably questioned. The judge's disclosure letter was properly sent to counsel for appellant, as required. *See* Minn. R. Crim. P. 33.02 (requiring service to a represented party to "be made on the attorney"). Appellant's attorney responded that appellant had "no objection" to the judge presiding over the case. As a defendant's waiver of non-fundamental rights may be made by counsel, appellant's counsel's waiver of any objection to the judge presiding over appellant's 2014 case is valid. *See State v. Halseth*, 653 N.W.2d 782, 786 (Minn. App. 2002) (permitting waiver of non-fundamental rights to be "effected by action of counsel"). Ultimately, appellant proceeded pro se to trial, *Traylor*, 2016 WL 854578, at *1, and he was given full access to the district court record in 2014. As the record included the relevant documents pertaining to the judge's recusal offer and appellant's waiver of the recusal, appellant is deemed to have received notice of that issue

in 2014. Under the facts presented, appellant's claim is both without merit and procedurally barred under *Knaffla*.[1]

Further, appellant has not offered evidence that would require the district court judge to recuse himself from presiding over appellant's second postconviction proceeding. As discussed, before trial on the current offenses in 2014, the judge properly disclosed his limited, isolated appearance in an unrelated 2003 criminal matter involving appellant. Appellant alleges no other basis for disqualification. Again, recusal of a judge is required only when the judge's impartiality can be reasonably questioned. *See Yaeger*, 399N.W.2d at 652 (requiring "affirmative showing of prejudice" to demonstrate basis for judge disqualification).

The postconviction court did not abuse its discretion in denying appellant's request for relief.

Affirmed.

[1] To the extent that appellant's claim depends on his counsel's purported failure to disclose the district court judge's letter to appellant, appellant's claim for that conduct is ineffective assistance of counsel. *See Strickland v. Washington*, 466 U.S. 668, 694, 104 S. Ct. 2052, 2068 (1984). Because appellant was clearly identified by two women who were brutally raped by him, one of whom knew him, and medical evidence tied him to the crime, any claim of ineffective assistance of counsel would fail. *See Andersen v. State*, 830 N.W.2d 1, 10 (Minn. 2013) (requiring for viable ineffective-assistance-of-counsel claim that "a reasonable probability exists that the outcome would have been different but for counsel's errors"). In commenting on the weight of the evidence against appellant, this court previously noted that "the evidence against [appellant] was overwhelming." *Traylor*, 2016 WL 854578, at *4.