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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0368**

Joseph Harvey Bellanger, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed November 25, 2019
Affirmed
Klaphake, Judge***

Beltrami County District Court
File No. 04-CR-14-801

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

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

David L. Hanson, Beltrami County Attorney, David P. Frank, Chief Assistant County Attorney, Cassidy Villeneuve (certified student attorney), Bemidji, Minnesota (for respondent)

Considered and decided by Hooten, Presiding Judge; Worke, Judge; and Klaphake,
Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

KLAPHAKE, Judge

In this appeal from the denial of his petition for postconviction relief, appellant Joseph Harvey Bellanger alleges that his ineffective-assistance-of-counsel claim is not barred under *State v. Knaffla*, 243 N.W.2d 737 (Minn. 1976), and that he received ineffective assistance of trial counsel. Because his claims are *Knaffla*-barred and they fail on the merits, we affirm.

DECISION

The denial of a petition for postconviction relief is reviewed for an abuse of discretion. *Pearson v. State*, 891 N.W.2d 590, 596 (Minn. 2017). “A postconviction court abuses its discretion when it has exercised its discretion 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).

Bellanger argues that the postconviction court erred when it found that his claims are *Knaffla*-barred, did not find any prejudice caused by his trial counsel’s representation, and denied his motion for postconviction relief. The postconviction court determined that Bellanger’s claims regarding newly discovered evidence and ineffective assistance of trial counsel are *Knaffla*-barred. “Claims that were raised on direct appeal, or were known or should have been known but were not raised on direct appeal, are procedurally barred.” *Sontoya v. State*, 829 N.W.2d 602, 604 (Minn. 2013) (citing *Knaffla*, 243 N.W.2d at 741); *see also* Minn. Stat. § 590.01, subd. 1 (2014) (“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.”). A claim is not *Knaffla*-barred, however, if “(1) the claim is novel; or (2) the interests of fairness and justice warrant relief.” *Sontoya*, 829 N.W.2d at 604.

On his first appeal, Bellanger claimed that his trial counsel was ineffective because he conceded Bellanger’s guilt without his consent. We affirmed his conviction. *State v. Bellanger*, No. A15-0150, 2016 WL 764094 (Minn. App. Feb. 29, 2016), *review denied* (Minn. May 17, 2016). On this, his second appeal, Bellanger claims that he received ineffective assistance of trial counsel because his attorney either failed to discover or failed to utilize a full version of a surveillance video and failed to completely cross-examine witnesses.

During Bellanger’s trial, a video exhibit was used that contained portions of a security video taken at a casino where part of the crime took place. The video that Bellanger contends is new evidence contains the full security video interface with multiple views from outside of the casino. Bellanger acknowledges that the full security video was available to both trial counsel and counsel on his first appeal.¹ He argues, however, that it is “new” evidence, because he did not personally know about the information until after his first appeal. The postconviction court found that his appellate counsel had access to the video prior to bringing his appeal. Therefore, this evidence is not new, and Bellanger

¹ Bellanger does not claim that he received ineffective assistance of appellate counsel.

had the opportunity during his first appeal to argue that his trial counsel was ineffective regarding the use of the full security video.

Additionally, Bellanger could have raised the issue of his trial attorney not completely cross-examining witnesses during his first appeal. Therefore both of his claims are *Knaffla*-barred.

Moreover, Bellanger's ineffective-assistance-of-counsel claim fails on the merits. To prevail on an ineffective-assistance-of-counsel claim, Bellanger must show "(1) that his 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.'" *Nissalke v. State*, 861 N.W.2d 88, 94 (Minn. 2015) (quoting *Strickland v. Washington*, 466 U.S. 668, 688, 694, 104 S. Ct. 2052, 2064, 2068 (1984)). "We review a district court's application of the *Strickland* test de novo because it involves a mixed question of law and fact. If a claim fails to satisfy one of the *Strickland* requirements, we need not consider the other requirement." *State v. Mosley*, 895 N.W.2d 585, 591 (Minn. 2017) (citation omitted).

Appellate courts apply "a strong presumption that [an attorney's] performance falls within the wide range of 'reasonable professional assistance.'" *State v. Jones*, 392 N.W.2d 224, 236 (Minn. 1986) (quoting *Strickland*, 466 U.S. at 689, 104 S. Ct. at 2065). A reviewing court generally "will not review attacks on counsel's trial strategy." *Opsahl v. State*, 677 N.W.2d 414, 421 (Minn. 2004).

Bellanger claims that he received ineffective assistance of counsel because his trial attorney did not use the entire security video, and he failed to adequately cross-examine

witnesses. “[M]atters of trial strategy, including which witnesses to call, what defenses to raise at trial, and specifically how to proceed at trial, will not be reviewed later by [a court] as long as the trial strategy was reasonable.” *Ives v. State*, 655 N.W.2d 633, 636 (Minn. 2003).

Because the choice to introduce the full video and whether to more thoroughly cross-examine witnesses is a matter of trial strategy, Bellanger did not receive ineffective assistance of counsel. We therefore affirm.

Affirmed.