

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1247**

Robert Louis Freeman, III, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed April 27, 2020
Affirmed
Connolly, Judge**

Stearns County District Court
File No. 73-CR-13-347

John B. Orenstein, Amran A. Farah, Greene Espel PLLP, Minneapolis, Minnesota (for appellant)

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

Janelle P. Kendall, Stearns County Attorney, Ole Tvedten, Assistant County Attorney, St. Cloud, Minnesota (for respondent)

Considered and decided by Hooten, Presiding Judge; Connolly, Judge; and Smith, Tracy M., Judge.

S Y L L A B U S

For a petitioner seeking exoneration compensation, the phrase “any evidence of factual innocence” in Minn. Stat. § 590.11, subd. 1(c)(2) (Supp. 2019), does not include impeachment evidence about a victim’s prior acts of dishonesty unrelated to the petitioner’s alleged commission of the underlying crime.

OPINION

CONNOLLY, Judge

Appellant challenges the denial of his petition seeking eligibility for exoneration compensation under the Minnesota Imprisonment and Exoneration Remedies Act (MIERA). Because the district court correctly ruled that appellant did not meet the threshold requirement of “exonerated,” we affirm.

FACTS

In January 2013, respondent State of Minnesota charged appellant Robert Freeman III with one count of second-degree criminal sexual conduct and one count of fourth-degree criminal sexual conduct. These charges arose after appellant’s daughter (the victim) reported to police that he touched her vagina over her clothing while they were traveling in a vehicle.

Following a trial, the jury found appellant guilty as charged. The district court granted appellant a dispositional departure, stayed the presumptive 234-month prison sentence, and placed appellant on probation. Appellant appealed his conviction to this court. After a probation violation, the district court executed appellant’s stayed prison sentence. Appellant also appealed this decision. We consolidated those appeals and granted appellant’s motion for a stay while he pursued postconviction relief in district court, alleging that he had received ineffective assistance of trial counsel.

After holding an evidentiary hearing, the district court granted appellant’s postconviction petition, vacated his convictions, and ordered his release from prison. The state chose not to retry the case and dismissed the charges against appellant.

In January 2019, appellant petitioned for an order declaring him eligible for exoneration compensation under MIERA. After both parties filed written arguments, the district court denied appellant's petition, determining that he did not qualify as "exonerated" under Minn. Stat. § 590.11 (Supp. 2019). Appellant challenges this denial.

ISSUE

Does evidence about a victim's prior acts of dishonesty constitute "any evidence of factual innocence" under Minn. Stat. § 590.11, subd. 1(c)(2)?

ANALYSIS

I. Interpretation of MIERA

Under MIERA, persons released from incarceration after a court reverses or vacates their convictions may seek exoneration compensation. *See* Minn. Stat. §§ 590.11, 611.362-.368 (2018 & Supp. 2019). A person seeking compensation must first petition a court for an order declaring them eligible for compensation based on exoneration under Minn. Stat. § 590.11. *See Back v. State*, 902 N.W.2d 23, 26 (Minn. 2017). In relevant part, "exonerated" under MIERA means that "a court . . . ordered a new trial on grounds consistent with innocence and the prosecutor dismissed all felony charges against the petitioner arising from the same behavioral incident." Minn. Stat. § 590.11, subd. 1(b)(1)(ii).

Whether appellant meets the statutory definition of "exonerated" presents a legal question subject to de novo review. *Buhl v. State*, 922 N.W.2d 435, 438 (Minn. App. 2019). Here, the parties dispute only whether appellant received a new trial "on grounds consistent with innocence." In *Buhl*, the appellant argued that he was eligible for exoneration

compensation because this court had reversed his conviction based on improperly admitted *Spreigl*¹ evidence. *Id.* at 438-39. But we rejected this argument because “on grounds consistent with innocence” means “agrees with innocence,” and Buhl’s reversed conviction for improperly admitted *Spreigl* evidence did not agree with innocence. *Id.* at 440-41.

After we decided *Buhl*, the legislature amended Minn. Stat. § 590.11 to define “on grounds consistent with innocence.” 2019 Minn. Laws 1st Spec. Sess. ch. 5, art. 2, § 13, at 19. The statute now defines “on grounds consistent with innocence” as meaning either:

- (1) exonerated through a pardon or sentence commutation, based on factual innocence; or
- (2) exonerated because the judgment of conviction was vacated or reversed, or a new trial was ordered, and there is *any evidence of factual innocence* whether it was available at the time of investigation or trial or is newly discovered evidence.

Minn. Stat. § 590.11, subd. 1(c)(1)-(2) (emphasis added). Only the second definition is relevant here.

Under MIERA, appellant satisfies the threshold exoneration requirement if he received a new trial on grounds consistent with innocence. *Id.*, subd. 1(b)(1)(ii). This means that a court must have vacated or reversed appellant’s convictions, or ordered a new trial, and some evidence of factual innocence must exist, no matter when it was discovered. *Id.*, subd. 1(c)(2). The word “and” in this second definition of “on grounds consistent with innocence” is conjunctive and therefore requires a petitioner to meet both prongs of that

¹ Evidence of a criminal defendant’s other crimes, wrongs, or bad acts, called *Spreigl* evidence, is admissible for limited purposes and only after the evidence satisfies procedural safeguards. *See State v. Smith*, 932 N.W.2d 257, 266-67 (Minn. 2019).

definition. *See Back*, 902 N.W.2d at 28 (noting that the word “and” in a statute imposes another requirement).

While neither party assigns any ambiguity to the newly added, and undefined, phrase “any evidence of factual innocence,” aspects of both parties’ arguments require us to interpret this phrase. When interpreting and construing laws, we seek to ascertain and effectuate the legislature’s intent. Minn. Stat. § 645.16 (2018); *Buhl*, 922 N.W.2d at 438. We give words and phrases within a statute their ordinary meaning, *State v. Struzyk*, 869 N.W.2d 280, 284 (Minn. 2015), and may consult dictionary definitions to determine an undefined term’s common meaning, *State v. Thonesavanh*, 904 N.W.2d 432, 436 (Minn. 2017).

A “fact” is “[s]omething that actually exists; an aspect of reality” or “[a]n actual or alleged event or circumstance, as distinguished from its legal effect, consequence or interpretation.” *Black’s Law Dictionary* 735 (11th ed. 2019). In this way, “[f]acts include not just tangible things, actual occurrences, and relationships, but also states of mind such as intentions and the holding of opinions.” *Id.* “Innocence” means “[t]he absence of guilt; esp[ecially], freedom from guilt for a particular offense.” *Id.* at 942.

By its plain terms, the phrase “any evidence of factual innocence” means any evidence that shows some fact establishing the absence of the petitioner’s guilt. We observe that the legislature excluded no particular type of evidence. *See* Minn. Stat. § 590.11, subd. 1(c)(2). But the evidence must show factual innocence. *See id.*²

² Because we conclude that the relevant statutory language is unambiguous, we need not consider the parties’ arguments about the legislative history surrounding the recent

II. Appellant does not satisfy MIERA's threshold exoneration requirement

To determine whether appellant satisfied the threshold exoneration requirement, we analyze the basis for the order vacating his convictions and granting him a new trial.

Appellant received a new trial for ineffective assistance of counsel. *See Strickland v. Washington*, 466 U.S. 668, 686, 104 S. Ct. 2052, 2063 (1984) (explaining that the Sixth Amendment guarantees criminal defendants the right to the effective assistance of counsel). To secure a reversal of his conviction, appellant had to show both that his counsel's performance fell below the objective standard of reasonableness and that this deficient performance prejudiced him. *See State v. Mouelle*, 922 N.W.2d 706, 715 (Minn. 2019) (explaining the two-part *Strickland* test for ineffective-assistance-of-counsel claims). Neither prong required appellant to establish his factual innocence.

In its order granting appellant a new trial, the district court explained that appellant's trial counsel failed to conduct a reasonable pretrial investigation by not requesting helpful documents and not contacting witnesses who could have offered opinion testimony about the victim's character for untruthfulness.³ The documents not requested for appellant's trial chronicled the victim's dishonest behavior while she was in the child-protection system. The district court held that the opinion testimony and additional documents about

amendment. *See Nelson v. State*, 896 N.W.2d 879, 885 (Minn. App. 2017) (“[A]bsent ambiguity, this court does not resort to legislative history to interpret a statute.” (quotation omitted)), *review denied* (Minn. Aug. 8, 2017).

³ The victim had lied about conditions in her foster care placement to try to obtain a different placement.

the victim's character for untruthfulness created a reasonable probability that the trial outcome would have been different.

The parties offer conflicting views about the implications of this evidence. Appellant asserts that evidence of the victim's past pattern of lying goes beyond mere impeachment evidence and this makes it more likely that he did not commit the charged offenses. For its part, the state contends that appellant reads the statute too broadly and that the evidence involving the victim's previous lies is not "any evidence of factual innocence."

It is true that, at a new trial, the rules of evidence would have allowed appellant to elicit reputation and opinion testimony from several witnesses about the victim's character for untruthfulness, and appellant could have cross-examined the victim about these prior incidents as probative of truthfulness or untruthfulness. *See* Minn. R. Evid. 608(a), (b). But evidence showing the victim's pattern of past dishonesty does not constitute "any evidence of factual innocence." This evidence does nothing to show appellant's lack of guilt for the charged offenses.

Instead, evidence about the victim's lying involves her credibility as a witness, not appellant's guilt or innocence for the charged offenses. Even though the victim lied about past matters, this does not mean that she lied about appellant sexually abusing her here. Had there been a new trial, the fact-finder would have had the right to assess witness credibility. *Francis v. State*, 729 N.W.2d 584, 589 (Minn. 2007). The evidence underlying the district court's grant of a new trial shows only that the victim had lied several times about prior, unrelated events; it does not show appellant's guilt or innocence.

Appellant did not establish that the victim had recanted her accusation that appellant sexually touched her.⁴ And Minnesota law does not require corroboration of the testimony of a victim of criminal sexual conduct. Minn. Stat. § 609.347, subd. 1 (2018). Even still, the record contains substantial corroboration; four other witnesses testified at appellant’s trial about the alleged incident consistent with the victim’s testimony.

Based on the specific facts of this case, we hold that the impeachment evidence about the victim’s pattern of dishonesty does not constitute “any evidence of factual innocence” under MIERA. Appellant received a new trial based only on his trial counsel’s failure to conduct a reasonable pretrial investigation, and that failure does not represent “any evidence of factual innocence” because it does not show appellant’s absence from guilt for the charged offenses.

Our analysis does not foreclose a petitioner’s ability to meet MIERA’s exoneration requirement through impeachment evidence. For example, if a witness came forward and explained that the victim told them that she had fabricated the entire sexual-assault claim, this would represent “any evidence of factual innocence.” This hypothetical scenario would represent an actual event or occurrence tending to show appellant’s lack of guilt

⁴ In his reply brief, appellant argues that the state forfeited any argument about the lack of recantation here. We disagree. The record on appeal includes “[t]he documents filed in the trial court, the exhibits, and the transcript of the proceedings, if any.” Minn. R. Civ. App. P. 110.01. In its memorandum of law opposing appellant’s petition for exoneration compensation, the state listed witness recantation as an example of evidence tending to show factual innocence. Because the state made this argument below, we may consider it.

from the charged offenses.⁵ In contrast, evidence about the victim's past dishonesty does not establish appellant's factual innocence.

D E C I S I O N

Impeachment evidence about a victim's prior dishonesty unrelated to the underlying crime does not constitute "any evidence of factual innocence" under the statute's definition of "on grounds consistent with innocence." As a result, appellant does not meet MIERA's threshold exoneration requirement, and the district court correctly denied his petition for an order declaring him eligible for exoneration compensation.

Affirmed.

⁵ Other evidence of factual innocence would include DNA evidence establishing someone else committed the charged offense or an alibi witness who testified that a petitioner did not commit the charged offense.