STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1436

Miguel Angel Rodriguez, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed April 20, 2020
Affirmed
Johnson, Judge

Mower County District Court
File No. 50-CR-15-191

Miguel Angel Rodriguez, Faribault, Minnesota (*pro se* appellant)

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

Kristen M. Nelsen, Mower County Attorney, Megan A. Burroughs, Assistant County Attorney, Austin, Minnesota (for respondent)

Considered and decided by Rodenberg, Presiding Judge; Johnson, Judge; and Tracy M. Smith, Judge.

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

JOHNSON, Judge

In 2016, a Mower County jury found Miguel Angel Rodriguez guilty of first-degree aggravated robbery, possession of a firearm by an ineligible person, and second-degree assault. The district court imposed concurrent prison sentences of 162 months and

60 months. This court affirmed the convictions and sentences on direct appeal. In 2019, Rodriguez petitioned for post-conviction relief, arguing that the district court erred in sentencing him and that he received ineffective assistance of counsel. The post-conviction court denied the petition on the ground that it was procedurally barred and without merit. We affirm.

FACTS

Rodriguez's convictions arise from an armed robbery of the Hiawatha Bar in Austin. The evidence introduced at trial showed that he grabbed a bag containing approximately $2,000 in cash and fired a revolver at another customer before fleeing. Rodriguez later was identified, in part, by DNA evidence and by a forensic determination that a bullet recovered from the scene was fired by a revolver found in his possession one month later.

The state's amended complaint charged Rodriguez with three offenses: (1) first-degree aggravated robbery, in violation of Minn. Stat. § 609.245, subd. 1 (2012); (2) possession of a firearm by an ineligible person with a prior conviction of a crime of violence, in violation of Minn. Stat. § 624.713, subd. 1(2) (2012); and (3) second-degree assault, in violation of Minn. Stat. § 609.222, subd. 1 (2012). The state sought an aggravated sentence on the ground that Rodriguez was a dangerous offender who had two prior convictions for crimes of violence. The state requested a bifurcated trial.

The case was tried to a jury over three days in June 2016. The jury found Rodriguez guilty on all three counts. In the second phase of the trial, the jury found that Rodriguez was a danger to public safety. At sentencing, the district court found that Rodriguez had two prior convictions of crimes of violence. Based on those two findings, the district court

imposed an aggravated sentence of 162 months of imprisonment on count 1. The district court imposed a concurrent sentence of 60 months of imprisonment on count 2. The district court did not impose a sentence on count 3.

On direct appeal, Rodriguez argued that the district court erred by allowing references to his criminal history, by denying his motion to suppress evidence, and by not instructing the jury with more specificity regarding the meaning of the phrase "danger to public safety." In August 2017, this court affirmed with respect to each issue. *State v. Rodriguez*, No. A16-1874, 2017 WL 3585110, at *2-5 (Minn. App. Aug. 21, 2017), *review denied* (Minn. Nov. 14, 2017).

In April 2019, Rodriguez petitioned for post-conviction relief. In an accompanying memorandum of law, he asserted two claims. His first claim was that the district court erred in sentencing him on count 1 because it miscalculated his criminal-history score and erroneously admitted evidence concerning whether he was a danger to public safety. His second claim was that he received ineffective assistance of counsel from both his trial attorney and his appellate attorney because his trial attorney did not object to the errors alleged in his first claim and his appellate attorney did not argue that his trial attorney was ineffective. In response, the state argued that Rodriguez's claims are procedurally barred by *State v. Knaffla*, 243 N.W.2d 737 (Minn. 1976). The state also argued that Rodriguez's claims are without merit.

The post-conviction court denied Rodriguez's petition without an evidentiary hearing. The post-conviction court concluded that Rodriguez's claims concerning his sentence and ineffective assistance of trial counsel are procedurally barred by the *Knaffla*

doctrine. The post-conviction court also concluded that Rodriguez's claims concerning his sentence are without merit. The post-conviction court further concluded that Rodriguez's claim of ineffective assistance of appellate counsel is not *Knaffla*-barred but is without merit because the performance of both Rodriguez's trial attorney and his appellate attorney were not below an objective standard of reasonableness. Rodriguez appeals.

D E C I S I O N

Rodriguez argues in his well-structured, 44-page *pro se* brief that the district court erred by denying his post-conviction petition. The state has responded by filing a one-page letter, which states that the state will not file an appellate brief but, instead, will "rely upon the record and memoranda submitted to the trial court, as well as previous appellate briefs submitted in Appellant's prior appeal." The state's letter cites rule 128.01, subdivision 2, of the rules of appellate procedure. Subdivision 1 of that rule provides that the appellate court may authorize the filing of an informal brief with a "concise statement of the party's arguments on appeal, together with the addendum required by Rule 130.01." Minn. R. Civ. App. P. 128.01, subd. 1. Subdivision 2 of the rule (the provision on which the state relies in this appeal) provides that a party may "rely upon memoranda submitted to the trial court supplemented by a short letter argument," in which event the "trial court submissions . . . shall be included in the addendum." Minn. R. Civ. App. P. 128.01, subd. 2. The state did not comply with subdivision 2 of the rule because it did not attach an addendum and did not supplement the memorandum it filed in the post-conviction court with "a short letter argument." In an appeal such as this one—an appeal involving a felony conviction, a prison sentence of significant duration, complicated sentence-calculation issues, and

complicated procedural issues—a formal brief would have been appropriate. *See* Minn. R. Civ. App. P. 128.02, subd. 2. An informal brief would have been less helpful but still beneficial. But no brief whatsoever, not even "a short letter argument," is not helpful at all. Furthermore, the state has essentially shifted the burdens of finding various materials that were filed during post-conviction proceedings and a prior appeal and of determining which documents and which parts of those documents are pertinent to the issues that must be resolved in this appeal. Those tasks should be performed by counsel for the state, not by the court of appeals.

I. Sentencing Issues

Rodriguez renews the two arguments concerning his sentence that he made in his post-conviction petition, and he argues, for the first time on appeal, that the district court denied him his constitutional right to a jury trial on the question whether he had two prior convictions of crimes of violence. He also challenges the post-conviction court's determination that his arguments are barred by the *Knaffla* doctrine. We begin our analysis there.

The post-conviction court reasoned, in part, that Rodriguez "already knew or should have known about" issues concerning his criminal-history score at the time of his direct appeal. Consequently, the post-conviction court concluded that Rodriguez's challenges to his sentence are barred by the *Knaffla* doctrine. Under the *Knaffla* doctrine, after an offender has had a direct appeal, "all matters raised therein, and all claims known but not raised, will not be considered upon a subsequent petition for postconviction relief." *State v. Knaffla*, 243 N.W.2d 737, 741 (Minn. 1976); *see also* Minn. Stat. § 590.01, subd. 1

(2016). The supreme court has recognized two exceptions to the *Knaffla* bar. A claim may not be procedurally barred (1) "if the claim involves an issue so novel that its legal basis was not reasonably available at the time of the direct appeal," or (2) if it would be in the interests of justice to review the claim because it "has substantive merit and the petitioner did not deliberately and inexcusably fail" to raise the issue previously. *Swaney v. State*, 882 N.W.2d 207, 215 (Minn. 2016). It is an open question whether these two exceptions apply to post-conviction petitions after the 2005 amendments to chapter 590 of the Minnesota Statutes, which codified the *Knaffla* bar. *Id.* at 215 n.4 (citing Minn. Stat. § 590.01, subd. 1).

Rodriguez contends that the post-conviction court erred by applying *Knaffla* on the ground that he is allowed to challenge his sentence "at any time," as recognized by rule 27.03, subdivision 9, of the rules of criminal procedure and *State v. Maurstad*, 733 N.W.2d 141 (Minn. 2007). In *Maurstad*, the supreme court reasoned that "a sentence based on an incorrect criminal history score is an illegal sentence—and therefore, under Minn. R. Crim. P. 27.03, subd. 9, correctable 'at any time.'" 733 N.W.2d at 147. Consequently, the supreme court concluded that the petitioner neither waived nor forfeited a challenge to his criminal-history score even though he did not make such a challenge in the district court at sentencing. *Id.*

Unlike the petitioner in *Maurstad*, Rodriguez had a direct appeal, which means that he had a prior opportunity to challenge his criminal-history score. *Cf. State v. Maurstad*, 706 N.W.2d 545, 548 (Minn. App. 2005), *rev'd*, 733 N.W.2d 141 (Minn. 2007). But the supreme court did not qualify its opinion in *Maurstad* by limiting its holding to post-

conviction petitioners who did not have a direct appeal. *See Maurstad*, 733 N.W.2d at 147. Thus, the *Knaffla* doctrine does not apply to Rodriguez's post-conviction claim to the extent that he challenges his criminal-history score, which is the first of his three claims concerning his sentence. But the *Knaffla* doctrine bars his second and third claims, which are not concerned with his criminal-history score.

Nonetheless, Rodriguez's first sentencing claim is without merit. The district court assigned him four felony points for his prior Illinois convictions of murder, aggravated fleeing or eluding an officer, and felon in possession of a firearm. In his appellate brief, Rodriguez concedes that, under the Minnesota Sentencing Guidelines, four points are proper for those prior convictions. In addition, he does not challenge the custody-status point that he received. Rodriguez's argument appears to be based on the impression that certain traffic violations were included in his criminal-history score. But that is a misimpression. Rodriguez received two points for his murder conviction, a half point for his aggravated-fleeing or eluding-an-officer conviction, and one and a half points for his felon-in-possession-of-a-firearm conviction. Thus, the district court did not err by assigning Rodriguez four felony criminal-history points.

Even though Rodriguez's second and third sentencing claims are *Knaffla*-barred, we nonetheless will consider them on the merits because they are relevant to Rodriguez's claims of ineffective assistance of counsel, which we analyze below. *See supra* part II.

For his second sentencing claim, Rodriguez argues that the district court erred by finding that his prior conviction of being an armed habitual criminal was a crime of violence. He contends that the conviction was vacated on appeal. But the district court

did not rely on his conviction of being an armed habitual criminal; rather, it relied on his prior conviction of being a felon in possession of a firearm. Thus, the district court did not rely on a prior conviction that has been vacated.

For his third sentencing claim, Rodriguez argues that the district court erred by denying him his constitutional right to a jury trial on the question whether he had two prior convictions of crimes of violence. Rodriguez did not make this argument to the post-conviction court. "It is well settled that a party may not raise issues for the first time on appeal from denial of postconviction relief." *Azure v. State*, 700 N.W.2d 443, 447 (Minn. 2005) (quotation omitted); *see also Ashby v. State*, 752 N.W.2d 76, 79 (Minn. 2008). Because Rodriguez did not preserve the argument by presenting it to the district court, the argument has been forfeited, and this court is not obligated to consider it for the first time on appeal. *See State v. Sorenson*, 441 N.W.2d 455, 457 (Minn. 1989). In any event, the argument is without merit. By statute, the district court may "impose an aggravated durational departure from the presumptive imprisonment sentence up to the statutory maximum sentence" if, among other things, "*the court* determines on the record at the time of sentencing that the offender has two or more prior convictions for violent crimes." Minn. Stat. § 609.1095, subd. 2(1) (2012) (emphasis added). This statute does not violate Rodriguez's constitutional right to a jury trial because that right does not extend to "'the fact of a prior conviction.'" *Blakely v. Washington*, 542 U.S. 296, 301, 124 S. Ct. 2531, 2536 (quoting *Apprendi v. New Jersey*, 530 U.S. 466, 490, 120 S. Ct. 2348, 2362-63 (2000)); *see also State v. Wiskow*, 774 N.W.2d 612, 616 (Minn. App. 2009). The district

court did not err by making findings of fact concerning Rodriguez's prior convictions without submitting those issues to a jury.

Thus, the district court did not err in sentencing Rodriguez, and the post-conviction court did not err by denying his post-conviction petition to the extent that Rodriguez challenged his sentence.

II. Claims of Ineffective Assistance of Counsel

Rodriguez argues that the post-conviction court erred by denying his petition with respect to his claims of ineffective assistance of counsel.

To prevail on a claim of ineffective assistance of counsel, a post-conviction petitioner "must affirmatively prove [1] that his counsel's representation 'fell below an objective standard of reasonableness' and [2] 'that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'" *Gates v. State*, 398 N.W.2d 558, 561 (Minn. 1987) (quoting *Strickland v. Washington*, 466 U.S. 668, 688, 694, 104 S. Ct. 2052, 2064, 2068 (1984)). The petitioner "bears the burden of proof on that claim." *State v. Jackson*, 726 N.W.2d 454, 463 (Minn. 2007). To satisfy that burden, the petitioner "must do more than offer conclusory, argumentative assertions, without factual support." *State v. Turnage*, 729 N.W.2d 593, 599 (Minn. 2007). An appellate court need not analyze both prongs of the *Strickland* test if an analysis of one prong is determinative. *Leake v. State*, 767 N.W.2d 5, 10 (Minn. 2009).

Rodriguez argues that his trial attorney was ineffective on the ground that the attorney never informed Rodriguez of the state's motion to seek an aggravated sentence,

did not object to the computed criminal-history score, and did not contest the recognition of Rodriguez's armed-habitual-criminal conviction as a crime of violence. The post-conviction court reasoned, in part, that Rodriguez "knew or should have known about a claim for ineffective assistance of trial counsel at the time of his appeal, and his failure to raise this claim on appeal bars the claim under the *Knaffla* rule from consideration in this post-conviction court." Rodriguez does not challenge that reasoning in his appellate brief. The post-conviction court's reasoning necessarily implicates the general rule that "an ineffective assistance of counsel claim should be raised in a postconviction petition for relief, rather than on direct appeal" on the ground that "a postconviction hearing provides the court with 'additional facts to explain the attorney's decisions,' so as to properly consider whether a defense counsel's performance was deficient." *State v. Gustafson*, 610 N.W.2d 314, 321 (Minn. 2000) (quoting *Black v. State*, 560 N.W.2d 83, 85 n.1 (Minn. 1997)). Without additional facts, "any conclusions reached by [an appellate] court as to whether [a defendant's] attorney's assistance was deficient would be pure speculation." *Id.*; *see also Arredondo v. State*, 754 N.W.2d 566, 571 n.4 (Minn. 2008); *Jackson*, 726 N.W.2d at 463; *State v. Barnes*, 713 N.W.2d 325, 335 (Minn. 2006). But if the trial record is sufficiently developed such that an ineffectiveness claim can be decided based on that record, an appellate court may consider the claim on direct appeal. *Torres v. State*, 688 N.W.2d 569, 572 (Minn. 2004). In this case, it appears that the record was sufficiently developed at trial such that this court could have determined the effectiveness of Rodriguez's trial attorney on direct appeal.

In any event, a review of the record leads to the conclusion that Rodriguez did not receive ineffective assistance at trial. For the reasons stated above, Rodriguez did not have valid arguments that his trial attorney could have asserted at sentencing. *See supra* part I. Accordingly, Rodriguez cannot establish that his trial attorney's "representation fell below an objective standard of reasonableness" or that, if the trial attorney had challenged his sentence in the way Rodriguez would have liked, "there is a reasonable probability that . . . the result of the proceeding would have been different." *Gates*, 398 N.W.2d at 561 (quotation omitted). Similarly, because Rodriguez cannot show that his trial attorney was ineffective, he cannot prevail on his ineffective-assistance-of-appellate-counsel claim. *See Carridine v. State*, 867 N.W.2d 488, 494-95 (Minn. 2015). Thus, the post-conviction court did not err by rejecting Rodriguez's claims of ineffective assistance of counsel.

In sum, the post-conviction court did not err by denying Rodriguez's petition for post-conviction relief.

Affirmed.