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STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0103

Matthew Keely Hartley, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed September 8, 2020
Affirmed
Smith, Tracy M., Judge

Scott County District Court
File No. 70-CR-16-17560

Timothy D. Webb, Evan H. Weiner, Neve Webb, PLLC, Edina, Minnesota (for appellant)

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

Ronald Hocevar, Scott County Attorney, Todd P. Zettler, Assistant County Attorney, Shakopee, Minnesota (for respondent)

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

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

SMITH, TRACY M., Judge

Appellant Matthew Keely Hartley challenges the postconviction court's denial of his petition for postconviction relief without an evidentiary hearing. He argues that the

postconviction court abused its discretion by concluding that his ineffective-assistance-of-counsel claims were procedurally barred. We affirm.

FACTS

We described the facts of Hartley's case in our opinion deciding his direct appeal. *State v. Hartley*, No. A17-1199, 2018 WL 1902115 (Minn. App. Apr. 23, 2018), *review denied* (Minn. July 17, 2018). To summarize, early one morning in September 2016, Hartley left a bar on his motorcycle, struck and killed an individual who was standing on the opposite side of the road, left the scene without checking on the individual, and tried to hide his motorcycle. The state charged Hartley with three counts of criminal vehicular homicide—based on gross negligence, driving while intoxicated, and leaving the scene after a collision.

At a pretrial hearing, the state informed the district court that it had offered Hartley a plea agreement with a sentence "between 142 and a half and 166 and a half months," or roughly 12 to 14 years. Hartley rejected the offer and elected to proceed to trial. During the trial, Hartley's counsel became ill and had to go to the hospital. Hartley's counsel was diagnosed as having an ulcer. The trial resumed after a two-week delay, and the district court denied Hartley's request for a mistrial.

The jury acquitted Hartley of criminal vehicular homicide based on driving while intoxicated but found him guilty of criminal vehicular homicide based on gross negligence and leaving the scene. The district court sentenced Hartley to 120 months' imprisonment, Hartley appealed, and we affirmed the convictions. *Id.* at *1.

Hartley then petitioned for postconviction relief, claiming that he had received ineffective assistance of trial counsel in multiple respects. Along with his petition, Harley also submitted several affidavits. One was his own, describing his concerns with his counsel's representation and asserting that, before trial, he told his lawyer that he would accept a plea agreement calling for an executed 90-month sentence. Another affidavit was from a doctor, opining that, based on his review of the trial transcript, Hartley's counsel had "lost potentially a lot of blood" and that an ulcer that caused five days of hospitalization "would likely have a significantly adverse effect on a person's cognition and ability to perform mentally demanding tasks." The postconviction court, without holding an evidentiary hearing, denied Hartley's petition as procedurally barred under *State v. Knaffla*, 243 N.W.2d 737 (Minn. 1976).

This appeal follows.

D E C I S I O N

Hartley argues that the postconviction court erred by dismissing his petition without holding an evidentiary hearing on his claim that he received ineffective assistance of counsel. When considering a petition for postconviction relief, "[u]nless the petition and the files and records of the proceeding conclusively show that the petitioner is entitled to no relief, the court shall promptly set an early hearing on the petition." Minn. Stat. § 590.04, subd. 1 (2018). "Any doubts about whether to conduct an evidentiary hearing should be resolved in favor of the defendant." *Bobo v. State*, 820 N.W.2d 511, 516 (Minn. 2012).

An appellate court reviews the denial of postconviction relief for an abuse of discretion. *Matakis v. State*, 862 N.W.2d 33, 36 (Minn. 2015). It reviews "a postconviction court's legal determinations de novo, and its factual findings for clear error." *Martin v. State*, 865 N.W.2d 282, 287 (Minn. 2015). An appellate court will not reverse a postconviction court's order "unless the postconviction court 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." *Reed v. State*, 793 N.W.2d 725, 729 (Minn. 2010).

The postconviction court concluded that the *Knaffla* rule barred Hartley's claims. Under the *Knaffla* rule, "once a direct appeal has been taken, all claims raised in the direct appeal and all claims that were known or should have been known but were not raised in the direct appeal are procedurally barred." *Colbert v. State*, 870 N.W.2d 616, 626 (Minn. 2015) (emphasis omitted). "But [an ineffective-assistance-of-counsel] claim is not *Knaffla*-barred when the claim requires examination of evidence outside the trial record or additional fact-finding by the postconviction court . . . ." *Andersen v. State*, 830 N.W.2d 1, 10 (Minn. 2013).

Hartley did not argue ineffective assistance of counsel on direct appeal. Instead, he claimed that there was insufficient evidence to support his convictions, that the district court abused its discretion by not granting a mistrial due to his counsel's illness, and that the district court made several evidentiary errors. *Hartley*, 2018 WL 1902115, at *2, *6-7. But he contends that his ineffective-assistance-of-counsel claims are nevertheless

reviewable via postconviction petition because they rely on affidavits and evidence outside the trial record.

The state responds that Hartley knew about his claims before his direct appeal and *Knaffla* thus bars Hartley's claims. But the question is not just whether Hartley knew or should have known about his claims on direct appeal. Instead, the question also turns on whether his ineffective-assistance-of-counsel claims require additional evidence outside the trial court record. *See Andersen*, 830 N.W.2d at 10. Hartley asserts that his counsel was ineffective for three reasons: (1) his counsel was ineffective during plea negotiations, (2) his counsel's medical condition constituted ineffective assistance, and (3) his counsel made various trial errors. We examine each of Hartley's claims in turn.

Plea offer

Hartley first argues that his counsel was ineffective during plea negotiations because his counsel did not address the fact that the state's plea offer included a sentence that exceeded the statutory maximum. "The statutory maximum sentence is the absolute ceiling on the district court's sentencing discretion." *Dillon v. State*, 781 N.W.2d 588, 596 (Minn. App. 2010), *review denied* (Minn. July 20, 2010). A defendant has a Sixth Amendment right to effective counsel when defense counsel provides advice about a plea agreement offered by the state. *See Leake v. State*, 737 N.W.2d 531, 540-41 (Minn. 2007). Ineffective assistance of counsel prejudices a defendant if there is a reasonable likelihood that the defendant would have accepted the plea bargain had the defendant received effective representation. *Id.*

Hartley claims the state's only plea offer was an executed sentence of 150 months, which Hartley, in his affidavit, states that his attorney told him came in response to Hartley's offer of an executed sentence of 90 months. The state did describe its plea offer on the record before trial, stating that it was seeking between 142.5 and 166.5 months' imprisonment. Hartley suggests that the state's offer reflected a 30-month reduction from a statutory maximum of 15 years (180 months), based on the state's mistaken belief that Hartley had a qualified prior diving offense that would have increased the statutory maximum sentence from 10 years to 15 years.[1] He claims that, if the state had offered a 30-month reduction from the actually applicable 10-year (120-month) statutory maximum—i.e., if the state had offered 90 months—he would have accepted the plea agreement.

The postconviction court concluded that Hartley "knew of the disparity between the State's earlier offer and the lawful sentence imposed when he appealed, and the Court of Appeals could have decided it on the record." The postconviction court noted that the misunderstanding in Hartley's case is distinguishable from the misunderstanding in *Leake*[2]

[1] Under the criminal-vehicular-homicide statute, the maximum prison sentence is ten years (120 months). Minn. Stat. § 609.2112, subd. 1 (2016). But if a person is convicted of criminal vehicular homicide for operating a vehicle in a negligent manner while under the influence of alcohol *and* that person has a qualified prior driving offense within ten years, the maximum prison sentence increases to 15 years (180 months). Minn. Stat. § 609.2112, subd. 1(b). Hartley did not have a qualified prior driving offense, so the maximum sentence he was facing before trial was 120 months.

[2] In *Leake*, the district court observed, the defendant rejected a plea offer under the mistaken belief that he faced a shorter sentence than that which was ultimately imposed,

and that there is nothing in the record indicating that the state would have offered a similarly reduced sentence or that Hartley would still have counteroffered 90 months.[3]

The trial record contains the state's plea offer, Hartley's rejection of the plea offer, and a presentence investigation report. The presentence investigation report explains that Hartley did not have a qualified prior driving offense and that the ten-year statutory maximum applied. Based on these facts in the record, Hartley knew or should have known at the time of his direct appeal that this maximum was less than the state's earlier offer. The trial record also shows that, after the state described its plea offer on the record, Hartley's counsel did not point out the statutory maximum to either the district court or the state. We therefore conclude that the alleged error of Hartley's trial counsel—failing to inform the state of the applicable statutory maximum during plea negotiations—was reviewable on the trial record. *Knaffla* thus bars Hartley's claim of ineffective assistance of counsel based on that alleged error.

Counsel's health problems

Hartley also claims that his counsel's health issue during the trial impacted his effectiveness. Hartley claims that he has new testimony, not available at trial, in the form of an expert's affidavit that his counsel's health issue "would likely have a significantly

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see Leake, 737 N.W.2d at 539, whereas, here, Hartley rejected in plea negotiations a longer sentence than that which could have actually been imposed.

[3] The postconviction court also pointed out in a footnote that Hartley continued to disclaim responsibility for the act in his presentence investigation, indicating that he was not predisposed to plea bargain.

adverse effect on a person's cognition and ability to perform mentally demanding tasks." He also points out that the trial record did not contain Hartley's own observations of his trial counsel's condition.

The trial record shows that, on the third day of trial, Hartley's counsel told the district court, "I don't know what but there's something wrong with me," and that he felt "super lightheaded." The next day, the district court told the parties that counsel's brother had informed it that Hartley's counsel had been taken to the hospital in an ambulance, that "[h]e lost potentially a lot of blood," and that he had "a serious medical condition." At a subsequent hearing, the district court stated that Hartley's counsel was doing better and expected to get out of the hospital in a day or so. Hartley stated on the record that he was concerned because he had not been able to speak with his counsel while he was in the ICU. Hartley's counsel then returned the next week and informed the court that he had been in the hospital five or so days and that "[h]ealth wise, thinking wise, I'm fine." He moved for a mistrial, however, which the district court denied.

The postconviction court concluded that this claim is the "same complaint under a different guise" as the claim that Hartley raised on direct appeal when he challenged the district court's denial of his motion for a mistrial. The postconviction court went on to conclude that this court could have reviewed the effectiveness of Hartley's trial counsel because the trial record reflected that his counsel had lost a lot of blood, had been in the hospital for several days, and had ultimately been diagnosed with an ulcer. The

postconviction court thus held that an ineffective-assistance-of-counsel claim based largely on the same information from the trial record was procedurally barred.

We need not decide whether this ineffective-assistance-of-counsel claim was *Knaffla* barred because it fails for another reason—the petition, files, and records conclusively show that Hartley is not entitled to relief. *See* Minn. Stat. § 590.04, subd. 1. To prevail on an ineffective-assistance-of-counsel claim, an appellant must show that the appellant's "counsel's performance fell below an objective standard of reasonableness, and that a reasonable probability exists that the outcome would have been different but for counsel's errors." *State v. Rhodes*, 657 N.W.2d 823, 842 (Minn. 2003) (quotation omitted) (applying the test from *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052 (1984)). These two prongs are known as the performance and prejudice prongs, and appellate courts need not address both prongs if one is determinative. *Id.*

Hartley's counsel suffered from a health condition that may have impacted his subjective performance. But the standard for ineffective-assistance-of-counsel is an objective standard of reasonableness. Hartley's counsel's health issue alone does not support an ineffective-assistance claim because it does not demonstrate how his trial counsel's performance was objectively unreasonable or how his counsel's performance prejudiced Hartley. The district court therefore did not abuse its discretion by denying relief to Hartley based on the health of his counsel, whether that claim was procedurally barred under *Knaffla* or not. And, with respect to the objective reasonableness of Hartley's

counsel's representation, we address Hartley's specific complaints about his lawyer's representation in the next section.

Alleged trial errors

Finally, Hartley claims that counsel provided ineffective assistance of counsel by committing a number of trial errors, including failing to (1) have an expert testify on the victim's blood-alcohol content, (2) obtain video from the bar that both Hartley and the victim had been to that night, (3) request a jury instruction on a lesser offense of careless driving, (4) effectively cross-examine the state's expert, (5) get Hartley's cell-phone records admitted into evidence, and (6) use visual aids. The postconviction court concluded that Hartley's affidavits, filed with his petition, "provide no evidence indicating the trial record did not 'fully inform' the appeals court on the issues." The postconviction court thus dismissed these claims of ineffective assistance of counsel as *Knaffla* barred.

Again, whether or not these claims are procedurally barred, the petition, files, and records conclusively show that Hartley is not entitled to relief. Appellate courts generally "will not review ineffective assistance of counsel claims based on trial strategy." *Sanchez-Diaz v. State*, 758 N.W.2d 843, 848 (Minn. 2008). "Such trial tactics should not be reviewed by an appellate court, which, unlike the counsel, has the benefit of hindsight." *State v. Jones*, 392 N.W.2d 224, 236 (Minn. 1986). "What evidence to present to the jury, including which witnesses to call, represents an attorney's decision regarding trial tactics and lies within the proper discretion of trial counsel." *State v. Doppler*, 590 N.W.2d 627, 633 (Minn.1999). Decisions about how to cross-examine witnesses are matters of trial

strategy. *See State v. Miller*, 666 N.W.2d 703, 716-17 (Minn. 2003) (rejecting ineffective-assistance claim based in part on the manner of cross-examination); *State v. Irwin*, 379 N.W.2d 110, 115 (Minn. App. 1985) (noting that the manner of cross-examination is a tactical decision and that "failure to conduct cross-examination in a certain manner" does not demonstrate ineffective assistance), *review denied* (Minn. Jan. 23, 1986). The trial errors alleged by Hartley all fall within the trial-strategy category.[4]

In some instances, a defendant may challenge his counsel's trial-strategy decisions when counsel makes the decisions based on something other than reasoned strategic judgment. *E.g. State v. Nicks*, 831 N.W.2d 493, 506-08 (Minn. 2013) (stating that, while investigations are part of trial strategy, an ineffective-assistance claim was reviewable because trial counsel's failure to obtain phone records was not a considered and rejected course of action, but an unreasonable failure to investigate a central part of counsel's theory of the case). But, while Hartley contends that the claimed trial errors resulted in prejudice to his case, Hartley does not allege facts that would demonstrate that his counsel based his decisions on something other than reasoned judgment. While his counsel did suffer from an ulcer during trial, that fact alone does not show that every decision made by his counsel was compromised. And, after counsel had recovered and returned to court, he informed the

[4] The decision whether to request a lesser-offense instruction similarly reflects a strategic choice, with counsel needing to weigh the risks and benefits of adding another crime of which the jury might find his client guilty. Even if such a request is not trial strategy, however, we determined in Hartley's first appeal that there was sufficient evidence to support Hartley's convictions, so we discern no prejudice arising from his counsel's failure to request a lesser-offense instruction.

district court that he was feeling fine "[h]ealth wise, thinking wise." Furthermore, unlike in *Nicks*, Hartley's allegations and affidavits do not suggest that his counsel failed to review or investigate key evidence that was central to the defense's theory of the case. Instead, Hartley describes the evidence that his counsel failed to provide by stating that it "would have been helpful," could have bolstered his defenses, or could have impeached the reliability of certain witnesses. In addition, even though Hartley claims that his counsel failed to rebut the state's claim that he had been drinking that night by failing to introduce video and cell-phone records, his counsel obtained an acquittal of the charge connected with alcohol. We conclude that the trial counsel's strategic choices are not reviewable here, so the district court did not abuse its discretion by denying Hartley's petition based on these alleged trial errors.

Affirmed.