STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0225

Erick Carl Longo, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed July 13, 2020
Affirmed
Frisch, Judge

Pennington County District Court
File No. 57-CR-15-473

Erick C. Longo, Moose Lake, Minnesota (pro se appellant)

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

Seamus P. Duffy, Pennington County Attorney, Max W. LaCoursiere, Assistant County Attorney, Thief River Falls, Minnesota (for respondent)

Considered and decided by Bjorkman, Presiding Judge; Bratvold, Judge; and Frisch, Judge.

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

FRISCH, Judge

Appellant challenges the denial of his petition for postconviction relief without an evidentiary hearing. We affirm.

FACTS

This is the third appeal in this matter. Between May 2014 and July 2015, the state used multiple confidential informants to purchase methamphetamine from appellant Erick Carl Longo in controlled buys. At trial, the state presented evidence that Longo ran a drug operation in which he both sold methamphetamine and exchanged drugs for property, employing multiple "runners" to deliver methamphetamine. In July 2016, a jury found Longo guilty of one count of racketeering, three counts of conspiracy to commit first-degree sale of methamphetamine, and five counts of sale or possession of methamphetamine.

We affirmed Longo's convictions but reversed his sentence and remanded the matter for resentencing. *State v. Longo*, 909 N.W.2d 599, 613 (Minn. App. 2018) (*Longo I*). The district court resentenced Longo, and we affirmed the new sentence. *State v. Longo*, No. A18-1617, 2019 WL 2262322, at *1 (Minn. App. May 28, 2019), *review denied* (Minn. Aug. 20, 2019) (*Longo II*).

Longo filed a petition for postconviction relief, at issue here. Longo challenges the evidence introduced at trial, contends that he received ineffective assistance of counsel, and alleges that he discovered new evidence that a witness recanted his testimony. The postconviction court denied the petition without an evidentiary hearing, concluding that the claims set forth in the petition were barred under *State v. Knaffla*, 243 N.W.2d 737 (Minn. 1976). This appeal follows.

D E C I S I O N

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).

We review denial of a postconviction petition for an abuse of discretion. *Matakis v. State*, 862 N.W.2d 33, 36 (Minn. 2015). We review the postconviction court's interpretation of procedural rules and issues of law de novo. *Vazquez v. State*, 822 N.W.2d 313, 315 (Minn. App. 2012). We review factual findings of the postconviction court for clear error. *Martin v. State*, 865 N.W.2d 282, 287 (Minn. 2015).

The postconviction court concluded that the petition was procedurally barred by *Knaffla*. Under *Knaffla*, "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 on the direct appeal are procedurally barred." *Colbert v. State*, 870 N.W.2d 616, 626 (Minn. 2015) (emphasis omitted). "There are two exceptions to the *Knaffla* rule: (1) if a novel legal issue is presented, or (2) if the interests of justice require review." *White v. State*, 711 N.W.2d 106, 109 (Minn. 2006).

Ineffective Assistance of Counsel

As a threshold matter, the postconviction court found that each asserted challenge to the evidence and the conduct of counsel was known or should have been known to Longo at the time of his two previous appeals. Longo claimed his counsel was ineffective in

failing to (1) challenge a search warrant application; (2) strike jurors; (3) move to suppress or otherwise challenge evidence; (4) perform customary skills and diligence of a competent attorney; (5) "correct prejudice caused by the state's explanation of Mixture definition"; (6) object to improper witness communication; and (7) "properly develop facts for a fully informed determination of guilt" on certain counts. Longo asserted some of these issues in his previous appeals, including challenges to the sufficiency of the evidence and prosecutor misconduct. In any event, the postconviction court found that all of these claims were known or should have been known to Longo at the time of those appeals and his petition was therefore procedurally barred. We see no abuse of discretion by the postconviction court.

Longo claims that both exceptions to the *Knaffla* rule negate the procedural bar. Longo first claims that his petition presents a novel issue for review because his case presents "an irregular series of events" and the "[c]ircumstances surrounding these particular sales are rare and cannot be compared to anything found in Minnesota case law." "[A] defendant's failure to raise a claim may be excused when the claim is so novel that the legal basis was not available in the earlier proceeding." *Zornes v. State*, 903 N.W.2d 411, 421 (Minn. 2017) (quotation omitted). While Longo raises issues related to the *factual* basis for his convictions, he fails to raise any novel issues related to the *legal* basis for his convictions, nor does he identify any novel legal developments since his earlier appeals. Indeed, in *Longo I*, we set forth the well-established legal authority underlying his convictions and specifically held that sufficient evidence supports his convictions for racketeering and conspiracy to commit first-degree sale of a controlled substance. 909

N.W.2d at 606-09. We see no error by the postconviction court in concluding that the petition did not present a novel legal issue. *See Strickland v. Washington*, 466 U.S. 668, 694, 104 S. Ct. 2052, 2068 (1984) (setting forth the standard for an ineffective-assistance-of-counsel claim); *State v. Eling*, 355 N.W.2d 286, 293 (Minn. 1984) (applying the *Strickland* standard).

Longo then claims that the interests of justice merit consideration of his petition, arguing that an ineffective-assistance-of-counsel claim is more appropriately raised in a postconviction petition than on appeal. "Under the interests-of-justice exception to the *Knaffla* rule, the court may review a claim as fairness requires when the claim has substantive merit and the petitioner did not deliberately and inexcusably fail to raise the issue in the direct appeal or a previous postconviction petition." *Colbert*, 870 N.W.2d at 626. If an ineffective-assistance-of-counsel claim requires additional evidence outside the trial court record, such as evidence involving attorney-client communications, then a party may be able to raise a claim that would otherwise be barred under the second *Knaffla* exception. *Torres v. State*, 688 N.W.2d 569, 572 (Minn. 2004).

The postconviction court concluded that the issues raised in the petition could be resolved based on the trial court record alone. The court observed the trial court record fully informs each challenge to the conduct of counsel, that Longo knew or should have known of all of the challenged conduct, and the claims are therefore *Knaffla*-barred. Longo does not refute this finding by the postconviction court and identifies no evidence or context missing from the trial court record regarding the ineffective-assistance claim. We see no abuse of discretion.

Longo also suggests that the word limits on appellate briefs account for his failure to raise an ineffective-assistance claim. But nothing in the docket of his previous appeals suggests that he sought our permission to submit longer briefs. *See* Minn. R. Civ. App. P. 132.01, subd. 3 (describing the length limit and potential exceptions for appellate briefs); *see also* Minn. R. Crim. P. 28.01, subd. 2 (applying the civil appellate rules in criminal appeals unless otherwise stated). Longo does not dispute that he knew or should have known of his ineffective-assistance-of-counsel claim at the time he twice previously appealed.

New Evidence

Longo also alleges he discovered new evidence in the form of a letter from a witness recanting his testimony. The postconviction court concluded that the claim of newly discovered evidence was *Knaffla*-barred because the purported recantation letter was dated March 10, 2018, and therefore available to Longo at the time of his second appeal, on October 5, 2018. Longo offers no excuse for his failure to raise this issue in a prior appeal.

In addition, the postconviction court concluded that the letter did not bear sufficient indicia of reliability to merit an evidentiary hearing. When presented with a claim of witness recantation in a postconviction proceeding, "the allegations in a petition must be more than argumentative assertions without factual support." *Caldwell v. State*, 853 N.W.2d 766, 770 (Minn. 2014) (quotation omitted). "[T]he allegations in the petition must have factual support that carries sufficient indicia of trustworthiness to justify the expense and risk of an evidentiary hearing." *Id.* (quotations omitted). "[T]he sufficiently

trustworthy allegations must recite facts that would, if proven by a preponderance of the evidence, entitle the petitioner to a new trial." *Id.*

Here, the postconviction court found that the letter offered as proof of recantation did not bear sufficient indicia of reliability to warrant an evidentiary hearing, observing that the letter was not notarized or otherwise authenticated. Longo does not challenge these findings and merely reasserts that the letter is trustworthy because of its contents and delivery to the public defender's office. The postconviction court considered these circumstances and nevertheless concluded that the letter was not sufficiently reliable, a finding well within its discretion. We see no abuse of discretion by the postconviction court in denying the request for an evidentiary hearing under these circumstances.

Affirmed.