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STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0399

Igor Pavlovich Albantov, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed October 26, 2020
Affirmed
Frisch, Judge

Hennepin County District Court
File No. 27-CR-16-14164

Igor Pavlovich Albantov, Moose Lake, Minnesota (pro se appellant)

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

Michael O. Freeman, Hennepin County Attorney, Jordan W. Rude, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Frisch, Presiding Judge; Johnson, Judge; and Schellhas, Judge.[*]

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

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

FRISCH, Judge

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

FACTS

This is the second appeal in this matter. In April 2017, a jury found appellant Igor Albantov guilty of possession and sale of a controlled substance in the first degree. The district court adjudicated both convictions and sentenced Albantov to 110 months' imprisonment. Albantov appealed his convictions and sentence, arguing that the district court erred by denying his motion to suppress certain evidence discovered following a dog sniff, that the state presented insufficient evidence to prove his constructive possession, and that he was entitled to resentencing. *State v. Albantov*, No. A17-1327, 2018 WL 3214293, at *1 (Minn. App. July 2, 2018), *review denied* (Minn. Sept. 18, 2018). We affirmed Albantov's convictions, concluding that the dog sniff was supported by reasonable suspicion and that sufficient evidence supported his convictions. *Id.* at *2-4. But we reversed Albantov's sentence and remanded to the district court for resentencing under the Minnesota Drug Sentencing Reform Act. *Id.* at *4; *see also State v. Kirby*, 899 N.W.2d 485, 487 (Minn. 2017). On November 19, 2018, the district court resentenced Albantov to 85 months in prison.

The factual basis for the convictions is set forth in detail in *Albantov*. To summarize, on May 24, 2016, officers spoke with Albantov outside a hotel, observed his nervous reaction when questioned about selling heroin, subjected his vehicle to a dog sniff which

indicated the presence of narcotics, and located nearly 44 grams of heroin within the vehicle. 2018 WL 324293, at *1. Albantov moved to suppress the evidence against him, challenging the constitutionality of the stop, dog sniff, and vehicle search.

During an evidentiary hearing immediately before trial, investigating officers testified that they encountered a man (T.K.) who admitted his intent to purchase heroin from his friend "Igor," T.K. provided a description of "Igor" and his vehicle, and officers observed a man matching Igor's description and a woman exit the hotel and walk toward a vehicle matching the description from T.K. Officers questioned Albantov, who claimed he was at the hotel to visit someone in room 210, and officers eventually asked Albantov directly whether he was there to sell heroin. Albantov became nervous and admitted he was a heroin user. He consented to a search of his person which led to the discovery of a capsule on Albantov's keychain that smelled like heroin residue when opened. Police called for a dog sniff of Albantov's vehicle, and the K-9 alerted on the vehicle's door seams, indicating the presence of drugs. Police did not administer the *Miranda* advisory to Albantov. The district court denied Albantov's motion to suppress, and the case proceeded to trial.

The evidence at trial included testimony from law enforcement about these encounters, the discovery of a large amount of cash and a vial with heroin residue on Albantov's person, as well as the later discovery of a fanny pack containing heroin inside Albantov's vehicle. The evidence at trial also included an account of the K-9 sniff indicating the presence of narcotics. And the trial testimony further described evidence found inside room 210, which was registered to someone other than Albantov, including a

methamphetamine pipe, hypodermic needles, a case with heroin residue, and Albantov's credit card.

Albantov testified in his own defense, claiming that he and three others drove together to the hotel to party and use drugs. He claimed that he left the hotel room to wait for T.K. and decided to grab a cigarette from his vehicle when police arrived. He denied knowing that the fanny pack was inside his vehicle or that it contained heroin. He instead claimed that the fanny pack belonged to one of the passengers who earlier rode with him.

Following the convictions, sentence, appeal, and resentencing, Albantov petitioned for postconviction relief in January 2020, arguing that he did not receive a *Miranda* advisory, that the state failed to prove necessary elements, that Albantov's trial counsel was ineffective in several respects, and that his appellate counsel was ineffective for representing him despite an alleged conflict of interest and for failing to provide him with transcripts or raise certain issues on appeal. Albantov argued that none of his claims were time-barred or *Knaffla*-barred. *See* Minn. Stat. § 590.01, subd. 4(a) (2018); *State v. Knaffla*, 243 N.W.2d 737, 741 (Minn. 1976). He insisted his *Miranda* argument rested on newly discovered evidence, that his claims raised novel legal issues, and that the interests of justice favored consideration. He also explained that he would have raised the ineffective-assistance and *Miranda* issues in a supplemental brief on direct appeal but for his appellate counsel's failure to provide him with timely access to trial transcripts.

The postconviction court denied the petition without an evidentiary hearing. It concluded that the sufficiency-of-the-evidence challenge was barred because it was raised on direct appeal. It deemed the *Miranda* and ineffective-assistance-of-trial-counsel claims

barred under *Knaffla* because they could have been raised on direct appeal. It concluded that the *Knaffla* exceptions did not apply because transcripts were available at the time of the direct appeal, nothing prevented Albantov from raising issues through his appellate counsel, and correspondence to Albantov from his appellate counsel indicated that she had considered and rejected a potential ineffective-assistance argument. The postconviction court rejected as meritless the argument that his appellate counsel was ineffective. This appeal follows.

D E C I S I O N

Albantov argues that the postconviction court abused its discretion by deeming several claims barred and by rejecting his ineffective-assistance-of-appellate-counsel claim without an evidentiary hearing. We affirm because his postconviction claims are either *Knaffla*-barred without exception or because the petition and record conclusively show he was entitled to no relief.

We review the denial of a postconviction petition without an evidentiary hearing for an abuse of discretion. *Colbert v. State*, 870 N.W.2d 616, 621 (Minn. 2015). An individual convicted of a crime may petition for relief from a conviction or sentence. Minn. Stat. § 590.01, subd. 1 (2018). "Unless the petition and the files and records of the proceeding conclusively show that the petitioner is entitled to no relief," the postconviction court must hold an evidentiary hearing, make findings and conclusions, and either deny the petition or order appropriate relief. Minn. Stat. § 590.04, subd. 1 (2018). "In determining whether an evidentiary hearing is required, a postconviction court considers the facts alleged in the petition as true and construes them in the light most favorable to the petitioner." *Andersen*

v. State, 913 N.W.2d 417, 424 (Minn. 2018) (quotation omitted). "But a court need not hold an evidentiary hearing when the petitioner alleges facts that, if true, are legally insufficient to entitle him to the requested relief." *Jackson v. State*, 929 N.W.2d 903, 905 (Minn. 2019) (quotation omitted).

I. Albantov's sufficiency-of-the-evidence argument is *Knaffla*-barred.

The postconviction court found that Albantov's sufficiency challenge was *Knaffla*-barred because he challenged the sufficiency of the state's evidence on direct appeal. Albantov contends he never raised the issue despite having argued in support of his postconviction petition that "[t]he State has failed to prove every essential element of the crime beyond a reasonable doubt which the petitioner was charged with violating . . . ."

Like the postconviction court, we construe Albantov's essential-elements argument as a challenge to the sufficiency of the evidence supporting his convictions. "[W]here direct appeal has once been taken, all matters raised therein, and all claims known but not raised, will not be considered upon a subsequent petition for postconviction relief." *Knaffla*, 243 N.W.2d at 741; *see also* Minn. Stat. § 590.01, subd. 1 ("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 . . . ."). The *Knaffla* rule includes all claims that should have been known at the time of the direct appeal. *Zumberge v. State*, 937 N.W.2d 406, 411 (Minn. 2019).

On direct appeal, Albantov challenged the sufficiency of the state's evidence tending to prove that he possessed heroin. *Albantov*, 2018 WL 3214293, at *3–4. Although he advanced a broader argument in his postconviction petition, those arguments could have

been raised on direct appeal. The postconviction court correctly deemed the argument to be *Knaffla*-barred.

II. Albantov's *Miranda* claim is *Knaffla*-barred.

The postconviction court concluded that Albantov's *Miranda* claim was *Knaffla*-barred because it could have been raised on direct appeal and because no exception applied. Albantov argues that his claim was based on newly discovered evidence, that he raised a novel legal issue, and that the interests of justice warrant consideration of his petition.

Albantov's *Miranda* claim did not arise from newly discovered evidence. A petitioner filing a timely petition for postconviction relief alleging the existence of newly discovered evidence must establish, in part, that the evidence was unknown to him and his counsel at the time of trial. *See Miles v. State*, 840 N.W.2d 195, 201 (Minn. 2013). Albantov and his trial counsel learned of the alleged violation no later than the evidentiary hearing that occurred before trial. Albantov therefore could have raised the *Miranda* issue on direct appeal.

We also conclude that no exception to the *Knaffla* bar applies. "For claims that were not raised on direct appeal, two exceptions to the *Knaffla* rule exist: (1) a novel legal issue is presented that was unavailable at the time of the direct appeal; or (2) the interests of justice require review." *Zumberge*, 937 N.W.2d at 411–12. Albantov failed to identify exactly how the legal basis for his claim is novel, instead focusing on the circumstances supporting his legal theory. The circumstances of the alleged *Miranda* violation do not present a novel legal issue justifying an exception to the *Knaffla* bar. *See id.* at 411.

The interests of justice do not support the consideration of Albantov's petition. The exception "may be applied when fairness so requires and the petitioner did not deliberately and inexcusably fail to raise the issue on direct appeal." *Ford v. State*, 690 N.W.2d 706, 711 (Minn. 2005) (quotation omitted). Albantov contends that his appellate counsel's failure to provide him with transcripts prevented him from raising the *Miranda* issue in his direct appeal. The postconviction court reasoned that nothing stopped Albantov from raising the issue through his appellate counsel, who did have transcripts. The postconviction court failed to recognize that Albantov alleged a violation of his right to transcripts under the rules of criminal procedure, which in turn precluded him from preserving issues on direct appeal by filing a supplemental brief. We affirm regardless because Albantov failed to allege sufficient facts in his petition to support his claim that a violation of his right to transcripts occurred. *See* Minn. Stat. § 590.02, subd. 1(1) (2018) ("The petition . . . shall contain . . . a statement of the facts and the grounds upon which the petition is based."); *see also Jackson*, 929 N.W.2d at 905.

A defendant has a right to file a supplemental brief. Minn. R. Crim. P. 28.02, subd. 5(13), (17). A defendant also has a right to a transcript of the proceedings, but the public defender's office is obligated to send transcripts only if: (1) the defendant requests a copy, (2) the public defender's office confers with the defendant, and (3) the defendant insists on transcript copies after the meeting. Minn. R. Crim. P. 28.02, subd. 5(18). Albantov failed to allege that he requested transcripts before the expiration of the applicable deadline to file a supplemental brief on direct appeal, or that he conferred with the public defender's office, or that he repeated his request. Having failed to meet his

burden to allege facts sufficient to prove the claimed rule violation, the interests of justice do not require departing from the *Knaffla* bar.

III. Albantov's ineffective-assistance-of-trial-counsel claim is *Knaffla*-barred and without merit.

Albantov argues that the postconviction court erred by rejecting his ineffective-assistance-of-trial-counsel claim without an evidentiary hearing. We conclude that the grounds supporting Albantov's claim are *Knaffla*-barred and without merit.

An ineffective-assistance claim that "can be determined on the basis of the trial record . . . must be brought on direct appeal or it is *Knaffla*-barred." *Nissalke v. State*, 861 N.W.2d 88, 93 (Minn. 2015). When the claim requires the examination of evidence outside of the record or if the postconviction court must make additional findings, the claim is not *Knaffla*-barred. *Id.* To receive an evidentiary hearing upon an ineffective-assistance claim, a petitioner must allege facts which, if proven by a preponderance of the evidence, show that counsel's performance "fell below an objective standard of reasonableness" and that "but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 93–94 (quoting *Strickland v. Washington*, 466 U.S. 668, 688, 694, 104 S. Ct. 2052, 2064, 2068 (1984)). We generally decline to review ineffective-assistance-of-trial-counsel claims based on matters of trial strategy. *Sanchez-Diaz v. State*, 758 N.W.2d 843, 848 (Minn. 2008).

Several of Albantov's ineffective-assistance claims can be resolved based on the trial record, including his assertions that trial counsel: (1) made improper statements regarding automatic juror strikes during voir dire, (2) admitted to throwing a motion in

limine together quickly, (3) failed to object to a portion of the prosecutor's opening statement, (4) violated the attorney-client privilege, and (5) failed to challenge the warrantless search of his vehicle. Because these claims of ineffective assistance could have been decided on the trial record, they are *Knaffla*-barred. *See Nissalke*, 861 N.W.2d at 93. No *Knaffla* exception applies because ineffective-assistance grounds are not novel, *Schleicher v. State*, 718 N.W.2d 440, 447–48 (Minn. 2006), and the interests of justice do not warrant review.

The arguments are also meritless. Albantov failed to allege how his attorney's conduct during voir dire fell below an objective standard of reasonableness or affected the outcome of the proceeding. He failed to allege any substantive defect with his trial counsel's motion in limine and only summarily asserted that counsel "prejudice[d] the petitioner." His attorney's failure to object to the prosecutor's opening statement was presumably a matter of trial strategy, *see Zumberge*, 937 N.W.2d at 413–14, and Albantov did not allege how his attorney was ineffective for failing to object when the prosecutor's statement that Albantov "reached into the car" was reasonably consistent with the officer's testimony that Albantov "opened the driver's door [and] leaned inside the car a little bit." Albantov's assertion that his trial counsel violated the attorney-client privilege by "impeaching petitioner's credibility" is unsupported by the trial record. And Albantov's attorney *did* challenge the vehicle search by asserting a lack of probable cause under the applicable motor-vehicle exception to the warrant requirement, which permits police to search a vehicle without a warrant "if there is probable cause to believe the search will result in a discovery of evidence or contraband." *State v. Lester*, 874 N.W.2d 768, 771

(Minn. 2016) (quotation omitted). Beyond the *Knaffla*-bar, the petition and record conclusively show that Albantov was entitled to no relief.

Albantov's other arguments are also without merit. Albantov alleged that his trial counsel was ineffective for failing to investigate T.K. as an alternative perpetrator and for failing to call two of the passengers from Albantov's vehicle as witnesses who would have testified that Albantov did not possess or sell drugs. But Albantov specifically alleged that his counsel "stated that the decision not to investigate [T.K.] was based upon his own opinion" and that he "did not want" the passengers "to testify on behalf of the petitioner." The extent of investigation and which evidence to present were matters of trial strategy not subject to review for ineffective assistance. *See Sanchez-Diaz*, 758 N.W.2d at 848.

As for the *Miranda* issue, whether to file a motion to suppress is generally a matter of trial strategy. *Carridine v. State*, 867 N.W.2d 488, 494 (Minn. 2015). Regardless, Albantov failed to allege facts sufficient to establish a *Miranda* violation. "Statements made by a suspect *during a custodial interrogation* are admissible only if the police provided a *Miranda* warning," and an interrogation is custodial if a reasonable person would believe he was in custody to the degree associated with formal arrest. *State v. Sterling*, 834 N.W.2d 162, 168 (Minn. 2013) (emphasis added) (quotation omitted). Albantov misrepresented the record by claiming that an officer testified he would not have let Albantov leave, but the officer instead testified that he "*would've*" let Albantov leave. (Emphasis added.) The petition contains no facts to support a *Miranda* violation and therefore, Albantov failed to allege facts sufficient to show that his trial counsel was ineffective for failing to raise the issue.

IV. Albantov's ineffective-assistance-of-appellate-counsel claim is without merit.

Albantov argues that the postconviction court abused its discretion by narrowly construing his ineffective-assistance-of-appellate-counsel claim and by rejecting his petition without an evidentiary hearing. We conclude that no abuse of discretion occurred because Albantov's claim is without merit.

A petitioner alleging ineffective assistance of appellate counsel "must show that his appellate counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Arredondo v. State*, 754 N.W.2d 566, 571 (Minn. 2008) (quotations omitted). Appellate attorneys are "not required to raise all possible claims on direct appeal, and counsel need not raise a claim if [they] could have legitimately concluded that it would not prevail." *Id.* (quotation omitted).

Several of Albantov's ineffective-assistance arguments fail for reasons already set forth herein. Albantov alleged that his appellate counsel was ineffective for failing to provide him with transcripts, but he failed to allege that he made proper requests during the relevant time frame and therefore failed to allege a rule violation. *See* Minn. R. Crim. P. 28.02, subd. 5(18). He claimed appellate counsel was ineffective for failing to raise constitutional issues and for failing to raise an ineffective-assistance-of-trial-counsel claim. But because Albantov's underlying arguments lack merit, he cannot demonstrate that his appellate counsel was ineffective for failing to raise the issues. *See Carridine*, 867 N.W.2d at 494 ("When a petitioner bases his ineffective-assistance-of-appellate-counsel claim on

appellate counsel's failure to raise a claim of ineffective assistance of trial counsel, he must first show that trial counsel was ineffective.").

Albantov also alleged that his appellate counsel represented him despite a claimed conflict of interest, namely that his appellate counsel was a friend and "co-worker in law" of his trial counsel. "A lawyer's performance is deficient if he represents a client despite having a conflict of interest." *State v. Paige*, 765 N.W.2d 134, 140 (Minn. App. 2009). "For conflicts of interest, [p]rejudice is presumed only if the defendant demonstrates that counsel actively represented conflicting interests and that an actual conflict of interest adversely affected his lawyer's performance." *Pearson v. State*, 891 N.W.2d 590, 601 (Minn. 2017) (quotation omitted). To warrant a hearing, Albantov was required to allege facts in his petition sufficient to demonstrate that there was a "significant risk" that his appellate counsel's representation was "materially limited" by her responsibilities to a third party or by a personal interest. Minn. R. Prof. Conduct 1.7.

The allegations set forth in the petition are insufficient to establish a conflict of interest. Albantov claimed that appellate counsel "did not want to cross the line with her friend" by raising an ineffective-assistance claim "because [trial counsel and appellate counsel] have a loyalty to each other as co-worker[s] in law." We are aware of no authority supporting the premise that trial and appellate public defenders owe any loyalty to one another because they are "co-worker[s] in law." And the premise contradicts the statutes requiring the appointment of a public defender on direct appeal or in postconviction proceedings. *See* Minn. Stat. §§ 611.14(1)–(2) (affording the conditional right to a public

defender in district court and on appeal); 590.05 (affording the conditional right to a public defender in postconviction proceedings) (2018).

Albantov also cited correspondence from his appellate counsel which he claims establishes that her friendship materially impaired her ability to bring an ineffective-assistance claim. But the correspondence merely informed Albantov that appellate counsel could not bring a postconviction claim of ineffective assistance of counsel on Albantov's behalf because "once someone has been represented on appeal by our office, we cannot represent them in an additional challenge to their conviction in a postconviction proceeding." *See* Minn. Stat. § 590.05. The correspondence made no mention of any friendship or unwillingness to raise an ineffective-assistance claim because of a friendship or any reason other than office policy.

Albantov failed to allege any additional facts about the nature of any relationship between his trial and appellate counsel that could demonstrate a significant risk of materially limited representation. And, given that the substantive grounds asserted by Albantov in support of his ineffective-assistance-of-trial-counsel claims are meritless, we see no basis to conclude that any possible relationship between trial and appellate counsel could result in a *material* limitation in representation. We note that the limited allegation that counsel may be "friends" is insufficient standing alone to give rise to the type of conflict of interest upon which counsel must act under the rules of professional conduct. *See, e.g.*, Minn. R. Prof. Conduct 1.7 cmts. 10 (providing examples of personal interests, including implicating one's own conduct, potential employer relationships, and personal business interests), 11 (detailing conflicts based on attorneys being "closely related by

blood or marriage”). Albantov’s very general allegations, even if true, were insufficient to warrant relief or an evidentiary hearing. *Jackson*, 929 N.W.2d at 905.

Accordingly, Albantov’s various grounds for postconviction relief are either *Knaffla*-barred or meritless. We see no abuse of discretion by the postconviction court in denying the petition without an evidentiary hearing.

Affirmed.