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STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0471

Justin Lee Ironhawk, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed December 21, 2020
Affirmed
Reyes, Judge

Hennepin County District Court
File No. 27-CR-16-2763

Justin Lee Ironhawk, Bayport, 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 Connolly, Presiding Judge; Reyes, Judge; and Jesson, Judge.

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

REYES, Judge

Appellant argues that the postconviction court abused its discretion by denying his petition for postconviction relief without an evidentiary hearing as *Knaffla*-barred and without merit because his trial counsel provided ineffective assistance by (1) advising

against a jury trial; (2) failing to communicate a plea offer made by respondent State of Minnesota; and (3) failing to subject the state's case to meaningful adversarial testing. We affirm.

FACTS

After waiving his right to a jury trial, the district court found appellant Justin Lee Ironhawk guilty of first-degree criminal sexual conduct and sentenced him to 276 months in prison. Appellant filed a direct appeal to this court, arguing only that the district court erred by denying his motion to suppress evidence obtained by a warrantless search of his cell phone. The underlying facts of this case are discussed in our prior opinion in which we affirmed appellant's conviction and the supreme court denied review. *State v. Ironhawk*, No. A17-1739, 2018 WL 6729841, at *1-2 (Minn. App. Dec. 24, 2018), *review denied* (Minn. Feb. 27, 2019). Appellant subsequently filed a pro se petition for postconviction relief claiming ineffective assistance of trial counsel. The postconviction court determined that appellant's claims were procedurally barred under *State v. Knaffla*, 243 N.W.2d 737, 741 (Minn. 1976), and summarily denied an evidentiary hearing. The postconviction court also determined that appellant did not establish by a fair preponderance of the evidence facts warranting relief and that his claims fail on the merits. This appeal follows.

D E C I S I O N

I. The postconviction court did not abuse its discretion by determining that appellant's claims of ineffective assistance of counsel are *Knaffla*-barred.

Appellant first challenges the postconviction court's denial of his request for an evidentiary hearing and relief, arguing that no direct appeal occurred and that fairness requires a hearing on his ineffective-assistance-of-counsel claims. We disagree.

A postconviction court does not abuse its discretion when it summarily denies a petition that is *Knaffla*-barred. *Colbert v. State*, 870 N.W.2d 616, 622 (Minn. 2015). Minnesota courts do not consider claims for postconviction relief based on facts and issues which were known at the time of direct appeal and not raised. *Doppler v. State*, 660 N.W.2d 797, 801 (Minn. 2003). "When a claim of ineffective assistance of trial counsel can be determined on the basis of the trial record, the claim must be brought on direct appeal or it is *Knaffla*-barred" unless it requires review of evidence outside the record or more fact-finding. *Andersen v. State*, 830 N.W.2d 1, 10 (Minn. 2013). A petitioner must prove "by a preponderance of the evidence" facts warranting relief. *Erickson v. State*, 725 N.W.2d 532, 534 (Minn. 2007). And an appellant must prove why fairness requires review of claims which were "deliberately and inexcusably" not raised on direct appeal. *Greer v. State*, 673 N.W.2d 151, 155 (Minn. 2004).

Appellant initially argues that he only filed an appeal of his evidentiary hearing, which is not a direct appeal. This appears to be a misunderstanding of his appeal. *See* Minn. R. Crim. P. 28.02, subd. 2(1) (a criminal defendant cannot appeal from a pretrial evidentiary hearing). Appellant filed a direct appeal to this court from his conviction,

challenging the district court's pretrial denial of his motion to suppress. This court explicitly stated that appellant "direct[ly] appeal[ed] from his conviction for first-degree criminal sexual conduct." *Ironhawk*, WL 6729841, at *1.

Appellant argues that he received ineffective assistance when his trial counsel advised against a jury trial, failed to communicate a plea offer made by the state, and failed to subject the state's case to meaningful adversarial testing. Each of appellant's arguments is based on trial counsel's conduct at trial. And appellant knew about the conduct at the time of each complained-of error. Further, appellant's claims do not require evidence available outside of the trial record. The record is fully developed on each of appellant's arguments, and we nonetheless analyze them below on the merits based on that developed record. Because appellant's claims involve trial counsel's conduct at trial, do not require evidence outside of the record to determine, and were not raised on direct appeal, appellant's claims are barred under *Knaffla*.

For claims not raised on direct appeal, there are two exceptions to the *Knaffla* rule: (1) if novel legal issues now exist that were unavailable at the time of direct appeal or (2) the interests of justice requires review. *Chavez-Nelson v. State*, 948 N.W.2d 665, 673 (Minn. 2020). Appellant does not contend that his claims involve a novel legal issue. Rather, appellant broadly argues that fairness requires an evidentiary hearing because he did not knowingly reject the state's plea offer due to trial counsel's ineffective assistance by not communicating the state's plea offer. But the interests of justice are not served by reviewing claims which are capable of determination from the record, as appellant's claims are here, and were deliberately not raised on direct appeal. His underlying ineffective-

assistance claim lacks merit, as explained below, and he does not argue excusable delay. *See Griffin v. State*, 883 N.W.2d 262, 286 (Minn. 2016) (assuming interests-of-justice exception applied, nevertheless "a viable claim must have substantive merit and must be asserted without deliberate or inexcusable delay." (citation omitted)).

Appellant fails to establish by a preponderance of the evidence that either exception to the *Knaffla* bar applies. The postconviction court therefore did not abuse its discretion by determining that appellant's claims are *Knaffla*-barred and that no exception to *Knaffla* applies.

Even if we were to consider appellant's three arguments, each fails on the merits. We address each claim in turn.

II. Appellant's claims of ineffective assistance of counsel fail on the merits.

Appellant argues that his trial counsel provided ineffective assistance based on counsel's (1) advice against a jury trial on aggravating factors under *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531 (2004); (2) failure to communicate a plea offer made by the state; and (3) failure to subject the state's case to meaningful adversarial testing. We are not persuaded.

This court reviews a summary denial of a postconviction petition for an abuse of discretion. *Riley v. State*, 819 N.W.2d 162, 167 (Minn. 2012). "A postconviction court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record." *Id.* On an ineffective-assistance-of-counsel claim, an appellant seeking an evidentiary hearing must "allege facts that, if proven by a fair preponderance of the evidence," would prove both that (1) counsel's representation "fell

below an objective standard of reasonableness" and (2) "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland v. Washington*, 466 U.S. 668, 688, 694, 104 S. Ct. 2052, 2064, 2068 (1984). There is a strong presumption that counsel performed reasonably. *Andersen*, 830 N.W.2d at 10. If one prong is determinative, this court need not analyze both. *Chavez-Nelson*, 948 N.W.2d at 671.

A. Appellant's trial counsel informed appellant of his right to a jury trial on the *Blakely* factors.

Appellant argues that trial counsel only explained in general terms the significance of waiving a jury trial and findings of an upward-departure under *Blakely*. Appellant states that counsel informed him prior to trial that, to give up these rights, appellant had to agree with counsel when asked about waiver, and appellant subsequently agreed to everything. We are not persuaded.

Here, counsel extensively communicated appellant's right to a jury trial on the record. The process of obtaining these waivers constitutes six pages of trial transcript. Counsel ensured that appellant understood what waiving a jury trial meant, and communicated to appellant that waiving a jury trial is not a question of trial strategy, but appellant's decision whether to waive this right. Appellant replied that he understood and that he wanted to waive his right to a jury trial. Counsel also communicated that, if the jury found appellant guilty, "the [s]tate is going to seek a sentence that is greater than the sentencing guidelines." Appellant replied that he understood. Appellant also stated that he understood he had the right to a jury determination of those facts justifying an upward

departure, and appellant replied that he wanted to waive that right. Trial counsel's representation did not fall below an objective standard of reasonableness in plainly communicating these waivers on the record.

B. Trial counsel communicated the plea offer to appellant on the record.

Appellant argues that trial counsel "utterly failed to communicate" the state's plea offer. He states he "was not aware of the supposed plea offer of 144 months," and that the state did not present the offer "in a way that [he] would have known it to be an offer." However, the state made the plea offer directly to appellant on the record.

> My offer to [appellant] is to withdraw my *Blakely* notice and have him plead guilty to criminal sexual conduct in the first degree and have him serve the bottom of the box, which is 144 months in prison. . . . If he is not willing to take that, then we can proceed to trial.

Twice on the record, the state clearly articulated its offer to appellant. It further explained what sentence it sought, what it would be withdrawing, and how much time appellant would actually serve if appellant accepted the state's offer. The state therefore explained on the record the possible ramifications of either accepting or declining its offer. *See e.g., State v. Powell*, 578 N.W.2d 727 (Minn. 1998) (finding no ineffective assistance of counsel when state made verbal statement of its immediately rejected plea offer before start of trial). The record does not support appellant's arguments.

After the state offered the plea, appellant's trial counsel also immediately spoke to appellant off the record. Appellant asserts that counsel merely told appellant that "[the state is] done talking now, we can continue on with the trial if that's okay with you." But counsel stated on the record that "[o]ur position remains the same. My client continues to

assert his innocence of the charge and therefore would like to exercise his right to trial." We conclude that counsel's assistance did not fall below an objective standard of reasonableness with the plea offer clearly communicated on the record to appellant, which he subsequently rejected on the record.

C. Appellant's trial counsel did not fail to present evidence or a defense theory.

Appellant argues that trial counsel failed to: (1) submit evidence of appellant's "actual innocence;" (2) call several specified witnesses to his defense; (3) assert that the victim threatened appellant by saying she would report to the police that she had been raped unless he gave her money and drugs; and (4) put forth a defense at trial. We are not persuaded.

Generally, we do not review ineffective-assistance-of-counsel claims when the complained-of conduct is based on trial strategy. *Chavez-Nelson*, 948 N.W.2d at 671 (citing *State v. Vang*, 847 N.W.2d 248, 267 (Minn. 2014)). Trial strategy includes determining what witnesses to call at trial, *Carridine v. State*, 867 N.W.2d 488, 494 (Minn. 2015), and selecting what evidence to present to the jury, *Sanchez-Diaz v. State*, 758 N.W.2d 843, 848 (Minn. 2008). We therefore do not review trial counsel's strategy on whether to call certain witnesses and whether to present evidence of appellant's "actual innocence."

Belying appellant's third argument that counsel did not present evidence that the victim threatened him, the district court's order recognized appellant's statement that the

victim threatened to report appellant for rape if appellant did not give her both drugs and money. This argument is not supported by the record.

The postconviction court determined that trial counsel advanced a defense of consent. The record reflects that counsel called three witnesses at trial. Counsel offered that the victim and appellant had engaged in similar behavior in the past, exchanging sex for drugs. Appellant argued that the victim had consented to each of the acts recorded and had consented to being recorded on this occasion. He also argued that the victim was conscious and aware of what occurred.

The postconviction court did not abuse its discretion when it determined that trial counsel presented evidence and witnesses and offered a clear defense strategy of consent at trial. Because appellant fails to establish the first *Strickland* prong, we need not consider the prejudice prong.

Affirmed.