STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0191

State of Minnesota,
Respondent,

vs.

Derrick Lee Roberts,
Appellant.

Filed January 16, 2024
Affirmed
Worke, Judge

Hennepin County District Court
File No. 27-CR-20-7727

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

Mary F. Moriarty, Hennepin County Attorney, Adam Petras, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Andrea Barts, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Worke, Judge; and Ede, Judge.

NONPRECEDENTIAL OPINION

WORKE, Judge

Appellant challenges his criminal-sexual-conduct convictions, arguing that (1) the district court erred when it admitted *Spreigl* evidence, (2) the district court erred when it permitted the state to elicit testimony pertaining to the victim's character for truthfulness,

(3) his Sixth Amendment right to effective assistance of counsel was violated, and (4) the postconviction court abused its discretion when it denied his postconviction petition without an evidentiary hearing. Appellant also made a supplemental argument asserting that the predatory-offender-registration requirement violated his constitutional right to a jury trial. We affirm.

FACTS

In January 2019, then 12-year-old T.D. was placed in foster care at the home of appellant Derrick Lee Roberts. Roberts also fostered several other children throughout T.D.'s time in Roberts's care.

About one month after T.D. was placed in Roberts's home, Roberts began sexually abusing T.D. During an interview with CornerHouse, T.D. stated that he had told a school employee that Roberts "was doing some sexual things and [he] told [Roberts] [he] don't wanna do it." T.D. specifically described Roberts's sexual conduct.

Respondent State of Minnesota charged Roberts with two counts of first-degree criminal sexual conduct, and two counts of second-degree criminal sexual conduct. *See* Minn. Stat. §§ 609.342, subd. 1(a), (b), .343, subd. 1(a), (b) (2018). The state submitted notice of evidence of prior bad acts it intended to introduce to prove Roberts's guilt for the offenses. The state's supporting memorandum identified three other child-victims who had reported similar conduct by Roberts. The district court granted in part the state's

Spreigl[1] motion "for the limited purposes of showing a common scheme or plan," but denied it in part "as to showing intent or absence of mistake or accident."

Following a jury trial, the jury found Roberts guilty as charged. The district court adjudicated Roberts's guilt for two counts of first-degree criminal sexual conduct but did not adjudicate the remaining counts as lesser-included offenses. The district court sentenced Roberts to concurrent terms of 144 and 180 months in prison.

Roberts filed a direct appeal. He then requested a stay of his direct appeal to petition the district court for postconviction relief. This court granted the stay.

Roberts petitioned for postconviction relief and requested an evidentiary hearing for an ineffective-assistance-of-counsel claim. The postconviction court denied the petition without an evidentiary hearing. Roberts moved to reinstate his appeal. This court dissolved the stay and reinstated the direct appeal.

DECISION

I.

Roberts argues that the district court abused its discretion when it admitted certain *Spreigl* evidence under the common-scheme-or-plan exception.

We review a district court's decision to admit *Spreigl* evidence for an abuse of discretion. *State v. Griffin*, 887 N.W.2d 257, 261 (Minn. 2016). If an appellate court determines that a district court abused its discretion by admitting *Spreigl* evidence, it must

[1] *State v. Spreigl*, 139 N.W.2d 167 (Minn. 1965).

then consider whether there is a "reasonable possibility that the wrongfully admitted evidence significantly affected the verdict." *Id.* at 262.

Roberts claims that the district court abused its discretion in admitting the testimony of D.K. and B.B.—two of Roberts's former foster children—Roberts's former stepson, and the social worker who interviewed T.D. regarding Roberts's criminal sexual conduct. The district court admitted the evidence, stating that

> the *Spreigl* evidence is being offered for the permitted reason to determine whether the disputed act occurred. Further, the *Spreigl* evidence being offered contains a similar modus operandi as the charged offenses. The *Spreigl* evidence and the charge[d] offense[s] are similar enough to conclude that the [s]tate's real purpose in offering the evidence is to prove a common scheme or plan.

D.K. testified that he and T.D. shared a room while in Roberts's foster home. D.K. testified that Roberts asked him "multiple times" if D.K. was "gay," and also whether D.K. would get sexually aroused after he "got done with the bathroom." Roberts asked D.K. if he was masturbating while he was in the bathroom. D.K. testified that he saw Roberts and T.D. on Roberts's bed together under covers a "few times."

B.B. testified that he also shared a room with the other foster children at Roberts's home. B.B. testified that while living in Roberts's home, Roberts told "sexual jokes," showed "inappropriate" videos, and was sometimes "aggressive" in nature towards the foster children. According to B.B., the videos were inappropriate because the videos included "[e]xplicit sex scenes" and "high level gore."

Roberts's former stepson D.S. testified that when he was 12 years old, Roberts "brought [D.S.] into his office and then . . . [Roberts] showed [D.S.] a video of a guy

ejaculating." D.S. recounted multiple incidents that Roberts would walk past him and his brothers and "quick[ly] touch on [their] private parts." D.S. explained that when Roberts touched his "private parts," D.S. meant his penis and buttocks and that the touching was over the clothing.

In October 2019, T.D. reported Roberts's criminal sexual conduct. Following the report, a social worker interviewed T.D. The social worker testified as to what was included in her report based on T.D.'s interview, including several alleged acts of Roberts's sexual conduct.

Spreigl evidence cannot be admitted "to prove the character of a person in order to show action in conformity therewith." Minn. R. Evid. 404(b)(1); *see generally Spreigl*, 139 N.W.2d at 167. The "overarching concern" with *Spreigl* evidence is that it may be used for an improper purpose, such as suggesting that the defendant "has a propensity to commit the present bad acts, or that the defendant is a proper candidate for punishment" because of the prior bad acts. *State v. Washington*, 693 N.W.2d 195, 200-01 (Minn. 2005) (quotation omitted). *Spreigl* evidence may be admitted "for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." Minn. R. Evid. 404(b)(1).

To be admitted as *Spreigl* evidence:

> (1) the state must give notice of its intent to admit the evidence; (2) the state must clearly indicate what the evidence will be offered to prove; (3) there must be clear and convincing evidence that the defendant participated in the prior act; (4) the evidence must be relevant and material to the state's case; and (5) the probative value of the evidence must not be outweighed by its potential prejudice to the defendant.

State v. Ness, 707 N.W.2d 676, 686 (Minn. 2006). These "procedural safeguards are designed to ensure that all *Spreigl* evidence . . . is subjected to an exacting review." *State v. Kennedy*, 585 N.W.2d 385, 390 (Minn. 1998). Roberts challenges the admission of the *Spreigl* evidence on steps four and five. We address each separately.

A. Relevant and material

Roberts argues that the evidence was improperly admitted because the prior bad acts alleged by D.S. occurred between 2016 and 2017 and the criminal sexual conduct relevant to this appeal began in February 2019. As such, the relevance was "lost by the gap in time." Roberts does not challenge the relevance of the remaining *Spreigl* incidents.

A relevant-and-material determination requires a district court to "identify the precise disputed fact to which the *Spreigl* evidence would be relevant." *Ness*, 707 N.W.2d at 686 (quotation omitted); Minn. R. Evid. 401 (defining "[r]elevant evidence" as evidence tending to make more or less probable the existence of any consequential fact).

Here, the district court noted "that the real issue here is whether [Roberts] had [criminal] sexual contact with or sexually penetrated [T.D.]" The district court concluded "that the *Spreigl* evidence [was] admissible to prove common scheme or plan," but was "not admissible to prove intent."

Minnesota courts have long held that *Spreigl* evidence may be used to show a common scheme or plan. *Ness*, 707 N.W.2d at 687. Evidence of prior bad acts "is admissible under this exception to establish that the conduct on which the charged offense was based actually occurred or to refute the defendant's contention that the victim's

testimony was a fabrication or a mistake in perception." *Id.* at 688. District courts must determine whether the *Spreigl* incidents have a sufficient relationship to the charged offense. *Id.* In so doing, district courts should "focus on the closeness of the relationship between the [prior bad acts] and the charged crimes in terms of time, place, and modus operandi." *Id.* at 688-89 (quotation omitted).

1. Time

Here, the district court noted that "each *Spreigl* act happened within four years of the charged crime with some instances reported by B.B. and D.K. occurring during the same time period." The district court found that "[t]he *Spreigl* incidents ha[d] a close relationship with the charged offense in terms of time."

2. Place

It also noted that each of the *Spreigl* incidents and the charged offenses took place in Roberts's home, while the complainants were living with Roberts, and that many of Roberts's prior bad acts took place in the "exact same location" and so were "close in relation with the charged offense in terms of place."

3. Modus operandi

Finally, the district court noted that "the *Spreigl* evidence being offered contains a similar modus operandi as the charged offenses," and that "[t]he *Spreigl* evidence and charge[d] offense[s] [were] similar enough to conclude that the factor of modus operandi favors admissibility." For these reasons, the district court did not abuse its discretion in determining that the evidence was relevant and material to the state's case as being closely related to the charged offenses in time, place, and modus operandi.

B. Probative value versus unfair prejudice

Roberts argues that even if the *Spreigl* evidence was relevant, the potential unfair prejudice of the testimony outweighed the probative value.

When evaluating whether the potential for unfair prejudice outweighs the probative value of the *Spreigl* evidence, we must "balance the relevance of the [*Spreigl* evidence], the risk of the evidence being used as propensity evidence, and the [s]tate's need to strengthen weak or inadequate proof in the case." *State v. Fardan*, 773 N.W.2d 303, 319 (Minn. 2009). *Spreigl* evidence is prejudicial by nature, but "unfair prejudice is not merely damaging evidence, even severely damaging evidence; rather, unfair prejudice is evidence that persuades by illegitimate means, giving one party an unfair advantage." *State v. Bell*, 719 N.W.2d 635, 641 (Minn. 2006) (quotation omitted).

The district court noted that despite "the probative value of the *Spreigl* evidence [being] very high," that there was "a strong possibility the case w[ould] turn on conflicting testimony, which weigh[ed] heavily in favor of admitting the *Spreigl* evidence." Accordingly, the district court found that "the unfair prejudice [did] not substantially outweigh the probative value of the *Spreigl* evidence." D.S.'s testimony regarding Roberts's prior bad acts is similar to Roberts's alleged criminal sexual conduct with T.D. in that, when the conduct occurred, D.S. and T.D. were about the same age and both were living in the same home as Roberts. Therefore, the district court did not abuse its discretion when it admitted the *Spreigl* evidence as its probative value outweighed any unfair prejudice to Roberts.

II.

Roberts argues that the district court abused its discretion when it allowed the state to call witnesses regarding "their opinions that T.D. was truthful." Roberts claims that "[b]ecause there [was] a reasonable possibility that this wrongfully admitted evidence had a significant effect on the verdict, [he] must be granted a new trial."

We review evidentiary rulings for an abuse of discretion. *State v. Ali*, 855 N.W.2d 235, 249 (Minn. 2014).

Evidence of a witness's character for truthfulness may only be presented if the witness's character for truthfulness is first attacked. Minn. R. Evid. 608(a). A witness who testifies at trial opens up the issue of their credibility, not their character. *See State v. Mayhorn*, 720 N.W.2d 776, 789 (Minn. 2006). But even if a district court determines that evidence of a victim's truthful character is admissible under rule 608(a), the "evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice." Minn. R. Evid. 403.

Here, Roberts objected to certain testimony regarding T.D.'s truthfulness. But he did not object to other witnesses's opinion testimony regarding T.D.'s truthfulness. We address the objected-to and unobjected-to testimony in turn.

A. Objected-to

When a defendant objects to a district court's admission of evidence, he must show that the district court abused its discretion and that he was prejudiced by the admission of the evidence. *State v. Sanders*, 775 N.W.2d 883, 887 (Minn. 2009). "A defendant is prejudiced by an evidentiary ruling when there is a reasonable possibility that without the

error the verdict might have been more favorable to the defendant." *State v. Miller*, 754 N.W.2d 686, 700 (Minn. 2008) (quotation omitted).

Here, T.D. testified about Roberts's criminal sexual conduct. On cross-examination, Roberts's attorney asked T.D. the following questions:

> Q: [T.D.], do you recall telling investigators that Mr. Roberts gave you a Nintendo Switch in exchange for sexual favors?
> A: I got it for my birthday.
>
> Q: But you do recall telling investigators that you received the Nintendo Switch in exchange for sexual favors, correct?
> A: No.
>
> Q: Do you deny that you told investigators that?
> A: No.

Roberts's line of questioning called T.D.'s character for truthfulness into question.

The state called S.O., T.D.'s teacher, as its witness. The objected-to opinion testimony followed the state's question posed to S.O. The stated asked S.O. whether during her "time" and "experience" with T.D. if she "ha[d] an opinion as to . . . [T.D.]'s character for truthfulness." S.O. confirmed that she did have an opinion. Roberts objected and the district court held a brief bench conference before overruling the objection. The state proceeded to ask S.O.: "Is your opinion that, in general, [T.D.'s] character for truthfulness is that he's truthful or he's not truthful?" She replied: "Truthful."

Roberts argues that S.O.'s opinion testimony that T.D. was truthful was improperly admitted as character evidence because T.D.'s truthfulness was never called into question. We disagree. The state was permitted to rebut any "[e]vidence of a pertinent trait of

character of the victim of the crime offered by an accused." *See* Minn. R. Evid. 404(a)(2). The objected-to testimony here does not constitute improper character evidence under rule 608(a); therefore, the district court did not err by admitting it.

B. Unobjected-to

Roberts did not object to any other testimony pertaining to T.D.'s truthfulness, but challenges specific instances now for the first time on appeal.

When an objection is not made to evidence at the time of admission, we review the unobjected-to admission for plain error. *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). The plain-error standard requires that the defendant demonstrate: (1) error; (2) that is plain; and (3) that affects the defendant's substantial rights. *State v. Strommen*, 648 N.W.2d 681, 686 (Minn. 2002). If all three prongs are met, we "may correct the error only if it seriously affects the fairness, integrity, or public reputation of judicial proceedings." *Id.* (quotations omitted).

> To constitute plain error, the trial error must have been so clear under applicable law at the time of conviction, and so prejudicial to the defendant's right to a fair trial, that the defendant's failure to object—and thereby present the [district] court with an opportunity to avoid prejudice—should not forfeit his right to a remedy.

State v. Manthey, 711 N.W.2d 498, 504 (Minn. 2006) (quotation omitted).

A paraprofessional at T.D.'s school was called as a witness and testified that she believed T.D. to be truthful. A social-work unit supervisor testified that she found T.D. to be "very truthful." One of T.D.'s social workers testified that she thought T.D. is

"truthful." A second social worker testified that she trusted T.D. and that she thought that T.D. "tells the truth."

But T.D.'s former foster parent testified that she believed that T.D. is "dishonest." A pastor that had spent time with T.D. testified that he believed that T.D. "wasn't always truthful." A former foster child of Roberts testified that he thought that T.D. was "[n]ot truthful at all," and that in his opinion T.D. was "a liar." Another former foster child testified that he thought that T.D. was "very dishonest."

Here, the district court's decision to admit the challenged testimony is not plain error. The unobjected-to testimony described above involved each witness's testimony about what they either observed or experienced. These witnesses were not "vouching" for the testimony of another, as Roberts suggests. *See State v. Koskela*, 536 N.W.2d 625, 630 (Minn. 1995) (recognizing that credibility of witnesses is for the jury to determine, not another witness). Further, Roberts cites to no authority establishing that the character-for-truthfulness testimony offered here was improper. Therefore, the district court's decision to allow this testimony was not plain error.

III.

Roberts initially filed a direct appeal, followed by a motion for a stay to pursue postconviction relief, requiring this court to "review the postconviction court's decisions using the same standard that [is] appl[ied] on direct appeal." *State v. Beecroft*, 813 N.W.2d 814, 836 (Minn. 2012); *see* Minn. R. Crim. P. 28.02, subd. 4(4).

Roberts argues that his trial counsel's decision to withdraw her motion to admit *Paradee*[2] evidence amounted to ineffective assistance of counsel. Roberts raised this claim in his petition for postconviction relief, which the postconviction court denied. We review the court's denial of postconviction relief for an abuse of discretion. *See State v. King*, 990 N.W.2d 406, 417 (Minn. 2023).

We apply the two-prong *Strickland* test to evaluate an ineffective-assistance-of-counsel claim. *Id.*; *see also Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

The first prong requires an appellant to show that his "attorney's representation fell below an objective standard of reasonableness." *King*, 990 N.W.2d at 417 (quotations omitted). The second prong requires the appellant to show that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* (quotations omitted). If one prong is determinative, we need not address the other. *State v. Rhodes*, 657 N.W.2d 823, 842 (Minn. 2003).

A. Prong one of the *Strickland* test

An attorney performs within an "objective standard of reasonableness" when "the representation of an attorney exercising the customary skills and diligence that a reasonably competent attorney would perform under the circumstances." *State v. Doppler*, 590 N.W.2d 627, 633 (Minn. 1999) (quotation omitted). There is also a "strong presumption" that counsel's conduct meets this standard. *King*, 990 N.W.2d at 417

[2] A *Paradee* motion seeks an in-camera review of confidential records. *See State v. Paradee*, 403 N.W.2d 640, 642 (Minn. 1987).

(quotation omitted). Matters involving trial strategy are generally not reviewed by appellate courts, including counsel's decisions regarding what evidence to present. *State v. Mems*, 708 N.W.2d 526, 534 (Minn. 2006).

Roberts's trial counsel submitted an affidavit to the postconviction court in which she stated that she moved to admit *Paradee* evidence. But she withdrew the "motion only because [the district court] told [her] in chambers that [it] was not going to admit this evidence at Roberts'[s] trial." The postconviction court noted that Roberts failed to show that the *Paradee* evidence contained false statements by T.D. relating to a report of physical abuse while T.D. was in another's foster care. The postconviction court determined that the evidence was not "admissible because the accusation that defense counsel was trying to admit was an allegation of physical abuse, not sexual abuse."

Here, the district court and the postconviction court rejected this evidence as irrelevant and speculative in nature. We discern no error in this conclusion. Roberts's ineffective-assistance-of-counsel claim fails prong one of the *Strickland* test.

Understanding that we are not required to address the second prong, we nonetheless elect to do so. *See Rhodes*, 657 N.W.2d at 842.

B. Prong two of the *Strickland* test

To prove prejudice resulting from an attorney's deficient performance, Roberts must show that there is "a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different." *See State v. Nicks*, 831 N.W.2d 493, 504 (Minn. 2013). "A reasonable probability is a probability sufficient to undermine confidence in the outcome [of a proceeding]." *Strickland*, 466 U.S. at 694.

Here, Roberts asserts that the outcome would have been different but for his trial counsel's failure to file a *Paradee* motion. We disagree. The evidence presented against Roberts was strong and involved multiple witnesses testifying about Roberts and his criminal sexual conduct. Counsel's decision to not file a motion to review evidence regarding physical abuse in a sex-abuse case, that the district court stated it would deny, does not show that the outcome would have been different. Roberts's ineffective-assistance-of-counsel claim fails prong two of the *Strickland* test.

IV.

Roberts argues that the postconviction court abused its discretion when it denied his petition without first holding an evidentiary hearing.

A postconviction court must hold an evidentiary hearing on a petition "[u]nless the petition and the files and records of the proceeding conclusively show that the petitioner is entitled to no relief." Minn. Stat. § 590.04, subd. 1 (2022). In making this decision, "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, 422-23 (Minn. 2018) (quotation omitted). A postconviction court is not required to hold an evidentiary hearing if the "petitioner alleges facts that, even if true, are legally insufficient to entitle him to the requested relief." *Hughes v. State*, 851 N.W.2d 49, 52 (Minn. 2014). We review the postconviction court's denial of an evidentiary hearing for an abuse of discretion. *Caldwell v. State*, 853 N.W.2d 766, 770 (Minn. 2014).

In denying Roberts's petition without an evidentiary hearing, the postconviction court's order "assumed" that Roberts and his trial counsel "would testify to what is in the

[p]etition and [counsel's] [a]ffidavit." Accordingly, it concluded that no material facts were "in dispute, so no hearing [was] needed." The postconviction court found that "[t]he facts presented conclusively establish [that Roberts] [was] not entitled to relief; thus[,] no evidentiary hearing [was] needed to decide relief." We agree. The postconviction court did not abuse its discretion when it determined that there were no material facts in dispute; thus, it was within its discretion to deny Roberts's petition without holding an evidentiary hearing.

V.

Roberts also challenges his sentence in a pro se supplemental brief. Roberts appears to argue that registration as a predatory offender implicates his Sixth Amendment right to a trial by jury. We disagree.

A sentencing challenge such as Roberts's challenge to the predatory-offender-registration requirement is reviewed de novo. *See State v. DeRosier*, 719 N.W.2d 900, 903 (Minn. 2006); *see also State v. Lopez*, 778 N.W.2d 700, 705 (Minn. 2010).

Criminal defendants have a constitutional right to be sentenced based upon findings of facts made by a jury. *Blakely v. Washington*, 542 U.S. 296, 304 (2004); *State v. Reimer*, 962 N.W.2d 196, 198 (Minn. 2021). District courts "[can]not impose a sentence above the statutory maximum on the basis of facts not found by a jury, as that would be a violation of the defendant's right to trial by jury." *DeRosier*, 719 N.W.2d at 903. A *Blakely* violation occurs when a district court determines "any disputed fact essential to increase the ceiling of a potential sentence." *Id.* (emphasis omitted) (quotation omitted).

In *Kaiser v. State*, the supreme court stated that "[s]ex offender registration is a direct consequence of the offender's guilty plea if for no other reason than [it is mandated by statute]." 641 N.W.2d 900, 910 (Minn. 2002). And "[a]s a mandatory and nonwaivable requirement . . . registration becomes a direct consequence [of a plea], irrespective of its nonpunitive nature." *Id.*

Here, Roberts's criminal-sexual-conduct convictions require registration as a predatory offender. *See* Minn. Stat. §§ 609.342, subd. 1(a), (b), 243.166, subd. 1b(a)(1)(iii) (2018). Because this registration is mandated by statute, is nonwaivable, is nonpunitive, and does not increase the ceiling of Roberts's potential sentence, he does not have a constitutional right to have a jury find that registration as a predatory offender is required.

Affirmed.