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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A11-2251**

Erick Fontain Thomas, petitioner,  
Appellant,

vs.

State of Minnesota,  
Respondent.

**Filed September 24, 2012  
Affirmed  
Wright, Judge**

Mower County District Court  
File No. 50-CR-07-3785

Erick Fontain Thomas, Bayport, Minnesota (pro se appellant)

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Kristen Nelsen, Mower County Attorney, Jeremy Clinefelter, Assistant Mower County Attorney, Austin, Minnesota (for respondent)

Considered and decided by Wright, Presiding Judge; Schellhas, Judge; and Larkin, Judge.

**UNPUBLISHED OPINION**

**WRIGHT**, Judge

Appellant challenges the district court's summary denial of his petition for postconviction relief. We affirm.

## FACTS

Appellant Erick Fontain Thomas was arrested during the execution of a search warrant for two adjacent buildings, which are referred to by the parties as the “white” building and the “gray” building. The search warrant was obtained based on information gathered during three controlled buys, which the investigating detective set up after he was approached by a confidential reliable informant (CRI). The CRI reported to the detective that a man named “Darrell,” whom the detective knew as Darrell Anthony Leaks, would sell the CRI some cocaine.

During each of the three controlled buys, which occurred on October 3, 8, and 12, 2007, the CRI picked up Leaks at his residence and drove to the white and gray buildings. Leaks entered the white building, purchased cocaine from a supplier, and returned to the CRI’s vehicle. Law enforcement officers monitored the activities from a distance and observed people traveling between the two buildings during the controlled buys. During the third controlled buy, Leaks was heard telling the CRI that the cocaine was still being “cooked,” that he could get powder cocaine if the CRI wanted to cook it, and that the cocaine was hidden in a second building. Following the third controlled buy, the CRI turned over 3.78 grams of powder cocaine to the investigating detective.

Based on information gathered during the three controlled buys, a search warrant was obtained and the two buildings were searched on October 19, 2007. In the basement of the gray building, a police dog indicated the presence of narcotics under a lawnmower, and officers found a black bag containing a scale and 9.2 grams of cocaine. Officers found Thomas in an apartment in the white building, along with small plastic bags, a

large amount of United States currency, a small amount of marijuana, and a cellular telephone plugged into the wall. One of the officers assisting in the execution of the search warrant recognized Thomas as the same person he had observed walking between the buildings during the October 8 controlled buy. Thomas was arrested toward the end of the search.

The investigating detective testified later at trial that the cellular telephone found in the white building included Leaks's cellular telephone number in its contacts list. In addition, the number assigned to the cellular telephone was the same number dialed by Leaks from the CRI's cellular telephone during one of the controlled buys.

Thomas was charged with multiple first- and second-degree controlled-substance offenses for sale and possession, in violation of Minn. Stat. §§ 152.021, subd. 1(1), 152.022, subds. 1(1), 2(1) (2006). At a contested omnibus hearing, Thomas's trial counsel argued that the search warrant was invalid and that all charges against Thomas must be dismissed for lack of probable cause; these arguments also touched on the legality of Thomas's arrest. In an order filed on March 17, 2008, the district court denied the motions to suppress the evidence and to dismiss the charges. The district court held that the search warrant was supported by probable cause and concluded that the facts established probable cause as to the charges against Thomas.

Following a jury trial, Thomas was convicted of all counts, including the lesser-included offense of third-degree sale, in violation of Minn. Stat. § 152.023, subd. 1(1) (2006). On appeal, we affirmed the convictions, rejecting Thomas's claims that the district court erred by admitting evidence of his prior bad acts under Minn. R. Evid.

404(b) and that the evidence was insufficient to corroborate the accomplice testimony. *State v. Thomas*, No. A08-1833, 2009 WL 3735496 (Minn. App. Nov. 10, 2009), *review denied* (Minn. Jan. 19, 2010). We also concluded that the evidence was sufficient to establish that Thomas possessed the cocaine found in the adjacent gray building. *Id.*

In June and July 2011, Thomas filed a pro se petition and amended petition for postconviction relief, claiming that he was arrested without probable cause, that all evidence discovered subsequent to his arrest must be suppressed, and that his trial and appellate counsel were ineffective for failing to argue in district court or on direct appeal that he was arrested without probable cause. The district court denied Thomas's petition for postconviction relief, concluding that the interests-of-justice exception pursuant to *State v. Knaffla*, 309 Minn. 246, 243 N.W.2d 737 (1976), does not apply and that Thomas cannot establish ineffective assistance by either trial or appellate counsel because the evidence introduced at trial was not obtained as a result of Thomas's arrest. This appeal followed.

## D E C I S I O N

When a direct appeal has 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*, 309 Minn. at 252, 243 N.W.2d at 741; *see also* Minn. Stat. § 590.04, subd. 3 (2010) (stating that postconviction petition may be summarily denied when it raises issues that have been previously decided in the same case by an appellate court). The two exceptions to the *Knaffla* rule are (1) when a novel legal issue

is presented and (2) when the interests of justice require review. *Powers v. State*, 731 N.W.2d 499, 502 (Minn. 2007).

Thomas claims that his trial and appellate attorneys were ineffective because they failed to challenge the constitutionality of his arrest incident to the execution of the search warrant. Thomas asserts that, because his arrest was without probable cause, the evidence seized as a result of that arrest should have been suppressed. This evidence includes the statements made by Leaks during a subsequent interview with the police and evidence involving the ownership of the cellular telephone found in the white building. Thomas maintains that this evidence is “inculpatory linchpin evidence” that was obtained after his unlawful arrest and seizure.

Although the constitutionality of Thomas’s arrest was not specifically raised during his direct appeal, the issue was considered and examined during the omnibus hearing by trial counsel, who focused on challenging the search warrant instead. On direct appeal, the focus of the challenge was whether the evidence was sufficient to prove beyond a reasonable doubt that Thomas was in possession of the cocaine found in the adjacent gray building. *See Thomas*, 2009 WL 3735496, at \*7-8. Because issues involving the constitutionality of Thomas’s arrest depend on evidence that he possessed during his direct appeal and because those issues are similar, albeit not identical, to issues raised by Thomas in his direct appeal, the district court correctly concluded that those claims are barred by *Knaffla*. *See Ives v. State*, 655 N.W.2d 633, 635-36 (Minn. 2003) (concluding that claims which are similar, although not identical, to those raised on direct appeal may be barred by *Knaffla*).

To prevail on claims of ineffective assistance of trial and appellate counsel, an appellant must prove that “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.” *Fields v. State*, 733 N.W.2d 465, 468 (Minn. 2007) (quotations omitted). When a claim of ineffective assistance of appellate counsel rests on appellate counsel’s decision to forgo a claim of ineffective assistance of trial counsel, the party must first show that trial counsel was ineffective. *Id.*

We will not review matters of trial strategy, including which witnesses to call and what defenses to raise at trial, as long as the trial strategy was reasonable. *Ives*, 655 N.W.2d at 636. Here, trial counsel may have questioned the constitutionality of Thomas’s arrest. But trial counsel chose to focus the defense strategy on the more meritorious issue addressing the validity of the search warrant—a strategy, which if successful, also would have rendered the arrest invalid. This type of a trial tactic “lies within the proper discretion of trial counsel.” *Case v. State*, 364 N.W.2d 797, 800 (Minn. 1985) (“[C]ounsel has no duty to include claims which would detract from other more meritorious issues.”).

Finally, Thomas’s arguments that his arrest was not supported by probable cause and that key evidence should have been suppressed as the product of that illegal arrest are without merit. “The test of probable cause to arrest is whether the objective facts are such that under the circumstances, a person of ordinary care and prudence would entertain an honest and strong suspicion that a crime has been committed.” *In re Welfare*

of *G.(NMN)M., a/k/a W.M.*, 560 N.W.2d 687, 695 (Minn. 1997). To determine whether probable cause existed to make an arrest, we look to the “information that police took into consideration when making the arrest, not what was uncovered thereafter.” *State v. Walker*, 584 N.W.2d 763, 769 (Minn. 1998).

A substantial body of evidence linked Thomas to the three controlled buys: Thomas was discovered in one of two apartments in the white building, where Leaks purchased cocaine from his supplier on the three occasions monitored by the police; Thomas was identified by at least one of the officers executing the search warrant as the same man observed during one of the controlled buys traveling between the two buildings and disappearing into the gray building where the cocaine was found; and items consistent with drug trafficking, including small plastic bags and a large amount of United States currency, were found in the apartment in the white building. Thomas’s arrest was supported by probable cause.

Because Thomas’s claims are either barred by *Knaffla* or are without merit, we affirm the district court’s denial of his petition for postconviction relief.

**Affirmed.**