

STATE OF MINNESOTA

IN SUPREME COURT

A22-1483

Hennepin County

Moore, III, J.

James Andre Woodard,

Appellant,

vs.

State of Minnesota,

Respondent.

Filed: August 23, 2023
Office of Appellate Courts

James Andre Woodard, Rush City, Minnesota, pro se.

Keith Ellison, Attorney General, Saint Paul, Minnesota; and

Mary F. Moriarty, Hennepin County Attorney, Anna R. Light, Assistant County Attorney, Minneapolis, Minnesota, for respondent.

S Y L L A B U S

The district court did not abuse its discretion by summarily denying appellant's petition for postconviction relief because, even if the facts alleged in the petition were proven by a preponderance of the evidence, appellant is conclusively entitled to no relief.

Affirmed.

Considered and decided by the court without oral argument.

OPINION

MOORE, III, Justice.

In this case, we are asked to determine whether the district court erred when it summarily denied appellant James Andrew Woodard's request for postconviction relief. In 2018, Woodard was convicted of first-degree premeditated murder for the killing of Divittin Hoskins. We affirmed Woodard's conviction on direct appeal. *State v. Woodard*, 942 N.W.2d 137, 145 (Minn. 2020). In April 2022, Woodard filed a petition in Hennepin County District Court seeking postconviction relief and an evidentiary hearing, arguing that in his direct appeal, he was deprived of his Sixth Amendment right to effective assistance of appellate counsel. The district court denied Woodard's petition without a hearing. Because we conclude that Woodard is conclusively entitled to no relief even if the facts alleged in the petition were proven by a preponderance of the evidence at an evidentiary hearing, we affirm.

FACTS

The facts underlying Woodard's conviction are not at issue in this appeal.¹ On July 28, 2017, Divittin Hoskins was fatally shot while socializing with friends and family in the parking lot by his sister's townhome in North Minneapolis. Hoskins's children and niece witnessed the shooting, and the police went to the townhome of Hoskins's sister to

¹ A more complete description of the facts underlying Woodard's conviction and sentence can be found in our opinion from Woodard's direct appeal. *See Woodard*, 942 N.W.2d at 140–41.

interview the children. There, police obtained a description of the shooter from Hoskins's niece and two of his children.

The day after the shooting, Hoskins's sister began seeking information from the community about the shooting and heard that Woodard may have been involved. Hoskins's sister looked up Woodard's profile on Facebook and found a picture and video of him, which she allowed the child witnesses to view. Two of them identified Woodard as the man who committed the murder. Hoskins's sister subsequently reached out to one of the investigators in the case, who asked Hoskins's sister to bring the children to forensic interviews.

Investigators also located surveillance footage of the parking lot where the murder took place, which shows the assailant hiding along the side of a detached garage next to the parking lot. The recording reveals a man, later identified as E.R., socializing in the parking lot before walking over to talk to the shooter for a moment, proceeding through the parking lot, stopping at the far end of the parking lot to look around, and going back to the side of the garage. As he walked back to the side of the garage, the shooter withdrew behind the garage out of view of the camera. E.R. also temporarily disappeared from the view of the camera behind the garage before returning to the party. The shooter then reappeared from the back of the garage, pulled out a gun, ran up to where Hoskins was standing next to four children, and fired a single shot into the back of Hoskins's head at close range before turning and fleeing.

During an interview on July 30, 2017, E.R. eventually identified Woodard as the shooter after police showed him a series of photographs of individuals police believed were

at the scene. Based on the identifications of E.R. and the children, police arrested Woodard on August 1, 2017. He was later charged with first-degree premeditated murder in violation of Minnesota Statutes section 609.185, subdivision (a)(1) (2022).

The jury found Woodard guilty of first-degree premeditated murder, and the district court sentenced Woodard to life in prison without the possibility of release. Woodard filed a direct appeal, arguing that the district court erred when it denied his motion to present an alternative-perpetrator defense and in instructing the jury on the order in which to consider the charges against him. We affirmed Woodard's conviction. *Woodard*, 942 N.W.2d at 145.

On April 26, 2022, Woodard filed a petition for postconviction relief alleging ineffective assistance of appellate counsel and requesting an evidentiary hearing. Specifically, Woodard alleged appellate counsel's performance fell below an objective standard of reasonableness when appellate counsel failed to raise two claims of alleged prosecutorial misconduct and two claims of erroneous evidentiary rulings made during his trial. The unpursued claims of prosecutorial misconduct alleged that the prosecutor "elicited inadmissible hearsay evidence" while E.R. was on the stand and "failed to disclose pretrial interview summaries" of the child witnesses. The unraised abuse-of-discretion claims asserted that the court impermissibly allowed the State to question one of the investigators about a briefing he received from another officer at the crime scene and permitted the jury to hear inadmissible testimony of the child witnesses.

Citing *Arredondo v. State*, 754 N.W.2d 566, 571 (Minn. 2008), the district court applied the standard that an appellate counsel's performance is not objectively

unreasonable for not pursuing a claim counsel could legitimately conclude would fail. Applying this rule of law to the facts alleged in Woodard’s petition for postconviction relief, the court concluded that appellate counsel had good reason not to raise the prosecutorial misconduct claims because there was no misconduct and that, even if there had been, there was no prejudice to Woodard. Similarly, the district court reasoned that appellate counsel was well within the bounds of objective reasonability in deciding not to argue that the trial court abused its discretion by allowing the State to question one of the investigators about his scene briefing. And the district court came to the same conclusion regarding appellate counsel’s decision not to challenge the admission of the child testimony. This appeal follows.

ANALYSIS

A person convicted of a crime is entitled to pursue a petition for postconviction relief if the conviction violated the person’s constitutional or statutory rights. *See* Minn. Stat. § 590.01, subd. 1(1) (2022). The availability of and procedure for postconviction relief is governed by Minnesota Statutes sections 590.01 to .11 (2022). Section 590.04, subdivision 1, requires a court to set a 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.”

We “review the summary denial of a postconviction petition for an abuse of discretion.” *Martin v. State*, 969 N.W.2d 361, 363 (Minn. 2022). “A district court abuses its discretion when ‘it has exercised its discretion in an arbitrary or capricious manner,

based its ruling on an erroneous view of the law, or made clearly erroneous factual findings.’ ” *Id.* (quoting *Pearson v. State*, 891 N.W.2d 590, 596 (Minn. 2017)).

Woodard argues the district court abused its discretion when it summarily denied his petition for postconviction relief without holding an evidentiary hearing. We disagree. Although doubts about whether to conduct an evidentiary hearing are resolved in favor of the petitioner, “a postconviction evidentiary hearing is not required when the petitioner alleges facts that, if true, are legally insufficient to grant the requested relief.” *Rhodes v. State*, 875 N.W.2d 779, 786 (Minn. 2016). In his petition for postconviction relief, Woodard alleges that appellate counsel failed to raise two instances of alleged prosecutorial misconduct and two instances in which he asserts the district court abused its discretion. Based on these alleged failures, Woodard claims his Sixth Amendment right to effective assistance of appellate counsel was violated and he is therefore entitled to a new trial. Because Woodard’s alleged facts, if taken to be true, present legally insufficient grounds for a claim of ineffective assistance of appellate counsel for failure to raise these four claims on direct appeal, the district court did not err in denying Woodard relief without an evidentiary hearing.

To succeed on a claim of ineffective assistance of appellate counsel, a petitioner must “allege facts that, if proven by a fair preponderance of the evidence, would satisfy the two prongs of the test announced in *Strickland v. Washington*.” *Zumberge v. State*, 937 N.W.2d 406, 413 (Minn. 2019) (citing 466 U.S. 668 (1984)). Under the *Strickland* test, Woodard must show first that his “counsel’s representation fell below an objective standard of reasonableness” and second that “there is a reasonable probability that, but for counsel’s

unprofessional errors, the result of the proceeding would have been different.” 466 U.S. at 688, 694. When determining whether an attorney’s performance fell below an objective standard of reasonableness, courts do not second-guess the decision of appellate counsel not to raise a claim that “appellate counsel could have legitimately concluded would not prevail.” *Reed v. State*, 793 N.W.2d 725, 736 (Minn. 2010).

For the reasons that follow, we conclude that even if Woodard proved his alleged facts by a preponderance of the evidence, none of his ineffective assistance claims would have succeeded because appellate counsel could have legitimately concluded that the four disputed issues would not prevail on appeal. Accordingly, it was not an abuse of discretion for the district court to summarily deny Woodard’s postconviction petition.

The first claim of prosecutorial misconduct that Woodard claims his appellate counsel was ineffective for not raising involved an allegation that the prosecutor attempted to elicit inadmissible hearsay testimony of a prior shooting during the State’s direct examination of E.R. “The prosecutor is an officer of the court charged with the affirmative obligation to achieve justice and fair adjudication, not merely convictions.” *State v. Fields*, 730 N.W.2d 777, 782 (Minn. 2007) (citation omitted). “[A]ttempting to elicit . . . clearly inadmissible evidence may constitute misconduct.” *Id.* (citation omitted). Because Woodard’s trial counsel objected to this line of questioning (which was sustained by the district court), to prevail in raising this claim on direct appeal, Woodard’s appellate counsel would have had to show there was misconduct that likely played a substantial part in

influencing the jury to convict. *See State v. Wren*, 738 N.W.2d 378, 390 & n.8 (Minn. 2007).²

The trial record shows that the prosecutor sought testimony about a prior shooting to establish Woodard's motive for shooting Divittin Hoskins. This, however, does not support a claim that the prosecutor was trying to elicit "clearly inadmissible evidence." *Fields*, 730 N.W.2d at 782. Although evidence about motive does not prove any necessary element of a first-degree-murder charge, it can add credibility to the state's case, and this evidence is often admissible. *See State v. Bolstad*, 686 N.W.2d 531, 541 (Minn. 2004). Nor is every attempt to elicit testimony about a purported prior event necessarily offered for proof of the matter asserted when elicited for motive purposes. *See Arredondo*, 754 N.W.2d at 574 (defining hearsay as "an out-of-court statement offered as evidence to prove the truth of the matter asserted" (quoting *State v. Manthey*, 711 N.W.2d 498, 504 (Minn. 2006)); *see also* Minn. R. Evid. 801(c)). Given these circumstances, the district court did not abuse its discretion in summarily denying Woodard's postconviction petition, because Woodard's appellate counsel could have legitimately determined that this

² When defense counsel objects to instances of alleged prosecutorial misconduct at trial, our court "use[s] a two-tiered harmless-error test under which the standard of review varies based on the seriousness of the misconduct." *State v. Whitson*, 876 N.W.2d 297, 304 (Minn. 2016). "In cases involving less serious misconduct, the misconduct will not be characterized as prejudicial unless it is likely that the misconduct played a substantial part in influencing the jury to convict." *Steward*, 645 N.W.2d at 121. In cases of serious misconduct, "[w]e will review any objected-to prosecutorial misconduct to determine whether the misconduct is harmless beyond a reasonable doubt." *State v. Dobbins*, 725 N.W.2d 492, 506 (Minn. 2006) (citation omitted) (internal quotation marks omitted). Because we conclude that any misconduct here would be nonserious, the former standard applies.

prosecutorial misconduct claim would not prevail on appeal, and thus Woodard is conclusively entitled to no relief on his ineffective assistance of appellate counsel claim.

The second claim of prosecutorial misconduct that Woodard asserts his appellate counsel was ineffective for not raising involved an allegation that the prosecutor failed to disclose pretrial interview summaries of three child witnesses. According to Woodard, his trial counsel requested the summaries before trial, but the prosecutor did not provide them until after his trial had already begun, and the testimony of one witness “caught the defense by surprise” and prejudiced his case. Woodard has not identified any objection at trial based on this allegation, so appellate counsel would have been required to satisfy the modified plain-error test to prevail on this claim on direct appeal. *See State v. Matthews*, 779 N.W.2d 543, 551 (Minn. 2010) (explaining that, for unobjected-to misconduct, the court applies a modified plain-error test under which “the defendant has the burden to demonstrate that the misconduct constitutes (1) error, (2) that was plain” before the burden “shifts to the State to demonstrate that the error did not affect the defendant’s substantial rights”).

The trial record shows that before trial, Woodard’s trial counsel was already aware of the substance of the child witnesses’ testimony—in fact, the district court had held an evidentiary hearing on the issue. And when asked, the State readily obliged the request of Woodard’s trial counsel and provided the summaries, after which the issue was never raised again. As the district court correctly pointed out in its order denying the petition for postconviction relief, “[Woodard]’s counsel wanted basic discovery and he got it,” without any indication that the State had violated any law in the timing of the disclosure. We

therefore conclude that the district court did not abuse its discretion in summarily denying the postconviction petition because appellate counsel could have legitimately determined that the prosecutorial misconduct claim would not prevail on appeal, and therefore Woodard is conclusively entitled to no postconviction relief on his ineffective assistance of appellate counsel claim.

The third claim of ineffective assistance of appellate counsel alleged by Woodard is that his appellate counsel should have argued that the district court abused its discretion when it allowed one of the investigators to testify about inadmissible evidence of a prior shooting. We have explained that “[e]videntiary errors . . . warrant a new trial only when the error substantially influences the jury’s decision.” *State v. Valtierra*, 718 N.W.2d 425, 435 (Minn. 2006) (citation omitted) (internal quotation marks omitted). And “[a] district court’s evidentiary rulings will not be reversed absent a clear abuse of discretion.” *State v. Robertson*, 884 N.W.2d 864, 872 (Minn. 2016). As mentioned above, the trial record shows that the evidence of the prior shooting was elicited as evidence of a possible motive for Woodard to shoot Divittin Hoskins, not as direct evidence of Woodard’s guilt; this type of evidence is generally admissible, even though it is not an element of first-degree murder, because it helps the jury when dealing with circumstantial evidence. *See Bolstad*, 686 N.W.2d at 541; *State v. Webb*, 440 N.W.2d 426, 431 (Minn. 1989). Woodard is thus conclusively entitled to no postconviction relief on his ineffective assistance of appellate counsel claim because appellate counsel could have legitimately determined that the claim that the district court abused its discretion when it allowed one of the investigators to testify about the prior shooting would not prevail on appeal.

The fourth claim of ineffective assistance of appellate counsel raised by Woodard is that his attorney should have argued that the district court abused its discretion when it denied Woodard's motion to preclude the child witnesses from testifying at trial because "[e]nhanced video of the homicide shows their attention was elsewhere," their testimony was not credible because their "description of [the] shooter changes," and their observations were only "fleeting or limited" and "may have required corroboration." In *State v. Mosely*, however, the appellant similarly argued that identification testimony should have been excluded because it lacked reliability. 853 N.W.2d 789, 798 (Minn. 2014). We rejected that argument because we have "repeatedly concluded that the reliability of identification testimony goes to the *weight* to be afforded the testimony by the trier of fact, not to its *admissibility*." *Id.* Likewise, Woodard's appellate counsel could have reasonably concluded that this argument would fail on direct appeal because the district court did not abuse its discretion by allowing testimony that was likely admissible. Therefore, we conclude that Woodard is conclusively entitled to no relief on his postconviction ineffective assistance of counsel claim because appellate counsel could have legitimately determined that the claim would not prevail on appeal.

For the reasons stated above, we conclude that even under the facts as alleged by Woodard, he is conclusively entitled to no relief on his ineffective assistance of appellate counsel claim because appellate counsel could have legitimately concluded the four claims would not prevail on appeal. Consequently, we hold that the district court did not abuse its discretion in summarily denying Woodard's petition for postconviction relief without an evidentiary hearing.

CONCLUSION

For the foregoing reasons, we affirm the decision of the district court.

Affirmed.