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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1336**

Eric James Hawkins, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed June 18, 2012
Affirmed
Johnson, Chief Judge**

Sherburne County District Court
File No. 71-CR-07-3388

Eric James Hawkins, Faribault, Minnesota (*pro se* appellant)

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

Kathleen A. Heaney, Sherburne County Attorney, Tim Sime, Assistant County Attorney,
Elk River, Minnesota (for respondent)

Considered and decided by Johnson, Chief Judge; Bjorkman, Judge; and Huspeni,
Judge.*

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

UNPUBLISHED OPINION

JOHNSON, Chief Judge

In 2009, Eric James Hawkins was convicted of first- and second-degree criminal sexual conduct. This court affirmed his convictions on direct appeal. In 2011, he petitioned the district court for postconviction relief, unsuccessfully. On appeal from the denial of postconviction relief, Hawkins argues that he is entitled to a new trial for four independent reasons. We conclude that Hawkins's claims are either procedurally barred or without merit. Therefore, we affirm.

FACTS

In November 2007, the state charged Hawkins with one count of first-degree criminal sexual conduct and one count of second-degree criminal sexual conduct for two incidents of sexual contact with A.H., a 14-year-old girl whom he coached in a youth soccer league.

In January 2009, a Sherburne County jury found Hawkins guilty on both counts. The district court sentenced him to 144 months of imprisonment. We affirmed the convictions on direct appeal. *State v. Hawkins*, No. A09-1706, 2010 WL 3632200 (Minn. App. Sept. 21, 2010), *review denied* (Minn. Dec. 22, 2010).

In April 2011, Hawkins, acting *pro se*, petitioned the district court for postconviction relief. In June 2011, the district court denied the petition without conducting an evidentiary hearing. Hawkins appeals.

DECISION

Hawkins argues that the district court erred by denying his postconviction petition. He contends that he is entitled to a new trial for four independent reasons: (1) the prosecutor withheld the case file of D.H., a juvenile with whom A.H. had had sexual contact; (2) newly discovered evidence shows that A.H. lied about the location of one of Hawkins's sexual assaults; (3) the prosecutor committed misconduct by failing to correct false trial testimony; and (4) he received ineffective assistance from his trial counsel.

A district court may deny a petition for postconviction relief without an evidentiary hearing if “the files and records of the proceedings conclusively show that the petitioner is entitled to no relief.” Minn. Stat. § 590.04, subd. 1 (2010); *see also Gustafson v. State*, 754 N.W.2d 343, 348 (Minn. 2008). A district court also may summarily deny a postconviction petition if it raises issues previously decided by this court or the supreme court. Minn. Stat. § 590.04, subd. 3. As a general rule, we apply an abuse-of-discretion standard of review to a postconviction court's denial of relief. *State v. Miller*, 754 N.W.2d 686, 707 (Minn. 2008). But we review questions of law on a *de novo* basis, and we review questions of fact to determine whether the postconviction court's findings are supported by sufficient evidence. *Sanchez-Diaz v. State*, 758 N.W.2d 843, 846 (Minn. 2008).

I.

Hawkins first argues that he is entitled to a new trial on the ground that the prosecutor withheld certain evidence from him by failing to include it in the state's pretrial disclosures.

The procedural history relevant to this claim is well known to both the district court and this court. After the jury's verdicts, the state disclosed to Hawkins and his trial counsel materials associated with the juvenile court file of D.H., who previously had sexually assaulted A.H. Hawkins moved for a new trial based on the state's failure to disclose those materials before trial. The state responded that it did not find the juvenile court file due to a misspelling of D.H.'s name. The district court denied the motion. Hawkins renewed his argument for a new trial in his direct appeal. This court concluded that the state's failure to disclose the evidence, "though troubling," did not arise from bad faith or intentional concealment and, thus, was not reversible error. *Hawkins*, 2010 WL 3632200, at *7. Because this was Hawkins's only argument on direct appeal, we affirmed his convictions. *Id.* at *7-8.

In a postconviction action, "all matters" raised in a direct appeal and "all claims known but not raised, will not be considered upon a subsequent petition for postconviction relief." *State v. Knaffla*, 309 Minn. 246, 252, 243 N.W.2d 737, 741 (1976). The postconviction court concluded that Hawkins's postconviction claim concerning the state's failure to produce the juvenile file was barred by the *Knaffla* doctrine. If the relevant facts are not in dispute, we apply a *de novo* standard of review to a postconviction court's application of *Knaffla*. See *Sanchez-Diaz*, 758 N.W.2d at 846.

Hawkins's argument plainly is the same argument that he made on direct appeal. He has refined the argument slightly; he contends, contrary to our opinion in his direct appeal, that the state concealed D.H.'s juvenile court file in bad faith because, for certain technical reasons, a search of D.H.'s name on the state's computer system would have

revealed D.H.'s file despite the misspelling of his name. Nonetheless, the argument for a new trial is, in essence, the same one that this court rejected on Hawkins's direct appeal. A postconviction petitioner cannot evade the *Knaffla* bar by presenting a slightly different version of the same argument. See *White v. State*, 711 N.W.2d 106, 109 (Minn. 2006).

In his appellate brief, Hawkins does not challenge the postconviction court's conclusion that his argument is barred by *Knaffla*. Hawkins also does not attempt to offer an excuse for his failure to make a more complete presentation of his argument on direct appeal, which potentially might qualify for an exception to the *Knaffla* bar. Thus, we conclude that the postconviction court did not err by concluding that Hawkins's first claim is barred by *Knaffla*.

II.

Hawkins also argues that he is entitled to a new trial on the ground that newly discovered evidence shows that A.H. lied about the location of a sexual assault. At trial, A.H. testified that, on one occasion when Hawkins drove her home after a soccer match at the Plymouth Dome, he first drove into an adjacent alley, where he sexually assaulted her. On appeal, Hawkins argues that this testimony must be false because it would have been impossible for him to drive into the alley. He relies on ground-based and aerial photographs of the Plymouth Dome, which purport to show that the alley is inaccessible to vehicular traffic. Hawkins contends that this evidence is newly discovered evidence.

A postconviction claim based on newly discovered evidence may be heard, notwithstanding the *Knaffla* bar, "if the evidence was not available at the time of the petitioner's direct appeal." *Gustafson*, 754 N.W.2d at 349 (quotation and alterations

omitted). To prevail on such a postconviction claim so as to warrant a new trial, a petitioner must satisfy four requirements:

In order for postconviction relief to be granted on the basis of newly-discovered evidence, a petitioner must establish that (1) the evidence was unknown to him and his counsel at the time of trial; (2) the failure to discover that evidence before trial was not due to a lack of diligence; (3) the evidence is material (i.e., not impeaching, cumulative, or doubtful); and (4) the evidence would probably produce a more favorable result on retrial.

Whittaker v. State, 753 N.W.2d 668, 671 (Minn. 2008).

In this case, the postconviction court determined that Hawkins failed to establish the first and third requirements. That ruling is supported by the record. With respect to the first requirement, Hawkins knew before trial that A.H. had claimed that he assaulted her in an alley near the Plymouth Dome. Consequently, Hawkins could have investigated the geographical features of the Plymouth Dome to test that aspect of her claims and, if appropriate, could have presented contrary evidence at trial. In his brief, Hawkins does not challenge the postconviction court's determination that his newly discovered evidence was known or knowable before trial.

With respect to the third requirement, the postconviction court determined that the alleged newly discovered evidence would not be material because it is cumulative impeachment evidence. On appeal, Hawkins does not challenge this determination. In fact, his arguments tend to corroborate the postconviction court's reasoning because he contends that his newly discovered evidence "goes directly toward A.H.'s credibility."

Thus, we conclude that the postconviction court did not err by determining that Hawkins is not entitled to a new trial due to newly discovered evidence.

III.

Hawkins also argues that he is entitled to a new trial on the ground that the prosecutor committed misconduct by failing to correct false trial testimony. This argument is based entirely on events occurring at trial. It is apparent that Hawkins could have raised this claim on direct appeal, but he did not do so. Thus, we conclude that the argument is barred by *Knaffla*.

IV.

Hawkins last argues that he is entitled to a new trial on the ground that he received ineffective assistance from his trial counsel. Specifically, Hawkins argues that his trial counsel was ineffective because he (1) failed to request a jury instruction that would have required the jury to determine the exact date of each offense and (2) failed to correct alleged false testimony through cross-examination of witnesses.

A claim of ineffective assistance of trial counsel is barred by *Knaffla* if the claim is based solely on the trial record and was known or should have been known at the time of a direct appeal. *Evans v. State*, 788 N.W.2d 38, 44 (Minn. 2010). An ineffective-assistance claim is not barred by *Knaffla* if additional evidence is required to determine whether the allegation has merit. *Barnes v. State*, 768 N.W.2d 359, 364 (Minn. 2009). In this case, the postconviction court determined that Hawkins’s “dissatisfaction with trial counsel was known or knowable at the time of his direct appeal.” This determination is supported by the record. The two specific grounds of Hawkins’s ineffectiveness claim

are based solely on the trial record. Thus, we conclude that this claim is barred by *Knaffla*. See *Evans*, 788 N.W.2d at 44.

In any event, even if we were to address the substance of Hawkins's ineffectiveness claim, we would conclude that it fails on the merits. To prevail on a claim of ineffective assistance of counsel, a postconviction petitioner "must demonstrate that (1) counsel's performance fell below an objective standard of reasonableness, and (2) a reasonable probability exists that, but for his counsel's unprofessional error, the outcome would have been different." *Leake v. State*, 767 N.W.2d 5, 10 (Minn. 2009) (citing *Strickland v. Washington*, 466 U.S. 668, 687-88, 104 S. Ct. 2052, 2064-65 (1984)). An appellate court need not analyze both prongs of the *Strickland* test if an analysis of one prong is determinative. *Id.* (citing *State v. Rhodes*, 657 N.W.2d 823, 842 (Minn. 2003)).

With respect to the first part of Hawkins's ineffectiveness claim, the exact date of Hawkins's criminal conduct is not an element of either offense that must be proved beyond a reasonable doubt. The statutes setting forth the offenses do not require the state to prove the date on which criminal sexual conduct occurred. See Minn. Stat. §§ 609.342, subd. 1(b), .343, subd. 1(b) (2004). Likewise, the supreme court has held that the date of an offense of criminal sexual conduct ordinarily is not a material element of the offense. *State v. Becker*, 351 N.W.2d 923, 927 (Minn. 1984). The precise date of the offense may be relevant if it is necessary to prove that the offense occurred after the effective date of a statute, but that situation is not present here. See *State v. Murray*, 495 N.W.2d 412, 412-13 (Minn. 1993); *State v. Robinson*, 480 N.W.2d 644, 646 (Minn.

1992). Accordingly, Hawkins was not entitled to an instruction requiring the jury to determine the exact date of the offense.

With respect to the second part of Hawkins's ineffectiveness claim, Hawkins's argument falters on the general principle that trial counsel's strategic decisions about how to prepare for trial, which evidence to present to the jury, and how to cross-examine witnesses generally are not subject to second-guessing. *See Sanchez-Diaz*, 758 N.W.2d at 848; *State v. Voorhees*, 596 N.W.2d 241, 255 (Minn. 1999); *Cooper v. State*, 565 N.W.2d 27, 33 (Minn. App. 1997), *review denied* (Minn. Aug. 5, 1997). Consistent with that general principle, a review of the trial transcripts demonstrates that counsel conducted competent cross-examinations of the state's witnesses. In short, Hawkins has failed to show that his trial counsel's performance was deficient or that he suffered prejudice as a result of his trial counsel's decisions.

In sum, the postconviction court did not err by denying Hawkins's petition without an evidentiary hearing.

Affirmed.