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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0259**

Thomas Dean DeWolf, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed February 3, 2009
Affirmed
Johnson, Judge**

Goodhue County District Court
File No. K2-04-1783

Stephen V. Grigsby, Grigsby Law Office, 30260 118th Street Northwest, Princeton, MN 55371 (for appellant)

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Stephen N. Betcher, Goodhue County Attorney, Erin L. Kuester, Assistant County Attorney, 454 West Sixth Street, Red Wing, MN 55066 (for respondent)

Considered and decided by Schellhas, Presiding Judge; Johnson, Judge; and Crippen, Judge.*

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

UNPUBLISHED OPINION

JOHNSON, Judge

Thomas Dean DeWolf appeals from the district court's denial of his petition for postconviction relief. He argues that he received ineffective assistance from his trial counsel. We conclude that DeWolf's general allegations, which are not supported by any evidence, are insufficient to prove his claim and, therefore, affirm.

FACTS

In 2005, a Goodhue County jury found DeWolf guilty of first-, second-, third-, and fourth-degree criminal sexual conduct based on evidence that he entered the home of a female acquaintance and forcibly raped her. In July 2005, the district court sentenced DeWolf to 144 months on the first-degree offense. DeWolf appealed his conviction and his sentence, and this court affirmed. *State v. DeWolf*, No. A05-2102, 2007 WL 3498, at *9 (Minn. App. Jan. 2, 2007), *review denied* (Minn. Mar. 20, 2007).

In August 2007, DeWolf filed a pro se petition for postconviction relief. In October 2007, DeWolf filed an amended pro se petition for postconviction relief. The amended petition alleged, in a general way, eight claims for postconviction relief. As his eighth claim, DeWolf alleged that his trial counsel rendered ineffective assistance in ten ways:

- (1) Counsel's failure to conduct a proper investigation of [the] victim's medical history to prove the mental anguish claim could have resulted from a life-threatening medical trauma;
- (2) Counsel's failure to retain rebuttal expert to disprove post traumatic stress claim;

- (3) Counsel's failure to conduct proper investigation of previous criminal sexual conduct accusations made by victim;
- (4) Counsel's failure to locate and call significant witnesses;
- (5) Counsel's failure to demand a suppression hearing on voluntariness of statements;
- (6) Counsel's coercion of Petitioner to withdraw motion to dismiss;
- (7) Counsel's failure to properly cross examin[e] of *Spreigl* witness on facts of her claim;
- (8) Counsel's misstatement of law to Petitioner regarding *Spreigl* evidence;
- (9) Counsel improperly conducting a pretrial hearing without Petitioner's appearance or consent; and
- (10) Counsel's failure to investigate and present mitigating circumstances for downward departure at sentencing.

The district court scheduled a hearing on the petition, but neither party appeared or submitted any evidence. In a ten-page order and memorandum, the district court denied DeWolf's petition in its entirety. DeWolf appeals, challenging the district court's ruling only with respect to his claim of ineffective assistance of trial counsel.

D E C I S I O N

DeWolf argues that the district court abused its discretion by denying his postconviction claim of ineffective assistance of trial counsel. A postconviction court's denial of relief is reviewed for an abuse of discretion. *State v. Miller*, 754 N.W.2d 686, 707 (Minn. 2008).

A postconviction petition filed pursuant to chapter 590 of the Minnesota Statutes “shall contain . . . a statement of the facts and the grounds upon which the petition is based and the relief desired,” and “[a]ll grounds for relief must be stated in the petition or any amendment thereof unless they could not reasonably have been set forth therein.” Minn. Stat. § 590.02, subd. 1 (2004). “[T]he burden of proof of the facts alleged in the petition shall be upon the petitioner to establish the facts by a fair preponderance of the evidence.” Minn. Stat. § 590.04, subd. 3 (2004). The district court, in its discretion, “may receive evidence in the form of affidavit, deposition, or oral testimony.” *Id.* To satisfy the burden of proof, a petitioner “must do more than offer conclusory, argumentative assertions, without factual support.” *State v. Turnage*, 729 N.W.2d 593, 599 (Minn. 2007). As the supreme court has explained:

[P]ostconviction procedures under Minn. St[at]. 590.01 . . . do not comprehend that a petitioner may have a full evidentiary hearing on the basis of bald assertions of denial of constitutional rights. A petitioner may not subject the judicial process to an exploratory investigation in the hope that some fortuitous reason may be discovered for expunging a conviction from the record.

Morrissey v. State, 286 Minn. 14, 16, 174 N.W.2d 131, 133-34 (1970).

To prevail on a claim of ineffective assistance of counsel, a petitioner must prove, 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 error, the result of the trial would have been different.” *Pippitt v. State*, 737 N.W.2d 221, 229-30 (Minn. 2007) (alterations omitted) (quotations omitted). A petitioner “asserting a claim of ineffective assistance of counsel bears the burden of proof on that claim,” *State v. Jackson*, 726 N.W.2d

454, 463 (Minn. 2007), and “there is a strong presumption that counsel’s performance fell within a wide range of reasonable assistance,” *Bruestle v. State*, 719 N.W.2d 698, 705 (Minn. 2006) (quotation omitted).

In addressing DeWolf’s claim of ineffective assistance, the district court noted that DeWolf made “several claims” but that his petition consisted solely of “conclusory statements [that] clearly do not suffice to establish that his counsel was ineffective.” We agree with the district court that the general nature of DeWolf’s allegations and the lack of any supporting evidence compel the conclusion that he has failed to carry his burden of proof. With respect to each part of the claim, DeWolf fails to explain how “his counsel’s representation fell below an objective standard of reasonableness” and also fails to explain how “but for counsel’s error, the result of the trial would have been different.” *Pippitt*, 737 N.W.2d at 229-30 (alterations omitted) (quotations omitted).

DeWolf’s allegations are similar in their level of generality to the allegations in *McKenzie v. State*, 754 N.W.2d 366 (Minn. 2008), where the petitioner made the conclusory allegation that his trial counsel “had a conflict of interest, failed to conduct discovery, and met with him only twice before trial.” *Id.* at 370. The supreme court found these allegations to be “simple argumentative assertions, for which he offers no factual support and no argument as to why they constitute ineffective assistance of counsel.” *Id.* Likewise, in *Gail v. State*, 732 N.W.2d 243 (Minn. 2007), the petitioner alleged that his trial counsel was ineffective because counsel had not challenged an indictment and had failed to “investigate, speak with witnesses, and prepare his case.” *Id.* at 248-49. The supreme court rejected the claim on the ground that Gail’s claims amounted to “argumentative assertions

without factual support.” *Id.* at 249. And in *Boitnott v. State*, 631 N.W.2d 362 (Minn. 2001), the petitioner alleged that trial counsel was ineffective for failure to “interview witnesses, conduct discovery, or visit the scene of the shooting.” *Id.* at 371. The supreme court stated that postconviction petitions must allege “more than argumentative assertions without factual support” and rejected the petitioner’s allegations as “insufficient to establish ineffective assistance of trial counsel.” *Id.* (quotation omitted). DeWolf’s allegations do nothing more than offer “conclusory, argumentative assertions, without factual support.” *Turnage*, 729 N.W.2d at 599.

The district court buttressed its denial of DeWolf’s postconviction petition by finding that trial counsel did not deliver ineffective assistance of counsel. The district court stated that trial counsel’s performance “exceeded all standards of reasonableness and that he did a more than adequate job of representing Petitioner.” The district court further noted that “the evidence against the Petitioner was substantial and any supposed defects or errors by counsel as to trial strategy or otherwise did little if anything to affect the outcome of the trial.” These findings provide an alternative basis for the district court’s denial of the postconviction petition.

The state also argues in its responsive brief that DeWolf’s claim is procedurally barred. Because we have resolved the appeal in the state’s favor for the reasons stated above, we need not address the state’s *Knaffla* argument.

In sum, the district court did not abuse its discretion by denying DeWolf’s postconviction petition.

Affirmed.