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STATE OF MINNESOTA
IN COURT OF APPEALS
A11-114

Dahir Ahmed Abdirahman, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed November 14, 2011
Affirmed
Bjorkman, Judge

Hennepin County District Court
File No. 27-CR-08-30587

David W. Merchant, Chief Appellate Public Defender, Rochelle R. Winn, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Michael O. Freeman, Hennepin County Attorney, David C. Brown, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Bjorkman, Presiding Judge; Schellhas, Judge; and Crippen, Judge.[*]

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

U N P U B L I S H E D O P I N I O N

BJORKMAN, Judge

Appellant challenges the denial of his postconviction request for a new trial, arguing that his trial counsel was ineffective and that he did not knowingly and voluntarily waive his right to testify. We affirm.

FACTS

In 2008, appellant Dahir Ahmed Abdirahman was prosecuted for aggravated robbery in the first degree and simple robbery. Appellant did not testify at trial, and the district court found him guilty of both offenses. He did not appeal, but in 2010, he petitioned for postconviction relief, arguing that he received ineffective assistance of counsel because his attorney prevented him from testifying at trial.

The district court conducted an evidentiary hearing, at which appellant conceded that his attorney told him that he had the right to testify but he chose not to exercise that right. Appellant's attorney testified that she had no independent recollection of her discussions with appellant, but that she normally discusses the right to testify with her clients at the close of the state's case. The district court found that appellant's attorney advised him of his right to testify and recommended that he not do so, and that appellant decided not to testify. The district court concluded that appellant was not entitled to postconviction relief based on ineffective assistance of counsel. This appeal follows.

D E C I S I O N

To establish ineffective assistance of counsel, a party must demonstrate "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." *Reed v. State*, 793 N.W.2d 725, 733 (Minn. 2010) (quotation omitted). Since ineffective-assistance claims involve mixed questions of law and fact, we review the district court's decision de novo. *Opsahl v. State*, 677 N.W.2d 414, 420 (Minn. 2004). But we defer to the credibility determinations of the district court. *Doppler v. State*, 771 N.W.2d 867, 875 (Minn. 2009).

We note at the outset that appellant frames the issue as whether he knowingly and voluntarily waived his right to testify. To the extent that this issue relates to his trial attorney's performance, it falls within the context of the ineffective-assistance claim on which his postconviction petition was based. But he also asserts, for the first time on appeal, that he did not understand his rights, in part due to a language barrier.[1] We generally do not consider issues raised for the first time on appeal, *State v. Glad*, 381 N.W.2d 101, 101 (Minn. App. 1986), *review denied* (Minn. Mar. 21, 1986), and we decline to do so here.

Appellant contends that his attorney was ineffective because she gave him no opportunity to testify. A defense attorney's denial of the client's right to testify constitutes ineffective assistance of counsel and entitles the defendant to a new trial. *State v. Walen*, 563 N.W.2d 742, 750 (Minn. 1997). But appellant admitted that he discussed his right to testify with his attorney and agreed with her recommendation against testifying:

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[1] We note that both parties agree that appellant advised the district court during a pretrial hearing that he did not need an interpreter.

> Q: Okay. Now, at the close of this, the evidentiary part of this trial, were you, did you discuss with your attorney your right to testify?
> A: Yes.
> Q: And what did she tell you about your right to testify?
> A: She told me—I don't know what she said exactly, but she said like it's not good for you to go up there.
> . . . .
> Q: All right. And why did you want to testify? Very briefly.
> A: Because I wanted to tell my side of the story.
> Q: Okay. And did you tell her that?
> A: Huh? She told me—I talked to her but she says, she told me something about it *and I was like okay*.
> Q: She told you something about what?
> A: She told me something about like, if you tell, like if you go up there they might confuse you, tell you some other things and you've never been up there, and I tell her I never been on the witness stand and she was like they might trick you so—
> [The court asks appellant to bring the microphone closer to him.]
> A: They might kind of confuse you, a lot of words. *And I was like okay.*

(Emphasis added.) Nothing in the record indicates that appellant subsequently told his attorney that he changed his mind and wanted to testify. The district court, after evaluating the testimony presented in the postconviction hearing and observing the attorney's performance at trial, found that the attorney "discuss[ed] with [appellant] the fact that he had a right to testify" and "[appellant] knew he had the right to testify and he consciously determined not to." Based on the district court's credibility findings and our independent review of the record, we conclude that counsel was not ineffective and appellant is not entitled to postconviction relief on that basis.

Affirmed.