STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1062

Terrance Alfonso Dudley, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed March 8, 2011
Affirmed
Klaphake, Judge

Ramsey County District Court
File No. 62-K1-06-4894

Terrance Alfonso Dudley, Stillwater, Minnesota (pro se appellant)

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

John Choi, Ramsey County Attorney, Mitchell L. Rothman, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Considered and decided by Klaphake, Presiding Judge; Minge, Judge; and Larkin, Judge.

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

KLAPHAKE, Judge

In this postconviction appeal, Terrance Dudley challenges his conviction of attempted first-degree criminal sexual conduct, Minn. Stat. §§ 609.342, subd. 1(e)(i), .17 (2006), and attempted third-degree criminal sexual conduct, Minn. Stat. §§ 609.344,

subd. 1(b), .17 (2006), stemming from his contact with a 14-year-old girl, S.T., on December 5, 2006. Appellant claims that the district court abused its discretion by allowing deputies to remain in the courtroom during S.T.'s testimony, that the district court abused its discretion by denying his motion to suppress his first custodial statement, and that he received ineffective assistance of trial counsel. We affirm because appellant is procedurally barred from raising the first two claims and because the ineffective assistance of counsel claims are without merit.

D E C I S I O N

Deputies in Courtroom and Suppression of Custodial Statement

"On appeal, we generally review the denial of a postconviction petition for abuse of discretion. We review the postconviction court's legal determinations supporting the denial de novo." *State v. Sanders*, 791 N.W.2d 126, 128 (Minn. 2010) (citations omitted). Under the often-repeated rule of *State v. Knaffla*, once a petitioner has had a direct appeal of a conviction, "all matters raised therein, and all claims known but not raised, will not be considered upon a subsequent petition for postconviction relief." 309 Minn. 246, 252, 243 N.W.2d 737, 741 (1976); *see Dobbins v. State*, 788 N.W.2d 719, 726 (Minn. 2010) (recently reiterating *Knaffla* rule); Minn. Stat. § 590.01, subd. 4 (2010) (codifying *Knaffla* rule). Two exceptions to the *Knaffla* rule apply: when "(1) a claim is so novel that the legal basis was not available on direct appeal, or (2) the interests of justice require review." *Perry v. State*, 731 N.W.2d 143, 146 (Minn. 2007).

Appellant claims that the district court abused its discretion by (1) admitting his first custodial statement that was made in violation of his *Miranda* rights and

(2) permitting too many deputies to remain in the courtroom during S.T.'s testimony. These were claims that could have been raised in appellant's direct appeal. As such, they are barred. *See Ashby v. State*, 752 N.W.2d 76, 78-79 (Minn. 2008) ("The *Knaffla* rule also bars all claims that should have been known at the time of direct appeal but were not raised in the direct appeal"). Further, appellant has not offered facts to demonstrate a basis for either of the "narrow" exceptions to the *Knaffla* rule. *See id.* at 79. The claims involve conduct that occurred either before or during trial; neither claim is so novel that it was unavailable at the time of trial; and appellant did not identify any unfairness in the record that would require review of these claims. *See id.* Therefore, these claims are procedurally barred under *Knaffla*.

Ineffective Assistance of Counsel

Appellant also argues that he was deprived of his right to a fair trial because of ineffective assistance of his trial counsel.[1] A defendant claiming ineffective assistance of counsel must show by a preponderance of the evidence that "his counsel's performance was so deficient that it fell below an objective standard of reasonableness" and that "his counsel's error so prejudiced the defendant at trial that a different outcome would have resulted but for the error." *Dukes v. State*, 621 N.W.2d 246, 252 (Minn. 2001)

[1] Summarized, appellant's ineffective assistance of counsel claims are that his attorneys did not assist him with his jail mistreatment claims, met him just once before trial, did not contact two possible witnesses or call one available witness to testify, did not challenge prospective jurors for cause or allow him to participate in jury selection, did not object to some of the state's pretrial motions, did not challenge the integrity of the recording of his first police interview, did not protect him from prejudicial conduct by the prosecution when S.T. refused to enter the courtroom, did not properly cross-examine S.T. or other state witnesses, and did not assist him at sentencing.

(quotations omitted); *see Bruestle v. State*, 719 N.W.2d 698, 704 (Minn. 2006). There is a strong presumption that an attorney acted competently, and matters of trial strategy, "including which witnesses to call, what defenses to raise at trial, and specifically how to proceed at trial," do not support an ineffective assistance of counsel claim, unless the trial strategy was not reasonable. *Ives v. State*, 655 N.W.2d 633, 636 (Minn. 2003); *see Leake v. State*, 737 N.W.2d 531, 536 (Minn. 2007) (stating that a claim of ineffective assistance of counsel cannot be based on a matter of trial strategy). When additional fact finding is needed, a postconviction petition is an appropriate method for raising an ineffective assistance of counsel claim, but when the merits of the claim can be determined from the district court record, the *Knaffla* rule applies. *Erickson v. State*, 725 N.W.2d 532, 535-36 (Minn. 2007) (quoting with approval language stating that "[t]he issue is whether any information beyond the briefs and trial court record is needed to resolve defendant's ineffective assistance of trial counsel claim . . . [i]f not, his ineffective assistance of trial counsel claim was properly barred under *Knaffla* by the postconviction court").

In his direct appeal, appellant sought a new trial on the basis that the district court failed to appoint substitute counsel. In making that argument, appellant made many of the same allegations with regard to the performance of his trial counsel that he makes in this postconviction appeal. This court addressed the import of appellant's allegations during his direct appeal and rejected them as a basis for reversal of his conviction. *See State v. Dudley*, No. A07-1843, 2009 WL 112845 at *3-4 (Minn. App. Jan. 20, 2009), *review denied* (Minn. Mar. 31, 2009). In addition, these claims are not novel "because they were available to [appellant] during his direct appeal." *Erickson*, 725 N.W.2d at

536. Also, appellant has not demonstrated that the *Knaffla* fairness exception applies to his ineffective assistance of counsel claims and offers no reason for failing to bring these claims in his direct appeal. *See Azure v. State*, 700 N.W.2d 443, 449 (Minn. 2005) (affirming district court's refusal to apply *Knaffla* fairness exception when petitioner "did not offer any reason in his postconviction petition for not raising the ineffective assistance of trial counsel claims on direct appeal").

Finally, we individually address two of appellant's ineffective assistance of counsel claims. First, appellant claims that his attorneys did not assist him in responding to any jail problems. Appellant did not offer factual or legal support for this claim and failed to demonstrate how his attorneys were responsible for handling those problems. We also note that the record shows that the attorneys attempted to assist him by seeking his transfer to another facility. Appellant has therefore not shown that his attorneys' conduct in this matter was deficient.

Second, although appellant alleges that his attorneys met him only once outside of the courtroom, the district court evaluated appellant's attorneys' conduct and concluded, "I have seen nothing to indicate that you have not been given anything but the finest legal representation." *Dudley*, 2009 WL 112845 at *4. Appellant offers no evidence showing he was prejudiced by the lack of contact with his attorneys.

For all of these reasons, the postconviction court did not abuse its discretion in denying appellant's postconviction petition.

Affirmed.