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STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1765

Jaime Tirado Hernandez, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed June 13, 2011
Affirmed
Stoneburner, Judge

Hennepin County District Court
File No. 27CR04036221

Gary R. Wolf, Minneapolis, Minnesota (for appellant)

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

Michael O. Freeman, Hennepin County Attorney, Linda M. Freyer, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Stoneburner, Presiding Judge; Ross, Judge; and Stauber, Judge.

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

STONEBURNER, Judge

Appellant challenges the dismissal of his petition for postconviction relief based on his claim of ineffective assistance of counsel. Appellant asserts that the district court erred by summarily dismissing the petition as barred by the *Knaffla* rule and argues that

he is entitled to an evidentiary hearing to develop the record regarding his claim. Because appellant's claim of ineffective assistance of counsel could have been determined on direct appeal, we affirm.

FACTS

After a jury trial in 2006, appellant Jaime Hernandez was convicted of second-degree murder committed for the benefit of a gang and second-degree assault committed for the benefit of a gang for a shooting that occurred in April 2003.[1] Hernandez appealed, arguing that the district court abused its discretion in evidentiary rulings, the prosecutor committed prejudicial misconduct, and the district court improperly sentenced him. This court affirmed Hernandez's convictions and sentence. *State v. Hernandez*, No. A07-0714 (Minn. App. July 15, 2008), *review denied* (Minn. Oct. 1, 2008).

In 2010, Hernandez petitioned the district court for postconviction relief, alleging that he was denied a fair trial because trial counsel was ineffective. The petition asserts that trial counsel was apprised of an alibi defense but did not investigate, give notice of, or pursue an alibi defense. Hernandez asserts that he was not informed and was not aware that trial counsel was ineffective for failing to pursue the alibi defense at the time of his direct appeal because he "was not aware of the technicalities of raising an alibi defense."

Hernandez asserts that the following facts support his alibi defense: (1) at the time of the shooting, he was employed under an assumed name at a now defunct meatpacking

[1] A detailed statement of the underlying facts can be found in this court's opinion on Hernandez's direct appeal at *State v. Hernandez*, A07-0714, 2008 WL 2727078 at *1 (Minn. App. July 15, 2008), *review denied* (Minn. Oct. 1, 2008).

company in Minneapolis; (2) he worked the second shift on the day of the shooting and arrived on time for that shift; (3) in order to arrive at work on time he had to leave his home for work by 12:30 p.m., making it impossible for him to have been at the murder scene; (4) when he was eventually arrested he was still employed at the meatpacking plant and the police seized his employee-identification card in the assumed name "Juan Ramirez" under which he worked.[2] Hernandez requested an evidentiary hearing, asserting that he could support the facts underlying his claims by (1) calling his two brothers, who would testify that he was employed under the name of Juan Ramirez and was at work on the date of the murder and (2) introducing employer records, such as his time cards.

The district court concluded that Hernandez could have raised his ineffective-assistance-of-counsel claim on his direct appeal and that his claim could have been addressed on direct appeal based on the record without additional factfinding. The district court denied Hernandez's petition as *Knaffla*-barred without an evidentiary hearing. This appeal follows, in which Hernandez asserts that his claim is not barred by *Knaffla*, and he is entitled to an evidentiary hearing.

D E C I S I O N

A person convicted of a crime may file a petition seeking postconviction relief. Minn. Stat. § 590.01, subd. 1 (2010). A district court is required to conduct an evidentiary hearing on a postconviction petition unless the petition and the files and

[2] The record demonstrates that the first 911 call concerning the shooting was made at approximately 11:53 a.m.

records of the proceeding conclusively show that the petitioner is not entitled to relief. Minn. Stat. § 590.04, subd. 1 (2010).

In *State v. Knaffla*, the Minnesota Supreme Court held that once a direct appeal has been taken, "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). *Knaffla* also bars claims that should have been known at the time of direct appeal. *King v. State*, 649 N.W.2d 149, 156 (Minn. 2002).

A postconviction court may hear and consider a claim that was previously known but not raised if (1) the claim presents a novel legal issue or (2) fairness requires review of the claim and the petitioner did not deliberately and inexcusably fail to raise the issue on direct appeal. *Greer v. State*, 673 N.W.2d 151, 155 (Minn. 2004). Under the second exception to the *Knaffla* rule, an ineffective-assistance-of-counsel claim, even if "known but not raised at the time of direct appeal[,] may be brought in a postconviction petition if the claim cannot be evaluated by an appellate court on direct appeal based on the briefs and trial court transcript, without any additional factfinding." *Carney v. State*, 692 N.W.2d 888, 891 (Minn. 2005) (quotation omitted).

Summary denial of postconviction relief based on the *Knaffla* procedural bar is reviewed for an abuse of discretion. *Powers v. State*, 695 N.W.2d 371, 374 (Minn. 2005). "An evidentiary hearing is not required unless there are material facts in dispute which must be resolved to determine the postconviction claim on its merits." *Id.*

No witnesses were called to testify on Hernandez's behalf at trial and Hernandez waived his right to testify on his own behalf, therefore Hernandez knew or should have

known at the time of the direct appeal that trial counsel did not pursue an alibi defense.[3] "A claim of ineffective assistance of trial counsel that can be decided on the basis of the trial court record must be brought on direct appeal and is procedurally barred when raised in a postconviction petition." *Torres v. State*, 688 N.W.2d 569, 572 (Minn. 2004).

Hernandez argues that the claim could not have been decided on direct appeal because the facts underlying the claim involve attorney-client communications "entirely outside the record." Hernandez relies on *Carney*, in which the supreme court noted that it had "previously held that an ineffective assistance of trial counsel claim was not *Knaffla*-barred, despite an appellant's failure to raise it on direct appeal, when it involved attorney-client communications and required additional factfinding." 692 N.W.2d at 891 (referring to *Robinson v. State*, 567 N.W.2d 491, 494–95 (Minn. 1997), in which the supreme court concluded that an evidentiary hearing was required to determine whether a trial attorney failed to communicate two plea offers, and *Dukes v. State*, 621 N.W.2d 246, 255 (Minn. 2001), in which the supreme court concluded that an evidentiary hearing was required to establish whether the appellant had consented to his attorney's decision to concede appellant's guilt).

Carney involved a claim of ineffective assistance of counsel based on the assertion that Carney's trial counsel failed to investigate his medical history in more detail and failed to present expert medical testimony regarding his mental state. 692 N.W.2d at 892.

[3] Hernandez asserts that the fact that he is not fluent in English prevented him from knowing about his claim, but the record reflects that he had the assistance of two interpreters at trial. Hernandez waived his right to testify on the record, acknowledging that it was his decision not to testify and confirming that he had been present for the entire trial and heard all of the testimony.

The supreme court concluded that Carney's claims focused on trial-strategy issues rather than attorney-client communications; the trial-strategy issues involved could have been decided on the trial record and briefs, and the claims should have been brought "prior to—or at the time of—his direct appeal." *Id.*

Here, as in *Carney*, Hernandez's ineffective-assistance-of-counsel claim does not genuinely concern attorney-client communications because, even if we assume that Hernandez informed counsel about the evidence that he now claims is available to support his alibi defense, counsel's decisions about the extent of investigation and what defenses to raise at trial are matters of trial strategy, and therefore the ineffective-assistance-of-counsel claim could have been decided in Hernandez's direct appeal based on the trial record and briefs.[4] We conclude that the district court did not abuse its discretion by holding that the claim is *Knaffla*-barred.

Affirmed.

[4] Generally trial strategy matters are not reviewed for competence. *See, e.g.*, *Opsahl v. State*, 677 N.W.2d 414, 420–21 (Minn. 2004) (upholding postconviction court's summary denial of a petition involving trial counsel's decision to focus on one defense over another because the decision was one of trial strategy, stating that "[t]he extent of counsel's investigation is considered a part of trial strategy" and that trial strategy is generally not reviewed); *State v. Doppler*, 590 N.W.2d 627, 635 (Minn. 1999) (concluding that trial counsel's decision "not to focus" on defense of intoxication provided no basis for postconviction relief because it was a matter of trial strategy).