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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-2191**

Anthony Steven Hill, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed July 30, 2012
Affirmed
Stoneburner, Judge**

Hennepin County District Court
File No. 27-CR-08-47521

Anthony Steven Hill, Faribault, Minnesota (pro se appellant)

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

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

Considered and decided by Hudson, Presiding Judge; Peterson, Judge; and
Stoneburner, Judge.

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

STONEBURNER, Judge

Appellant was convicted of first-degree assault for the use of deadly force against
a peace officer. In this pro se appeal from the denial of his petition for postconviction
relief, appellant asserts that he is entitled to relief because (1) the trial court failed to hold

a hearing to determine probable cause, an issue raised but not addressed on direct appeal, (2) he received ineffective assistance of trial and appellate counsel, and (3) the postconviction court denied him an evidentiary hearing. Because several of appellant's claims are procedurally barred and appellant has failed to establish that he is entitled to postconviction relief on any of his claims, we affirm.

FACTS

In 2009, appellant Anthony Steven Hill was convicted of first-degree assault for the use of deadly force against a peace officer. He was sentenced to 120 months in prison. On direct appeal, Hill, represented by counsel, argued, in relevant part, that the district court erred by denying Hill's motion to suppress all evidence seized following the warrantless entry by Edina police into his residence and that there was insufficient evidence to convict Hill of first-degree assault. In a supplemental pro se appellate brief, Hill asserted, in relevant part, that the district court erred by failing to hold a probable-cause hearing. This court affirmed the conviction in an unpublished opinion that does not address issues raised by Hill in his supplemental pro se brief. *State v. Hill*, 2010 WL 5290066 at *7 (Minn. App. Dec. 28, 2010), *review denied* (Minn. Mar. 15, 2011).

Hill then petitioned for postconviction relief, arguing that (1) he was denied constitutionally mandated due process and equal protection rights, (2) he was denied the right to an impartial jury¹ and effective assistance of counsel under the Sixth Amendment, and (3) the prosecutor committed prejudicial prosecutorial misconduct. The

¹ In this appeal, Hill does not challenge any decision related to his right to an impartial jury.

postconviction court denied his petition without a hearing, determining that the majority of Hill's claims are *Knaffla*-barred because they were addressed and rejected on direct appeal by this court. The postconviction court acknowledged that Hill's ineffective-assistance-of-appellate-counsel claim was not procedurally barred by *Knaffla* but concluded that Hill did not show that his appellate counsel's performance was not objectively reasonable and that the result of the proceeding would have been different but for counsel's alleged errors. This appeal follows.

DECISION

"We review a postconviction court's denial of relief for abuse of discretion." *Quick v. State*, 692 N.W.2d 438, 439 (Minn. 2005). A decision will not be reversed unless the court "exercised its discretion in an arbitrary or capricious manner, based its ruling on an erroneous view of the law, or made clearly erroneous factual findings." *Reed v. State*, 793 N.W.2d 725, 729 (Minn. 2010). This court reviews issues of law de novo. *Butala v. State*, 664 N.W.2d 333, 338 (Minn. 2003).

In *State v. Knaffla*, the supreme court held that, after a direct appeal, "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). Under the *Knaffla* rule, when a petition for postconviction relief follows a direct appeal of a conviction, all claims that were raised, or could have been raised, in the direct appeal are procedurally barred and may not be considered. Minn. Stat. § 590.01 subd. 1(2) (2010); *Buckingham v. State*, 799 N.W.2d 229, 231 (Minn. 2011) (citing *Knaffla*, 309 Minn. at 252, 243 N.W.2d at 741). The *Knaffla* bar also applies to all claims

that should have been known on direct appeal. *King v. State*, 649 N.W.2d 149, 156 (Minn. 2002). There are two exceptions to the *Knaffla* bar: “(1) the defendant presents a novel legal issue or (2) the interests of justice require the court to consider the claim.” *Buckingham*, 799 N.W.2d at 231.

Hill argues that the postconviction court erred by determining that his claim for relief based on the district court’s failure to hold a probable-cause hearing is barred by *Knaffla* because, although that issue was raised on direct appeal, the issue was not addressed on appeal. It appears that all claims made in Hill’s pro se supplemental appellate brief, including this claim, may have been considered waived due to inadequate briefing, and therefore would be *Knaffla*-barred. But because the opinion failed to mention Hill’s pro se supplemental brief, we will, in the interests of justice, address Hill’s lack-of-probable-cause-hearing claim.

Hill asserts that his due-process rights were denied because the district court violated Minn. R. Crim. P. 11.02(a) (requiring the district court to hold an omnibus hearing on the issue of probable cause if the defendant demands it). Hill’s argument appears to rest on a colloquy that occurred among counsel and the district court at the suppression hearing, regarding what issues were to be determined at the suppression hearing. Hill’s counsel wanted to make an offer of proof that he characterized as establishing “circumstances that are in the totality in support of the probable cause not only of the entry but of the assault in the first degree charge.” The prosecutor, noting that a probable-cause determination should not be made until the admissible evidence is determined, stated that once the suppression motion was determined, “then we can

determine probable cause and . . . the trial court judge . . . should be making that determination.” The judge who was presiding at the suppression hearing (who was not the trial judge) agreed, and counsel for Hill did not object. Hill has seized on this colloquy about procedure to assert that he was entitled to a probable-cause hearing subsequent to the ruling on his suppression motion. But the record reflects that probable cause was not challenged after the suppression motion was denied.² Because a probable-cause hearing was not requested, there is no merit to Hill’s assertion that he was entitled to and denied a hearing on probable cause.

Hill’s pro se supplemental appellate brief also contained an ineffective-assistance-of-trial-counsel claim that was not specifically addressed in the opinion affirming his conviction. In this postconviction appeal, Hill presents a laundry list of acts that he claims constituted ineffective assistance of trial counsel, many of which relate to trial strategy. Hill’s claims are not supported with facts, authority or any argument about how the outcome of the trial was affected by counsel’s challenged conduct and are waived. *See State v. Wembley*, 712 N.W.2d 783, 795 (Minn. App. 2006) (stating that “[a]n assignment of error in a brief based on ‘mere assertion’ and not supported by argument or authority is waived”), *aff’d* (Minn. Mar. 8, 2007); *see also State v. Bobo*, 770 N.W.2d 129, 138 (Minn. 2009) (“What evidence to present to the jury . . . lie[s] within the proper discretion of trial counsel and will generally not be reviewed later for competence. . . . [A] defendant must show that his counsel’s errors so prejudiced the defendant at trial that

² As the colloquy demonstrates, Hill’s counsel’s argument on probable cause depended on succeeding to have evidence suppressed. It follows logically that Hill’s trial counsel did not pursue a challenge to probable cause after the motion to suppress was denied.

a different outcome would have resulted but for the error.”); *see also Gates v. State*, 398 N.W.2d 558, 561 (Minn. 1987) (quoting *Strickland v. Washington*, 466 U.S. 668, 694, 104 S. Ct. 2052, 2068 (1984)) (“The defendant must affirmatively prove that his 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. A reasonable probability is a probability sufficient to undermine confidence in the outcome.’”). The postconviction court did not abuse its discretion in determining that Hill’s claim for relief based on ineffective assistance of trial counsel is without merit.³

The only claim Hill raises in this appeal concerning ineffective assistance of appellate counsel is that appellate counsel failed to obtain a transcript of the 911 call and dispatch.⁴ The audio recording of the 911 dispatch call is in the trial record and was played to the jury. Hill made no argument to the postconviction court, and makes no argument in this appeal, that a transcript of the call would have affected his direct appeal. The postconviction court did not abuse its discretion by determining that Hill failed to establish that he is entitled to postconviction relief based on ineffective assistance of appellate counsel.

³ Hill asserts that his trial attorney was disbarred in January 2011, supporting his argument that counsel was ineffective. Hill’s trial attorney was suspended indefinitely in January 2011, but the acts for which he was suspended are unrelated to his representation of Hill. *In re Disciplinary Action Against Coleman*, 793 N.W.2d 296, 299-301 (Minn. 2011).

⁴ Hill raises additional claims of ineffective assistance of counsel in his postconviction petition but has failed to brief any of these claims on appeal. Issues not briefed on appeal are waived. *State v. Butcher*, 563 N.W.2d 776, 780 (Minn. App. 1997), *review denied* (Minn. Aug. 5, 1997).

Hill has also failed to brief his assertion that the postconviction court erred by failing to hold an evidentiary hearing on his postconviction claims. Issues not briefed on appeal are waived. *Butcher*, 563 N.W.2d at 780.

Affirmed.