STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0373

Remona Lysa Brown, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed February 18, 2025
Affirmed
Wheelock, Judge

Nobles County District Court
File No. 53-CR-17-852

Remona Lysa Brown, Shakopee, Minnesota (pro se appellant)

Keith Ellison, Attorney General, Nicholas B. Wanka, Assistant Attorney General, St. Paul, Minnesota; and

Braden Hoefert, Nobles County Attorney, Worthington, Minnesota (for respondent)

Considered and decided by Bjorkman, Presiding Judge; Johnson, Judge; and Wheelock, Judge.

NONPRECEDENTIAL OPINION

WHEELOCK, Judge

In this appeal from the district court's denial of her petition for postconviction relief, appellant contends that her arguments are not *Knaffla*[1] barred, she received ineffective

[1] *State v. Knaffla*, 243 N.W.2d 737 (Minn. 1976).

assistance of appellate counsel, and she should have received an evidentiary hearing on the petition. Because appellant's claims are *Knaffla* barred or are otherwise without merit, we affirm.

FACTS

The details of appellant Remona Lysa Brown's convictions for aiding and abetting theft by false representation are set forth in a previous opinion of this court, *State v. Brown*, No. A21-1221, 2022 WL 3581576, at *1-2 (Minn. App. Aug. 22, 2022), *rev. denied* (Minn. Nov. 23, 2022). We therefore include only the facts that are relevant to this appeal.

Brown managed the Minnesota branch of Caring and Compassionate Healthcare Agency LLC (CCHA). *Brown*, 2022 WL 3581576, at *1. Brown's mother owned CCHA and operated its original branch in Michigan. *Id.* Respondent State of Minnesota charged Brown with 14 counts of aiding and abetting CCHA and her mother in theft. *Id.* at *2. A jury found Brown guilty of all 14 counts, but Brown successfully moved for judgments of acquittal on the seven counts related to the theft of public funds. *Id.* The district court convicted Brown on the seven remaining counts and, determining that the last conviction was for a major economic offense, imposed an aggravated sentence of 93 months' imprisonment. *Id.* We affirmed Brown's convictions on direct appeal. *Id.* at *2-7.

In 2023, Brown petitioned for postconviction relief, arguing that (1) insufficient evidence supports her convictions, (2) she received ineffective assistance of appellate counsel, (3) her incarceration is unconstitutional because her conviction is a manifest miscarriage of justice, and (4) her convictions violate the Venue and Vicinage Clauses of the Sixth Amendment of the United States Constitution and must be reversed.

The district court denied Brown's petition for postconviction relief and request for an evidentiary hearing, determining that her challenges to venue, her incarceration, and the sufficiency of the evidence were *Knaffla* barred and that she failed to demonstrate ineffective assistance of appellate counsel.

Brown appeals.

DECISION

A person convicted of a crime may seek postconviction relief based on a claim that "the conviction . . . violated the person's rights under the Constitution or laws of the United States or of the state." Minn. Stat. § 590.01, subd. 1(1) (2024). Appellate courts "review the denial of a petition for postconviction relief for an abuse of discretion." *Pearson v. State*, 891 N.W.2d 590, 596 (Minn. 2017). In so doing, appellate courts review legal issues de novo but limit the review of factual issues to whether the record is sufficient to sustain the district court's postconviction findings. *Id.* We will not reverse a district court's postconviction decision unless it "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." *Hannon v. State*, 957 N.W.2d 425, 432 (Minn. 2021) (quotation omitted).

On appeal, Brown asserts that the district court abused its discretion by determining that her challenge to venue is *Knaffla* barred and that she failed to demonstrate ineffective assistance of appellate counsel.

I. The district court did not abuse its discretion in determining that Brown's venue challenge is *Knaffla* barred.

A petitioner may not request postconviction relief based on "grounds that could have been raised on direct appeal of the conviction or sentence." Minn. Stat. § 590.01, subd. 1 (2024). "Claims that were raised on direct appeal, or were known or should have been known but were not raised on direct appeal, are procedurally barred," or *Knaffla* barred. *Sontoya v. State*, 829 N.W.2d 602, 604 (Minn. 2013) (citing *Knaffla*, 243 N.W.2d at 741). A claim is not *Knaffla* barred if "(1) the claim is novel; or (2) the interests of fairness and justice warrant relief." *Id.* But a district court may decline to apply these exceptions if the petitioner fails to argue that they apply. *Erickson v. State*, 725 N.W.2d 532, 535 (Minn. 2007).

Brown challenges venue, alleging that the state's evidence proving venue was fabricated and therefore insufficient. But because Brown challenged venue at sentencing, she evidently knew about that issue when she directly appealed her convictions. And because the claim could have been, but was not, raised on direct appeal, it is *Knaffla* barred. *See Sontoya*, 829 N.W.2d at 604. We need not consider whether an exception applies because Brown does not argue that the claim is novel or that the interests of justice warrant relief. *See Erickson*, 725 N.W.2d at 535. The district court did not abuse its discretion in determining that Brown's venue challenge is *Knaffla* barred.[2]

[2] Brown also challenges vicinage and jurisdiction on appeal. *See Smith v. United States*, 599 U.S. 236, 245 (2023) ("The Vicinage Clause differs from the Venue Clause in two ways: it concerns jury composition, not the place where a trial may be held, and it concerns the district where the crime was committed, rather than the State."); *see also State v. Smith*, 421 N.W.2d 315, 318 (Minn. 1988) ("[J]urisdiction is the power to hear and decide

II. Brown failed to demonstrate ineffective assistance of appellate counsel.

Ineffective-assistance-of-appellate-counsel claims are not barred by *Knaffla* because they cannot be raised on direct appeal. *Leake v. State*, 737 N.W.2d 531, 536 (Minn. 2007). Appellate courts analyze ineffective-assistance claims under *Strickland v. Washington*, which requires an appellant to "show 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." 466 U.S. 668, 688, 694 (1984); *see also State v. Rhodes*, 657 N.W.2d 823, 842 (Minn. 2003) (applying *Strickland*). Appellate courts apply "a strong presumption that a counsel's performance falls within the wide range of reasonable professional assistance." *State v. Jones*, 392 N.W.2d 224, 236 (Minn. 1986) (quotation marks omitted). If an appellant cannot meet one prong of the *Strickland* test, we need not address the other. *Rhodes*, 657 N.W.2d at 842.

"When an ineffective assistance of appellate counsel claim is based on appellate counsel's failure to raise an ineffective assistance of trial counsel claim, the [petitioner] must first show that trial counsel was ineffective." *Fields v. State*, 733 N.W.2d 465, 468 (Minn. 2007). In addition, appellate counsel does "not have a duty to include all possible claims on direct appeal, but rather [i]s permitted to argue only the most meritorious

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disputes."). Brown raised neither issue in her petition for postconviction relief, and we decline to address them for the first time on appeal. *Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996) (stating that reviewing courts generally will not decide issues not raised in district court); *see also Powers v. State*, 731 N.W.2d 499, 502 (Minn. 2007) (declining to consider a postconviction argument not raised in district court).

claims." *Schneider v. State*, 725 N.W.2d 516, 523 (Minn. 2007). Appellate courts "will not second-guess appellate counsel's decision not to raise a claim that counsel could have legitimately concluded would not prevail." *Thoresen v. State*, 965 N.W.2d 295, 310 (Minn. 2021) (quotation omitted).

Brown argues that she received ineffective assistance of appellate counsel because her attorney failed to raise a claim of ineffective assistance of trial counsel on direct appeal. According to Brown, trial counsel was ineffective because he did not present an alibi defense; did not raise and preserve issues of venue, jurisdiction, and vicinage; did not fully investigate her case; denied Brown the right to present a complete defense; did not raise *Miranda* and Sixth Amendment right-to-counsel challenges; and failed to object to false testimony.

The district court made an express finding that Brown knowingly accepted the trial counsel appointed to represent her only two weeks before trial commenced, observing that she acknowledged that her new counsel would dictate trial tactics and strategy and was taking over the case shortly before trial. This is supported by the record made in court when Brown's trial counsel was appointed. Moreover, "[t]he extent of trial counsel's investigation" and "the selection of evidence presented to the jury" are part of trial strategy, and we do not question trial strategy on appeal. *Anderson v. State*, 830 N.W.2d 1, 10 (Minn. 2013). Brown failed to demonstrate that trial counsel's performance fell below the range of reasonable professional assistance, and the district court did not err in rejecting her ineffective-assistance-of-appellate-counsel claim. Because Brown's petition failed to demonstrate that she is entitled to relief, the district court acted within its discretion in

denying her petition without an evidentiary hearing. *See Riley v. State*, 819 N.W.2d 162, 167 (Minn. 2012) (stating that, if "the facts considered in the light most favorable to the petition, together with the arguments presented by the parties, conclusively show that the petitioner is not entitled to relief," a district court may deny a postconviction petition without conducting an evidentiary hearing (quotation omitted)).

Affirmed.