

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0519**

Earl Lionell Ward, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed January 11, 2021
Affirmed
Klaphake, Judge***

Ramsey County District Court
File Nos. 62-CR-14-4920, 62-CR-14-3922

Earl Lionell Ward, Faribault, Minnesota (pro se appellant)

Keith Ellison, Attorney General, St. Paul, Minnesota; and

John Choi, Ramsey County Attorney, Jeffrey A. Wald, Assistant County Attorney, St. Paul,
Minnesota (for respondent)

Considered and decided by Smith, Tracy M., Presiding Judge; Bratvold, Judge; and
Klaphake, Judge.

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

NONPRECEDENTIAL OPINION

KLAPHAKE, Judge

Pro se appellant Earl Lionell Ward pleaded guilty to two counts of criminal vehicular operation resulting in great bodily injury. This court stayed his direct appeal so appellant could seek postconviction relief. The postconviction court denied appellant's first petition for relief. On direct appeal, this court upheld appellant's conviction and the denial of postconviction relief. *State v. Ward*, No. A15-0684, 2016 WL 7439082, at *5-7 (Minn. App. Dec. 27, 2016), *review denied* (Minn. Mar. 28, 2017). A federal court then denied appellant's habeas corpus petition because it was procedurally barred. *Ward v. Roy*, No. 17-CV-4542 (WMW/LIB), 2018 WL 3848438, at *1 (D. Minn. Aug. 13, 2018) (adopting a magistrate judge's report and recommendation).

Appellant now challenges his second postconviction relief denial and seeks to vacate his 2014 convictions and sentences on the ground that his appellate counsel was constitutionally ineffective for failing to preserve a federal claim of ineffective assistance of trial counsel. Alternatively, appellant asks this court to reverse and remand for a new evidentiary hearing on the ground that the district court erred by failing to rule on his pro se postconviction relief petition. Because appellant's claims of ineffective assistance of trial counsel were either known at the time of his direct appeal or decided by this court, and because appellant's claim of federal ineffective assistance of trial counsel lacks merit, we affirm.

DECISION

This court will not overturn a postconviction court's decision absent an abuse of discretion. *Pearson v. State*, 891 N.W.2d 590, 596 (Minn. 2017). Once a direct appeal has been filed, "all matters raised therein, and all claims known but not raised, will not be considered upon a subsequent petition for postconviction relief." *State v. Knaffla*, 243 N.W.2d 737, 741 (Minn. 1976).

Appellant argues that his appellate counsel was constitutionally ineffective for failing to preserve a federal claim of ineffective assistance of trial counsel. To prevail on a claim for ineffective assistance of counsel, an appellant must show that (1) his counsel's representation fell below an objective standard of reasonableness, and (2) there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Petersen v. State*, 937 N.W.2d 136, 139-40 (Minn. 2019) (quoting *Strickland v. Washington*, 466 U.S. 668, 688, 694, 104 S. Ct. 2052, 2064, 2068 (1984)); *Zornes v. State*, 880 N.W.2d 363, 370 (Minn. 2016). Appellate counsel does not act unreasonably if he does not raise issues he could have legitimately concluded would not prevail. *Zornes*, 880 N.W.2d at 371; *Jackson v. State*, 817 N.W.2d 717, 724 (Minn. 2012) ("[O]ur court has never held, and we find no authority holding, that appellate counsel is under a duty to raise federal constitutional claims in a state-court appeal simply to preserve those issues for federal habeas review."). When a claim of ineffective assistance of counsel is based on appellate counsel's failure to raise a claim of ineffective assistance of trial counsel, the petitioner must first show that trial counsel was ineffective. *Zornes*, 880 N.W.2d at 371.

Appellant's claim of ineffective assistance of appellate counsel is predicated on his attorney's failure to properly preserve a federal claim of ineffective assistance of trial counsel. Under *Knaffla*, appellant cannot establish trial counsel's conduct meets the *Strickland* test because this court has already reviewed and rejected those claims. *Ward*, 2016 WL 7439082, at *5, *7; *see also Knaffla*, 243 N.W.2d at 741.

Although appellant's claim of ineffective assistance of appellate counsel is not *Knaffla*-barred because appellant could not have raised it in his first postconviction or direct appeal proceedings, it lacks merit. *See Schneider v. State*, 725 N.W.2d 516, 521 (Minn. 2007). The supreme court has rejected the argument that appellate counsel is ineffective by failing to preserve a federal claim. *Jackson*, 817 N.W.2d at 724. Additionally, appellant's novel claim that his trial counsel provided unreasonable advice about the likelihood of receiving an aggravated sentence does not establish that appellate counsel acted unreasonably because counsel could have legitimately concluded the claim would not prevail. *See Zornes*, 880 N.W.2d at 371. Appellant failed to argue or establish that there is a reasonable probability that the outcome of the postconviction, direct appeal, or habeas corpus proceedings would have been different. *See Petersen*, 937 N.W.2d at 139-40. Because appellant cannot show his trial counsel was constitutionally ineffective or that appellate counsel's conduct met the *Strickland* test, we conclude the district court did not err.

Appellant also argues the district court abused its discretion by failing to rule on his pro se postconviction relief petition. Even if the district court failed to explicitly address each of appellant's arguments, this court must assume it implicitly rejected the argument

rather than assuming that the district court erred by failing to consider them. *Palladium Holdings, LLC v. Zuni Mortg. Loan Tr. 2006-OA1*, 775 N.W.2d 168, 177-78 (Minn. App. 2009) (citing *Loth v. Loth*, 35 N.W.2d 542, 546 (Minn. 1949) (stating that an appellate court cannot assume a district court erred)), *review denied* (Minn. Jan. 27, 2010). But because the district court referenced appellant’s November 26, 2018 pro se postconviction filings and stated, “Petitioner has failed to establish either prong of the *Strickland* test for any of the grounds he raises, and therefore, fails to meet his burden that he received constitutionally ineffective assistance from his appellate counsel,” we conclude the district court considered the pro se petitioner’s claims.

Therefore, the district court did not abuse its discretion by denying appellant postconviction relief.

Affirmed.