STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0545

Alexander John Cookson, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed July 1, 2024
Affirmed
Ede, Judge

Clay County District Court
File No. 14-CR-17-4600

Amber S. Johnson, Johnson Criminal Defense, Minneapolis, Minnesota (for appellant)

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

Brian J. Melton, Clay County Attorney, Pamela L. Foss, Chief Assistant County Attorney, Moorhead, Minnesota (for respondent)

Considered and decided by Reyes, Presiding Judge; Larson, Judge; and Ede, Judge.

NONPRECEDENTIAL OPINION

EDE, Judge

Following a third-degree criminal-sexual-conduct conviction, appellant challenges the denial of his petition for postconviction relief. Appellant maintains that he received ineffective assistance of trial counsel in two ways and that the postconviction court abused its discretion by determining that those claims were procedurally barred. Appellant also

contends that the postconviction court abused its discretion by deciding that he did not receive ineffective assistance of appellate counsel. We affirm.

FACTS

This appeal arises from postconviction proceedings after a jury found appellant Alexander John Cookson guilty of third-degree criminal sexual conduct, in violation of Minnesota Statutes section 609.344, subdivision 1(c) (2016), based on Cookson's sexual assault of his then-girlfriend, S.B.[1]

Pretrial Proceedings

Prior to the commencement of trial, the district court held a hearing outside the presence of the jury. The state moved the district court to prohibit Cookson's trial counsel from cross-examining witnesses about drug use, both during and after the incident. The district court ruled that Cookson was allowed to conduct cross-examination and present to the jury about S.B.'s substance use at the time of the offense. But the district court prohibited testimony and presentation to the jury about S.B.'s prior and subsequent drug use.

The state also submitted to the district court Cookson's statement to police with proposed redactions.[2] The state sought to redact parts of Cookson's statement telling police

[1] Respondent State of Minnesota initially charged Cookson with third-degree criminal sexual conduct and false imprisonment, but the state ultimately dismissed the false-imprisonment charge.

[2] During the underlying investigation, after waiving his rights under *Miranda v. Arizona*, 384 U.S. 436 (1966), Cookson agreed to speak with police about what had occurred. In his statement, Cookson told police that they should drug test S.B. because S.B. was using "this

that they should test S.B. because she had been using drugs and was coming down from that use. The district court ordered those redactions of Cookson's statement. Cookson's trial counsel sought clarification that, despite the redactions, Cookson could still testify about S.B.'s contemporaneous drug use if he so chose, asking: "Just to be clear, we're redacting as the state says, if my client gets up and testifies, he's going to testify about this; is that correct?" The district court responded: "Well, yeah. I mean, subject to any other rules of evidence."

Moreover, the state moved to redact portions of Cookson's statement about his past sexual relationship with S.B., arguing that such information was inadmissible under Minnesota Rule of Evidence 412. The district court ruled that the past sexual-relationship evidence was not admissible under rule 412(1)(A) because Cookson's trial counsel had neither given notice of a consent defense nor asserted that consent was a defense to the charged crime. The district court also determined that the evidence was not admissible under any of the grounds provided by rule 412(1)(B).

Trial and Verdict

The matter proceeded to trial. The jury heard testimony from S.B., S.B.'s daughter, the police officer who took Cookson's statement, and a forensic scientist. Cookson did not testify. The evidence showed as follows.

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whole time" and was coming down the past few days. And several times throughout his statement, Cookson spoke about his and S.B.'s past sexual relationship.

Before the assault, Cookson and S.B. were in a dating relationship. In December 2017, S.B. visited Cookson at his automobile repair shop. Cookson entered S.B.'s vehicle and sat in the passenger seat. S.B. noticed that Cookson became upset with her, and she tried to leave multiple times, but Cookson reached over her and shut the door. Despite being upset with S.B., Cookson continuously tried to kiss her, though she rebuffed those advances. Cookson moved to the vehicle's backseat. Once he was seated there, Cookson grabbed S.B. by her jacket and pulled her next to him. After a failed attempt at sexual intercourse, Cookson forced S.B. to perform oral sex on him. S.B. told Cookson "no" and requested that he stop, but she could not get away. S.B. reported the incident to police the next morning.

The jury heard recordings of conversations between Cookson and S.B that occurred after the assault. In those recordings, Cookson told S.B. he was sorry and that, because S.B. had "never turned [him] down," he "didn't think it was because of actually not wanting to." The trial evidence also showed that Cookson had instructed his sister to offer S.B. money or a house to make the situation go away.

Cookson's trial counsel argued in closing that S.B. had lied about the allegations against Cookson. Defense counsel asserted that S.B. did so to protect herself because B.A.—a person with whom she was in a romantic relationship at the time—knocked on the window of the vehicle while Cookson and S.B. were inside engaging in consensual sexual activity. As to the recorded conversations between Cookson and S.B., Cookson's trial counsel maintained that Cookson only apologized to S.B. because they were upset with each other, he wanted them to be together, and he was "desperately" trying to figure out

why things were different, given that the victim had "always" consented to sexual activity with him.

The jury found Cookson guilty of third-degree criminal sexual conduct. The district court sentenced Cookson to 180 months in prison based on a criminal-history score of five.

Direct Appeal and Remand

Cookson filed a direct appeal, arguing (1) that he was entitled to a new trial because the district court erred in answering a jury question without first meeting with the parties and (2) that the district court erred in calculating his criminal-history score because it considered an out-of-state conviction equivalent to a felony in Minnesota. In a nonprecedential opinion, we affirmed Cookson's conviction but reversed and remanded to the district court for resentencing based on a corrected criminal-history score. *State v. Cookson*, No. A19-0629, 2020 WL 3410482, at *5 (Minn. App. June 22, 2020).

On remand, the district court resentenced Cookson to 140 months in prison.

Petition for Postconviction Relief

Cookson timely petitioned for postconviction relief. In his petition, Cookson asserted two ineffective-assistance-of-counsel claims. Cookson contended that he received ineffective assistance of trial counsel because his trial attorney did not argue that S.B.'s past sexual conduct was admissible under rule 412(1)(B). And Cookson maintained that he received ineffective assistance of appellate counsel because his appellate attorney failed to raise an ineffective-assistance-of-trial-counsel claim. The postconviction court held a hearing, during which Cookson's trial counsel, his appellate counsel, and Cookson himself testified.

When asked if she recalled speaking with Cookson about whether he would testify, Cookson's trial counsel stated: "I absolutely remember that conversation. We had a number of them." His trial counsel explained that, during those conversations, she advised Cookson that he had a right to testify. And she said that she discussed with Cookson the reasons why he would want to testify and the reasons why he would not want to testify. Cookson's trial counsel also stated that she would have told Cookson that he could not testify about certain evidence if the district court had ruled that it was inadmissible.

In his postconviction testimony, Cookson said that he wanted to testify at trial but, because his trial counsel advised him that he would be unable to discuss S.B.'s drug use or his past sexual relationship with S.B., he did not see a purpose in taking the witness stand. Cookson stated that he wanted to tell the jury his side of the story about a recorded phone call between him and S.B., about how his DNA could have been on the jacket S.B. was purportedly wearing during the charged incident, and about his opinion on what happened, including the effect of B.A. knocking on the vehicle window while Cookson and S.B. were inside. Cookson acknowledged that it was his decision whether to testify, that his trial counsel explained to him that it was solely his decision, and that he made the decision not to testify. But Cookson also stated that he relied on the advice of his trial counsel when deciding whether to testify.

After the hearing, Cookson's postconviction counsel filed a memorandum in support of Cookson's petition for relief. In the post-hearing memorandum, postconviction counsel asserted that Cookson's trial attorney's representation was deficient because she failed to argue for the admission of evidence favorable to the defense per Cookson's

constitutional rights to due process. Postconviction counsel also argued that, because Cookson's trial attorney wrongly advised him about the parameters of his testimony, "his waiver of his right to testify was not knowing[ly], voluntar[ily], or intelligently given."

The district court filed an order denying Cookson's petition, determining that Cookson's ineffective-assistance-of-trial-counsel claims were *Knaffla*-barred[3] because those claims were available at the time of his direct appeal. The district court also ruled that Cookson failed to meet both prongs of the *Strickland*[4] test for his ineffective-assistance-of-appellate-counsel claims.

This appeal follows.

DECISION

Cookson challenges the district court's denial of his petition for postconviction relief. Cookson maintains first that he received ineffective assistance of trial counsel in two ways and that those claims are not *Knaffla*-barred. Cookson argues second that he received ineffective assistance of appellate counsel.

A person convicted of a crime who claims that a conviction or sentence violated his rights may petition for postconviction relief. Minn. Stat. § 590.01, subd. 1(1) (2022). Appellate courts review a district court's decision to deny a postconviction petition for an abuse of discretion. *Erickson v. State*, 842 N.W.2d 314, 318 (Minn. 2014). A district court abuses its discretion when it has "exercised its discretion in an arbitrary or capricious

[3] *State v. Knaffla*, 243 N.W.2d 737, 741 (Minn. 1976).

[4] *Strickland v. Washington*, 466 U.S. 668, 687 (1984).

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).

As explained below, Cookson's contentions do not persuade us to reverse.

I. The district court did not abuse its discretion in denying Cookson's petition for postconviction relief based on his ineffective-assistance-of-trial-counsel claims.

Cookson asserts that the district court abused its discretion by determining that his ineffective-assistance-of-trial-counsel claims were barred by *Knaffla*. Pointing to the evidence adduced at the postconviction hearing and arguing that "there is a record from which this Court can determine the issues on the merits without the district court's findings of fact and conclusions of law on the issues[,]" Cookson also maintains that his trial counsel's performance was deficient because his lawyer did not present evidence of Cookson and S.B.'s past sexual relationship and misadvised him about how the court's rulings would limit his testimony. Assuming without deciding that Cookson's ineffective-assistance-of-trial-counsel claims are not barred by *Knaffla*[5] and meet the deficient-performance prong of the *Strickland* test, we nevertheless conclude that the district court did not abuse its discretion in denying postconviction relief because Cookson has not satisfied *Strickland*'s prejudice prong.[6]

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[5] "When a claim of ineffective assistance of trial counsel can be determined on the basis of the trial record, the claim must be brought on direct appeal or it is *Knaffla*-barred." *Andersen v. State*, 830 N.W.2d 1, 10 (Minn. 2013). "But such a claim is not *Knaffla*-barred when the claim requires examination of evidence outside the trial record or additional fact-finding by the postconviction court, because the claim is not based solely on the briefs and trial court transcript." *Id*.

[6] We also conclude that Cookson has failed to carry his burden of proving that he did not voluntarily and knowingly waive the right to testify. "When a defendant knows and

A. Past Sexual-Relationship Evidence

Cookson contends that his trial counsel's failure to provide additional argument in favor of introducing past sexual-relationship evidence resulted in prejudice and deprived him of the right to present a complete defense at trial. Cookson relies on his trial counsel's assessment in her postconviction testimony that "there were a number of rulings by the [district] court that would have perhaps changed the outcome of the trial" and her stated belief that "there was . . . information that was allowed and not allowed in the trial that would have affected the outcome." Cookson posits that the district court's ruling on past sexual-relationship evidence "made it virtually impossible for Cookson to relay to the jury his side of the story." The trial record defeats these claims.

The right to effective assistance of counsel is guaranteed to all criminal defendants by the United States and Minnesota Constitutions. U.S. Const. amend. VI; Minn. Const.

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understands his right to testify, a claim that his attorneys' actions denied him the right to testify must fail 'absent some indication in the record that [his] lawyers coerced [him] into not testifying by applying undue pressure, using illegitimate means, or otherwise depriving [him] of [his] free will.'" *Andersen*, 830 N.W.2d at 11 (quoting *State v. Berkovitz*, 705 N.W.2d 399, 407 (Minn. 2005)). "The defendant has the burden of proving that he or she did not voluntarily and knowingly waive the right to testify." *Id.* Here, Cookson has failed to carry that burden because he has not established that his trial counsel coerced him to waive his right to testify by applying undue pressure, using illegitimate means, or depriving him of his free will. *See id.* Indeed, Cookson acknowledged at the postconviction hearing that the decision to testify was his decision, that his trial counsel explained that the decision belonged solely to him, and that he made the decision not to testify. *See Berkovitz*, 705 N.W.2d at 407-08 (holding that the advice of "trial counsel . . . that they were one hundred and five percent certain that [the appellant] would be convicted of premeditated first-degree murder if she testified . . . did not . . . rise to the level of coercion" and the appellant "was not denied the right to testify at her trial," where she "knew and understood that she had the right to testify and that the decision to testify was hers alone" and there was "no indication in the record that her lawyers coerced her into not testifying by applying undue pressure, using illegitimate means, or otherwise depriving her of her free will").

art. I, § 6. To establish that counsel provided ineffective assistance in violation of this constitutional right, a defendant must satisfy the two-pronged test set forth in *Strickland*. 466 U.S. at 687. First, the defendant must prove that counsel's performance "fell below an objective standard of reasonableness." *Id.* at 687-88. Second, the defendant must show that, but for counsel's deficient performance, there is a reasonable probability that the outcome of the proceeding would have been different. *Id.* at 694; *see also Andersen*, 830 N.W.2d at 10. "We may address the prongs in either order, and a claim may be disposed of on one prong without analyzing the other." *Eason v. State*, 950 N.W.2d 258, 268 (Minn. 2020). A district court's analysis of the two *Strickland* requirements is subject to de novo review because claims of ineffective assistance of counsel involve mixed questions of law and fact. *Opsahl v. State*, 677 N.W.2d 414, 420 (Minn. 2004).

Here, even if trial counsel had successfully introduced past sexual-relationship evidence, there is no reasonable probability that the trial's outcome would have changed because the jury heard substantial evidence of Cookson's guilt. This included S.B.'s testimony about the assault, the recordings of conversations between Cookson and S.B., and Cookson's instructions to his sister to offer money or property to S.B. to resolve the situation. We also note that the existence of a relationship between Cookson and S.B. was an undisputed fact at trial, insofar as S.B. testified that she was dating Cookson when the assault occurred.

Under these specific circumstances, we conclude that Cookson has not satisfied the prejudice prong of the *Strickland* test as to his claim that trial counsel was ineffective in failing to present evidence of Cookson and S.B.'s past sexual relationship.

B. Decision to Testify

Cookson further argues that his trial counsel was ineffective because she did not correctly advise him of the district court's rulings about S.B.'s drug use and his and S.B.'s past sexual relationship. We again disagree.

As explained above, even if Cookson had testified,[7] there is no reasonable probability that the trial's outcome would have changed based on the overwhelming evidence of Cookson's guilt. Cookson's postconviction proffer does not convey how his testimony would have led the jury to discredit the state's evidence, which included the recording of him telling S.B. that he did not think she had declined his sexual advances because she did not actually want to be intimate with him and his instruction that his sister offer S.B. money or a house to make the situation go away. And even without Cookson's trial testimony, his counsel was still able to argue the same issues in closing about which Cookson said he would have testified: that S.B. had lied; that she did so because B.A. knocked on the vehicle window while Cookson and S.B. were inside; and that the statements Cookson made to S.B. during a recorded call did not point to guilt. Despite listening to those arguments, the jury still found Cookson guilty.

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[7] Cookson testified at the postconviction hearing that he would have taken the witness stand at trial but for the advice that he alleged his trial counsel provided him about the district court's rulings on S.B.'s drug use and his and S.B.'s past sexual relationship. We note, however, that the purportedly deficient advice Cookson received had nothing to do with Cookson's general ability to offer trial testimony denying the charged crime, disputing S.B.'s account of what had occurred, and explaining the instruction he gave his sister to dissuade S.B. from pursuing the matter further. Cookson's failure to explain how his trial counsel's advice necessarily caused him not to testify about those topics further supports our conclusion that Cookson has not shown the requisite prejudice to establish his ineffective-assistance-of-trial-counsel claim.

In a letter filed before oral argument, Cookson cites *Hauwiller v. State*, 295 N.W.2d 641 (Minn. 1980), as supplemental authority in support of his position. But *Hauwiller* is distinguishable and instead supports our conclusion that Cookson's improper-advice claim fails on *Strickland*'s prejudice prong.

In *Hauwiller*, the petitioner was charged with third-degree murder and "notified the state [at trial] that he intended to claim self-defense[,] . . . [but] never testified." 295 N.W.2d at 643. "[P]etitioner's counsel, out of petitioner's presence, was informed by the trial court that, absent some testimony raising the defense, [the trial court] was not going to submit self-defense and, indeed, planned to submit an instruction informing the jury that as a matter of law petitioner had not acted in self-defense." *Id.* But petitioner's "counsel never told [petitioner] about this[.]" *Id.* Instead, "notwithstanding the fact that petitioner's testimony was crucial to his claim of self-defense, his counsel advised him not to testify but did not advise him that without his testimony the trial court not only would not submit self-defense but would specifically instruct the jury that petitioner had not acted in self-defense." *Id.*

On appeal from the district court's denial of postconviction relief, the petitioner claimed that his trial "counsel [had] failed to adequately inform him of facts relevant to his decision whether or not to testify." *Id.* The supreme court reversed and remanded for a new trial, "[a]pplying the harmless-error-beyond-a-reasonable-doubt test," "conclud[ing] that petitioner might have testified if his counsel had fully informed him of all relevant facts bearing on his decision whether or not to testify[,]" and ruling "that the trial court

prejudicially erred in instructing the jury that as a matter of law petitioner had not acted in self-defense[.]" *Id.* at 643-44.

Unlike *Hauwiller*, trial counsel here did not advise Cookson not to testify, and trial counsel's advice did not deprive Cookson of his defense and lead to prejudicially erroneous jury instructions. Instead, trial counsel asserted the same claims in summation that Cookson proffered during his postconviction testimony. Thus, even accepting all of Cookson's postconviction evidence as true and assuming deficient performance by his trial counsel, Cookson's claim that his trial counsel provided him incorrect advice about the district court's rulings on S.B.'s drug use and his and S.B.'s past sexual relationship fails to satisfy *Strickland*'s prejudice prong.

Because Cookson has not satisfied the prejudice prong of the *Strickland* test, we conclude that the district court did not abuse its discretion in denying Cookson's petition for postconviction relief based on his ineffective-assistance-of-trial-counsel claims. *See Eason*, 950 N.W.2d at 268.

II. The district court did not abuse its discretion in denying Cookson's petition for postconviction relief based on his ineffective-assistance-of-appellate-counsel claims.

Without citing supporting authority, Cookson contends that appellate counsel's failure to challenge the district court's exclusion of past sexual-relationship evidence under Minnesota Rule of Evidence 412 was objectively unreasonable. And Cookson maintains that he was prejudiced by appellate counsel's failure because this court could not review the issue. According to Cookson, had appellate counsel presented this issue, this court would have granted Cookson a new trial. We disagree.

When raising an ineffective-assistance-of-appellate-counsel claim, appellants must also satisfy the two-pronged *Strickland* standard. *See Arredondo v. State*, 754 N.W.2d 566, 571 (Minn. 2008) (applying the *Strickland* test to an ineffective-assistance-of-appellate-counsel claim). First, an appellant must show that counsel's performance fell below an objective standard of reasonableness. *Pierson v. State*, 637 N.W.2d 571, 579 (Minn. 2002). Second, an appellant must show "that absent his appellate counsel's error, the outcome of his direct appeal would have been different." *Id.* (quotation omitted). As with our analysis of Cookson's ineffective-assistance-of-trial-counsel claims, we review the district court's *Strickland* analysis of Cookson's ineffective-assistance-of-appellate-counsel claims de novo. *Opsahl*, 677 N.W.2d at 420.

"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). And if a petitioner "fail[s] to show that his trial counsel was ineffective, his claim that his appellate counsel performed unreasonably by failing to raise an ineffective-assistance-of-trial-counsel claim also fails." *Wright v. State*, 765 N.W.2d 85, 92 (Minn. 2009).

A. Failure to Challenge Exclusion of Past Sexual-Relationship Evidence

Assuming without deciding that appellate counsel's performance fell below an objective standard of reasonableness, we conclude that the outcome of Cookson's direct appeal would not have been different, even without the errors Cookson alleges. *See Pierson*, 637 N.W.2d at 579. Cookson's argument presumes that, had this court reviewed

the exclusion of rule 412 evidence on direct appeal, we would have concluded that the district court abused its discretion by declining to admit evidence related to his past sexual relationship with S.B. and we would have reversed his conviction. But even if the exclusion of this evidence implicated Cookson's constitutional right to present a complete defense, this court will only reverse "if the exclusion of evidence was not harmless beyond a reasonable doubt." *State v. Zumberge*, 888 N.W.2d 688, 694 (Minn. 2017). "An error is not harmless beyond a reasonable doubt when there is a reasonable possibility that the error complained of may have contributed to the conviction." *Id.* (quotation omitted).

Here, assuming without deciding that the district court abused its discretion by refusing to admit the rule 412 evidence, there is no reasonable probability that such assumed error contributed to Cookson's conviction in light of the other substantial evidence of Cookson's guilt, as described above. As a result, Cookson has not shown that, in his direct appeal, this court would have reversed based on a claim of evidentiary error had Cookson's appellate counsel advanced such an argument. Thus, even if his appellate counsel's performance were deficient, Cookson has failed to show how that performance prejudiced his direct appeal.

B. Failure to Raise an Ineffective-Assistance-of-Trial-Counsel Claim

Cookson argues last that his appellate counsel performed deficiently because she did not argue that trial counsel was ineffective by neglecting to file notice of a consent defense. Because we have concluded that Cookson's ineffective-assistance-of-trial-counsel claims are unavailing, Cookson's contention that appellate counsel performed deficiently by neglecting to raise those claims likewise fails. *See Sullivan v. State*, 585 N.W.2d 782,

784 (Minn. 1998) (observing that, where an appellant's "ineffective assistance of appellate counsel claim is predicated on the underlying claim against his trial counsel[,]" "[i]f he cannot establish a claim of ineffective assistance of trial counsel, his appellate counsel claim automatically fails").

Cookson has not established prejudice resulting from the representation he received from his appellate counsel. We therefore conclude that the district court did not abuse its discretion by denying Cookson's petition for postconviction relief based on his ineffective-assistance-of-appellate-counsel claims. *See Eason*, 950 N.W.2d at 268; *see also Zenanko v. State*, 688 N.W.2d 861, 865 (Minn. 2004) (where the appellant "failed to establish the prejudice prong of his ineffective assistance of appellate counsel claim[,]" the supreme court held that "it [was] not necessary to reach the question of whether counsel's representation fell below an objective standard of reasonableness").

Affirmed.