STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1163

Thomas Gabor Gratzer, petitioner,
Respondent,

vs.

State of Minnesota,
Appellant.

Filed April 28, 2025
Affirmed
Ede, Judge

Hennepin County District Court
File No. 27-CR-22-12422

Robert D. Richman, Robert D. Richman, LLC, St. Louis Park, Minnesota (for respondent)

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

Mary F. Moriarty, Hennepin County Attorney, Adam E. Petras, Senior Assistant County Attorney, Minneapolis, Minnesota (for appellant)

Considered and decided by Harris, Presiding Judge; Ede, Judge; and Bentley, Judge.

NONPRECEDENTIAL OPINION

EDE, Judge

In this appeal from the district court's order granting respondent's postconviction petition based on a claim of ineffective assistance of trial counsel, appellant argues: (1) that the district court erred in concluding that a communication to law enforcement about an incident of sexual abuse—which the victim repudiated but later reasserted—constituted a

"report" triggering the applicable statutory limitations period; and (2) that the district court erred in concluding that respondent's trial counsel rendered ineffective assistance by not raising the time-bar as a defense before trial. We affirm.

FACTS

Underlying Charge, Jury Trial, and Conviction

Appellant State of Minnesota charged respondent Thomas Gabor Gratzer with one count of first-degree criminal sexual conduct, in violation of Minnesota Statutes section 609.342, subdivision 1(a) (2008), alleging that he sexually abused his daughter "on or between 8/1/2008 and 5/13/2012." The matter proceeded to a jury trial. The record establishes the facts below.

Gratzer's daughter, A.G., testified that Gratzer began sexually abusing her in 2008 or 2009, when she was less than 13 years old. The abuse continued into high school. In 2019, A.G. told her therapist about the sexual abuse during a therapy session. On May 1, 2019, the therapist contacted Child Protection Services (CPS) and informed them that A.G. had stated that "her father raped her." The following day—May 2—CPS reported to the police department that a mandated reporter had shared the allegations that Gratzer sexually abused A.G. when she was a child.

A police officer contacted A.G., who said, "I made [the allegations] up. It didn't happen."[1] The officer documented the conversation with A.G. as follows:

> On 05/02/2019, I called [A.G.] . . . . [A.G.] was made aware of the allegations. [A.G.] immediately said she lied and does not

[1] At trial, A.G. stated that she lied to the officer about making the allegations up because she was scared.

> want any report made. [A.G.] was adamant that she did not want any paper trails and did not want any further investigation done. Our conversation was recorded and stored as evidence. This case is to be closed, lack of victim cooperation.

Several years later, in February 2022, A.G. directly reported to the police department that she had been sexually abused by her father multiple times during her childhood. The state filed a criminal charge against Gratzer on June 27, 2022, and the case proceeded to a jury trial in June 2023. The jury found Gratzer guilty of first-degree criminal sexual conduct and the district court imposed a 144-month prison sentence.

Petition for Postconviction Relief, Evidentiary Hearing, and Order

Gratzer later petitioned for postconviction relief, alleging that he had received ineffective assistance of trial counsel because counsel did not raise a statute-of-limitations defense before trial. Following an evidentiary hearing, the district court filed an order granting Gratzer's petition on the ground that he was denied effective assistance of trial counsel.

The district court reviewed Minnesota Statutes section 628.26(e) (Supp. 2009),[2] which instructs that a sexual-abuse complaint for a victim under the age of 18 years old "shall be . . . filed in the proper court within the later of nine years after the commission of the offense or three years after the offense was reported to law enforcement authorities." Minn. Stat. § 628.26(e). The district court determined that CPS's report to the police department in May 2019 triggered the limitations period. And the district court ruled that the state did not file the criminal complaint until June 27, 2022, which was beyond the

[2] The 2009 version of the statute was in effect at the time of the offense.

three-year statutory time frame. Because the state filed the complaint more than nine years after the offense ended on May 13, 2012, and more than three years after the May 2019 report to law enforcement, the district court decided that the prosecution was time-barred.

Turning to Gratzer's ineffective-assistance-of-counsel claim, the district court determined that, by neglecting to raise a statute-of-limitations defense, Gratzer's trial counsel did not provide him constitutionally effective assistance. And the district court decided that, but for trial counsel's deficient performance, there is a reasonable probability that the outcome of the proceeding would have been different because invoking the statute of limitations would have resulted in dismissal of the charge. The district court therefore vacated Gratzer's conviction and dismissed the complaint.

The state appeals.

DECISION

In arguing that we should reverse the district court's postconviction order, the state maintains: (1) that law enforcement did not receive a report of sexual abuse more than three years before the criminal complaint was filed; and (2) that, even assuming law enforcement had received such a report, trial counsel's decision not to raise a statute-of-limitations defense was a reasonable trial strategy that satisfied Gratzer's right to effective assistance of counsel.

Appellate courts review a district court's decision to grant postconviction relief for an abuse of discretion. *See State v. Hurd*, 763 N.W.2d 17, 34 (Minn. 2009). In doing so, we review legal issues de novo and limit our review of factual issues "to whether there is sufficient evidence in the record to sustain the [district] court's findings." *Pearson v. State*,

891 N.W.2d 590, 596 (Minn. 2017) (quotation omitted). A district court "abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record." *State v. Nicks*, 831 N.W.2d 493, 503 (Minn. 2013) (quotation omitted).

We address each of the state's arguments in turn.

I. The district court did not err in determining that the offense for which Gratzer was criminally charged was time-barred under the applicable statute of limitations.

A. Under the plain language of Minnesota Statutes section 628.26(e), law enforcement authorities received a report of sexual abuse on May 2, 2019, which triggered the limitations period.

We first consider whether the district court properly construed the statute of limitations governing Gratzer's postconviction petition.

Statutory interpretation is a question of law that is subject to de novo review. *State v. Holl*, 966 N.W.2d 803, 808 (Minn. 2021). Our goal in interpreting a statute "is to effectuate the intent of the Legislature." *State v. Velisek*, 986 N.W.2d 696, 699 (Minn. 2023) (quotation omitted). "The plain language of the statute controls when the meaning of the statute is unambiguous." *State v. Boecker*, 893 N.W.2d 348, 351 (Minn. 2017). When interpreting the plain language of a statute, "[s]tatutory words and phrases must be construed according to the rules of grammar and common usage." *State v. Defatte*, 928 N.W.2d 338, 340 (Minn. 2019) (quotation omitted). If a statute does not define a phrase, that phrase is given "its plain and ordinary meaning." *Id*. (quotation omitted). We may look to dictionary definitions to determine the common and ordinary meaning of undefined terms in a statute. *See State v. Thonesavanh*, 904 N.W.2d 432, 436 (Minn. 2017).

The legislature intends a criminal statute of limitations to "protect individuals from having to defend themselves against charges when the basic facts may have become obscured by the passage of time." *Reed v. State*, 793 N.W.2d 725, 731 (Minn. 2010) (quoting *Toussie v. United States*, 397 U.S. 112, 114 (1970)). In the criminal-law context, "a statute-of-limitations defense is a claim-processing rule, which is subject to waiver, and not a jurisdictional rule that deprives a district court of its power to adjudicate a case." *State v. White*, 996 N.W.2d 206, 214 (Minn. App. 2023) (quotation omitted), *aff'd*, 13 N.W.3d 395 (Minn. 2024).

The state charged Gratzer with one count of first-degree criminal sexual conduct, in violation of Minnesota Statutes section 609.342, subdivision 1(a). The applicable statute of limitations for that crime is set forth in the 2009 version of Minnesota Statutes section 628.26(e), which provides:

> Indictments or complaints for violation of sections 609.342 to 609.345 if the victim was under the age of 18 years at the time the offense was committed, shall be found or made and filed in the proper court within the later of nine years after the commission of the offense or three years after the offense was reported to law enforcement authorities.

The question presented here is whether the district court erred in determining that the May 2019 report from CPS to the police department was an "offense [that] was reported to law enforcement authorities," triggering the limitations period set forth in section 628.26(e). Based on the plain and unambiguous language of the statute, we discern no error in the district court's decision.

The statute plainly provides that the three-year charging deadline is triggered when the offense is "reported to law enforcement authorities."[3] Minn. Stat. § 628.26(e). "[B]y 'reporting,' the statute means notifying law enforcement authorities." *State v. Soukup*, 746 N.W.2d 918, 922 (Minn. App. 2008), *rev. denied* (Minn. Jun. 18, 2008). The term "reported" is not defined by the statute. But dictionary definitions define "reported" as "[t]o make or present an official or formal account of," or "[t]o tell about the presence or occurrence of," or "[t]o relate or tell, especially from personal experience." *The American Heritage Dictionary of the English Language* 1490 (5th ed. 2018); *see also New Oxford American Dictionary* 1481 (3rd ed. 2010) (defining "reported" as to "make a formal statement or complaint about (someone or something) to the necessary authority"). Based on the plain and ordinary meaning of this term, we determine that an "offense [is] reported to law enforcement authorities" when the authorities receive a formal statement or complaint that a criminal offense may have occurred.

A.G. reported the sexual abuse to her therapist in 2019. During a therapy session, A.G. told her therapist about an incident of sexual abuse and "realized . . . that what [she] was describing to [the therapist] in that moment was rape." A.G.'s therapist, as a mandated reporter, shared A.G.'s accusations with CPS on May 1, 2019. The next day, CPS reported the offense to a police officer by informing the officer of A.G.'s allegations that she had been sexually abused. According to the report, A.G. "disclosed the sexual abuse by stating

[3] The complaint alleged that the offenses occurred from 2008 to 2012. The state filed the complaint in 2022, which is more than "nine years after the commission of the offense." *Id.* Therefore, the only dispute on appeal is whether the three-year limitations period applies.

that her father raped her." The report explained that the abuse occurred in the family home when A.G. was in middle school. As a result, the report articulated the nature of the offense, the alleged perpetrator, the time frame, and the location. We are therefore satisfied that law enforcement received a "report" of sexual abuse on May 2, 2019, triggering the limitations period.

B. The state's contentions that the May 2, 2019 report did not trigger the limitations period are unavailing.

The state makes several arguments challenging whether the information received by law enforcement in 2019 was an offense that was "reported to law enforcement authorities." None persuade us to reverse.

The state maintains that the statute of limitations did not begin to run because law enforcement did not receive a report directly from the victim until 2022. The state relies on the syllabus point in *Soukup*, in which we stated that, "[f]or a victim to 'report' sexual abuse, triggering the statute-of-limitations period set forth in Minnesota Statutes section 628.26, the victim must report the abuse to law enforcement authorities, not merely disclose it to a relative." 746 N.W.2d at 919. The state's reliance on this syllabus point is misplaced.

"'[T]he language used in an opinion must be read in . . . light of the issues presented.'" *Skelly Oil Co. v. Comm'r of Tax'n*, 131 N.W.2d 632, 645 (Minn. 1964) (quoting *Sinclair v. United States*, 279 U.S. 749, 767 (1929)). In *Soukup*, the victim told her cousin in 1996 that she had been sexually abused about ten years earlier. 746 N.W.2d at 920. The victim later reported the abuse to the police in 2006. *Id.* The state charged

Soukup with criminal sexual conduct, but the district court dismissed the complaint based on its "broad interpretation of the term, 'report.'" *Id.* at 920–21. The issue on appeal was whether "reporting" a sexual-abuse crime included "informing a relative." *Id.* at 921. We concluded, based on the plain language of the statute, that "a 'report' . . . is a report to law enforcement authorities." *Id.* at 922.

Contrary to the state's argument, *Soukup* does not hold that a report must come directly from a victim. Indeed, the issue in *Soukup* was who received the report—not who made it. And *Soukup* recognized that, as to reports about the maltreatment of minors, a "report" includes "any report received by the local welfare agency, police department, county sheriff, or agency responsible for assessing or investigating maltreatment pursuant to this section," and may come from "those persons who are mandated reporters." *Id.* (citing Minn. Stat. § 626.556, subds. 1, 2(h), 3 (2007)). Reading the language used in *Soukup* in light of the issues in that case—as we must, *see Skelly Oil Co.*, 131 N.W.2d at 645—we conclude that the syllabus point does not support the state's position that the only way to trigger the statute-of-limitations period is for a victim to make a report directly to law enforcement. Instead, *Soukup* merely addressed the issues presented by the specific factual record that was before this court in that case: a report by the victim to a relative, not a report by a third-party mandated reporter to law enforcement, as in the case now before us.

Moreover, *Soukup* is distinguishable because it addressed the 1995 version of the statute, which uses language that is materially unlike the 2009 version applicable here. The 1995 version provides that the limitations period required a complaint to be filed "within

nine years after the commission of the offense or, if the victim failed to report the offense within this limitation period, within three years after the offense was reported to law enforcement authorities." 746 N.W.2d at 920 (quoting Minn. Stat. § 628.26(c) (Supp. 1995)). By contrast, the 2009 version of Minnesota Statutes section 628.26(e) requires a complaint to be filed "within the later of nine years after the commission of the offense or three years after the offense was reported to law enforcement authorities"—omitting any reference to a victim's failure to report the offense within the nine-year limitations period. Thus, even assuming that there is merit to the state's reading of *Soukup*, that decision does not compel reversal because it construed statutory language different from what applies here.[4]

The state also argues that the 2019 report did not adequately inform law enforcement authorities that a crime occurred because A.G. denied the allegations. We conclude that the victim's initial repudiation of the 2019 report does not affect the applicability of the limitations period. Under the plain language of section 628.26(e), the statute of limitations begins to run at the moment that an offense is reported to law enforcement authorities. Just as the statute does not condition the limitations period on whether the offense is reported

[4] Apart from our conclusion that *Soukup* did not hold that a report must come directly from a victim, we express no opinion whether the 1995 version of section 628.26 is susceptible to the construction that the state urges us to adopt in this case. We merely decide that the omission of any specific reference to a victim within the 2009 statute's requirement that a complaint be filed "within the later of nine years after the commission of the offense or three years after the offense was reported to law enforcement authorities," Minn. Stat. § 628.26(e), underscores our conclusion that the plain language of that version of the statute unambiguously includes *any* report to law enforcement authorities—not just a report by a victim. *See Boecker*, 893 N.W.2d at 351.

by a victim, nor does it require that law enforcement be able to secure a witness's cooperation. Indeed, section 628.26(e) includes no prerequisite that law enforcement definitively establish that a crime occurred to trigger the statute of limitations. Rather, the statute requires only that law enforcement receive a formal communication of a sexual-abuse offense.[5]

C. Our decision in *State v. Danielski* did not toll the limitations period.

Finally, the state cites our decision in *State v. Danielski* in contending that the statute of limitations was tolled while A.G. was living with Gratzer. 348 N.W.2d 352 (Minn. App. 1984), *rev. denied* (Minn. July 26, 1984). In *Danielski*, we held that, "[w]here the same parental authority that is used to accomplish criminal sexual acts against a child is used to prevent the reporting of that act, the statute of limitations does not begin to run until the child is no longer subject to that authority." *Id.* at 357. We are not convinced that *Danielski* establishes that the limitations period was tolled here.

[5] The district court relied on nonprecedential authority to support its decision that the 2019 report to law enforcement triggered the limitations period. *See, e.g.*, *State v. Keller*, No. A18-0664, 2018 WL 4289716, at *1, 4 (Minn. App. Sept. 10, 2018) (holding that "an offense is reported to law enforcement if the report includes enough detail to put the authorities on notice that a specific criminal offense may have occurred" and affirming the district court's dismissal of the complaint); *State v. Avila*, No. A18-1567, 2019 WL 3545813, at *3 (Minn. App. Aug. 5, 2019) (determining that a communication to a police officer was not sufficient to constitute a "report" to law enforcement). "Nonprecedential opinions . . . are not binding authority except as law of the case, res judicata or collateral estoppel, but nonprecedential opinions may be cited as persuasive authority." Minn. R. Civ. App. P. 136.01, subd. 1(c). To be clear, our analysis turns on the plain language of Minnesota Statutes section 628.26(e), which is controlling because the meaning of that statute is unambiguous. *See Boecker*, 893 N.W.2d at 351.

In *Danielski*, the offense was subject to a three-year statute of limitations. *Id.* at 354; *see also* Minn. Stat. § 628.26 (1980). But the legislature later amended the limitations period several times. Amendments enacted in 1982 and 1984 extended the limitations period that begins with the conclusion of the offense. *See* 1982 Minn. Laws ch. 432, §§ 1–2, at 387 (providing for a seven-year statute of limitations for crimes involving sexual conduct in an intrafamilial relationship and for intrafamilial sexual abuse); 1984 Minn. Laws ch. 496, § 1, at 488–89 (applying the seven-year statute of limitations to all sexual abuse charges committed against victims under the age of 18 at the time of the offense). And a 1989 amendment created an alternative limitations period that accounts for cases of delayed disclosure by beginning with a report of the offense to law enforcement authorities. *See* 1989 Minn. Laws ch. 290, art. 4, § 17, at 1623 (creating two alternate limitation periods—a seven-year period from the date of the offense and a two-year period from a report of the offense to law enforcement authorities). By the time the legislature amended the statute to the 2009 version at issue in this case, it differed from the 1980 version at issue in *Danielski* both in its extended limitations period from the conclusion of the offense (i.e., nine years instead of the three-year period in *Danielski*) and in its alternative three-year period that runs from a report of the offense to law enforcement authorities. *See* 2009 Minn. Laws ch. 59, art. 5, § 20, at 378–79 (amending the statute to the version applicable here).

As Gratzer points out, no Minnesota appellate decision—including those cited by the state—has applied the parental-authority tolling principle set forth in *Danielski*, 348 N.W.2d at 357, to an offense subject to the alternative limitations periods that that the legislature first adopted in 1989, let alone the 2009 version of section 628.26 that controls

here.[6] *See, e.g.*, *Virnig v. State*, No. C7-95-2302, 1996 WL 363388, at *4 (Minn. App. July 2, 1996), *rev. denied* (Minn. Sept. 20, 1996) (nonprecedential opinion analyzing the three-year limitations period that applied to offenses committed before the 1982 amendment); *State v. Johnson*, 422 N.W.2d 14, 17 (Minn. App. 1988) (citing Minn. Stat. § 628.26 (1980) and stating that, "when the crime was committed, the statute of limitations was three years"), *rev. denied* (Minn. May 16, 1988); *State v. French*, 392 N.W.2d 596, 598 (Minn. App. 1986) (footnote omitted) (stating that "the only issue before us on appeal is whether the three-year statute of limitations, Minn. Stat. § 628.26 (1978), was tolled because of the rule stated in" *Danielski*).

Here, unlike the three-year limitations period at issue in *Danielski*, the 2009 version of Minnesota Statutes section 628.26(e) prescribes a nine-year period from the commission

[6] It is true that, in *Soukup*, we mentioned *Danielski* in analyzing a post-1989 version of section 628.26. But we agree with Gratzer that our reference to *Danielski* in *Soukup* is dictum. *See State v. Atwood*, 925 N.W.2d 626, 629 (Minn. 2019) (explaining that appellate courts "are bound to [their] prior statements or rulings on an issue only when the statement or ruling was necessary to the decision in the case"); *State v. Rainer*, 103 N.W.2d 389, 396 (Minn. 1960) (stating that "a ruling not necessary to the decision of a case can be regarded as only dictum" (quotation omitted)). In *Soukup*, we described *Danielski* as "explain[ing] in a related setting that to 'report' means to inform law enforcement authorities." *Soukup*, 746 N.W.2d at 922. In support of that observation, we quoted *Danielski* as "stat[ing that], '[a]lthough the victim told her mother, this was insufficient to get official involvement,'" and as "not[ing] that '[t]he purpose of [Minnesota Statutes section 609.342(b) (1980)]—penalizing those who use their authority to sexually abuse young children—would be completely thwarted by permitting defendants to prevent reporting of the act while taking advantage of the statute of limitations.'" *Id.* (quoting *Danielski*, 348 N.W.2d at 355–56). We did not, however, rule that the statute of limitations in *Soukup* was tolled by the rule set forth in *Danielski*, nor did we hold that the rule applied to the 1995 version of section 628.26. Nor could we have done so, given that *Soukup* presented no issue of delayed disclosure resulting from an abuse of parental authority. Because the reference to the *Danielski* tolling rule was not necessary to our decision in *Soukup*, it is nonbinding dictum. *See Atwood*, 925 N.W.2d at 629; *Rainer*, 103 N.W.2d at 396.

of the offense or a three-year period from a report of the offense to law enforcement, whichever is later. Because the plain language of the 2009 version of section 628.26(e) controls our resolution of this appeal, we do not find *Danielski* persuasive.[7]

We therefore conclude that the district court did not err in its interpretation or application of Minnesota Statutes section 628.26(e). Based on the plain language of that section, the report to law enforcement in May 2019 triggered the statute of limitations and barred the complaint filed by the state over three years later, in 2022.

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[7] *Danielski* is also distinguishable because, unlike *Danielski*, the state did not charge Gratzer with using a position of authority to coerce a minor under Minnesota Statutes section 609.342(b) (1980). *See Danielski*, 348 N.W.2d at 354. Instead, the state charged Gratzer with a violation of Minnesota Statutes section 609.342, subdivision 1(a), which contains no element of authority. Thus, the central reasoning of *Danielski* does not apply to the violation of section 609.342, subdivision 1(a), here. *See Danielski*, 348 N.W.2d at 356 (explaining that "[t]he purpose of this particular statute [(i.e., section 609.342(b) (1980))]—penalizing those who use their authority to sexually abuse young children—would be completely thwarted by permitting defendants to prevent reporting of the act while taking advantage of the statute of limitations"). But even assuming that *Danielski* applies here despite the above, we would still conclude that the limitations period was not tolled. The record sufficiently sustains the district court's finding that there was no evidence that Gratzer threatened A.G. or prevented her from reporting the abuse. *See Pearson*, 891 N.W.2d at 596. And we discern no abuse of discretion in the district court's determination that, given the particular facts of this case, *Danielski* did not toll the statute of limitations. *See Nicks*, 831 N.W.2d at 503; *see also Johnson*, 422 N.W.2d at 17 (discussing *Danielski* and explaining that the coercive authority contemplated to toll the limitations period "must be in addition to that which characterizes every instance of intrafamilial sexual abuse"); *French*, 392 N.W.2d at 599–600 (affirming dismissal of a criminal complaint on statute-of-limitations grounds because the coercion exercised by the defendant over the victim was not the type contemplated by *Danielski*, given that there was no showing of active coercion).

II. The district court did not err in ruling that Gratzer's trial counsel provided him ineffective assistance.

Having determined that the 2019 sexual-abuse report to law enforcement triggered the statute of limitations, we next consider whether the decision by Gratzer's trial counsel to not raise the time-bar as a defense before trial amounted to ineffective assistance.

Criminal defendants have a constitutional right to effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 686 (1984). To prove that counsel was ineffective, the complaining party must show (1) that counsel's representation fell below an objective standard of reasonableness and (2) that there is a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different. *Lussier v. State*, 853 N.W.2d 149, 154 (Minn. 2014); *see also Strickland*, 466 U.S. at 687. The proponent of such a claim bears the burden of proving both prongs of this test. *Gates v. State*, 398 N.W.2d 558, 561 (Minn. 1987). Appellate courts review claims of ineffective assistance of counsel de novo because they involve mixed questions of fact and law. *Dobbins v. State*, 788 N.W.2d 719, 728 (Minn. 2010).

A. The district court did not err in determining that trial counsel's representation fell below an objective standard of reasonableness.

Under the first *Strickland* prong, we consider whether counsel's representation was reasonable.

"The objective standard of reasonableness is defined as representation by an attorney exercising the customary skills and diligence that a reasonably competent attorney would perform under similar circumstances." *State v. Vang*, 847 N.W.2d 248, 266–67 (Minn. 2014) (quotation omitted). "There is 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). Based on our review of the petition and the record as a whole, we conclude that the district court did not err in determining that trial counsel's representation fell below an objective standard of reasonableness.

Gratzer alleged in his postconviction petition that his trial counsel provided deficient representation by neglecting to raise a statute-of-limitations defense before trial. The district court agreed and determined that the first *Strickland* prong had been met. On appeal, the state asserts that the district court erred because counsel had a reasonable belief that the 2019 report to law enforcement did not trigger the statute of limitations and their decision not to raise that issue falls within reasonable trial strategy. We disagree.

The state is correct that we generally do not review ineffective-assistance-of-counsel claims based on trial strategy. *Opsahl v. State*, 677 N.W.2d 414, 421 (Minn. 2004). For example, "[w]hich witnesses to call at trial and what information to present to the jury are questions that lie within the proper discretion of the trial counsel. Such trial tactics should not be reviewed by an appellate court, which, unlike [trial] counsel, has the benefit of hindsight." *Jones*, 392 N.W.2d at 236. *Cf. Bobo v. State*, 820 N.W.2d 511, 516 (Minn. 2012) (stating that "there is a strong presumption that appellate counsel's judgment about which issues to raise falls within the wide range of reasonable professional assistance" (quotation omitted)); *Evans v. State*, 788 N.W.2d 38, 45 (Minn. 2010) (explaining that "appellate counsel is not ineffective for failing to raise issues that themselves have no merit"). But an attorney's unreasonable mistake of law can sometimes constitute objectively unreasonable performance under the first *Strickland* prong. *See State v. Ellis-*

Strong, 899 N.W.2d 531, 539 (Minn. App. 2017) ("An attorney's 'mistake of law' because of a failure to look up a statute may amount to an objectively unreasonable performance."); *see also Hinton v. Alabama*, 571 U.S. 263, 274 (2014) (ruling that trial counsel's performance was objectively unreasonable where counsel mistakenly believed that, under a state statute, his indigent client would only be able to receive a maximum of $1,000 for a qualified defense expert, and where counsel "failed to make even the cursory investigation of the state statute").

Here, the district court found that the record was devoid of evidence that trial counsel effectively researched the statute of limitations, which rendered their assistance objectively unreasonable. There is sufficient evidence in the record to sustain this finding. *See Pearson*, 891 N.W.2d at 596. Two of Gratzer's trial attorneys testified during the postconviction evidentiary hearing. The first attorney stated that she did "quite a bit of research" on the statute of limitations, explaining that she reviewed our nonprecedential decision in *Avila* and that she did not believe a statute-of-limitations defense would succeed. The second attorney testified that the first attorney was primarily responsible for legal research, including research on the statute-of-limitations issue. Moreover, the second attorney believed that he reviewed "one case" relevant to the statute of limitations. And he acknowledged that his records contain no notes, legal research, or memos relating to the statute of limitations. Nevertheless, the second attorney testified that the statute-of-limitations defense "was a non-issue" that did not have a reasonable chance of success.

Based on his review of the record, however, Gratzer's expert[8] testified that there was "an absolute complete lack of . . . any indication that [the statute-of-limitations issue] had been addressed." The expert noted that there was no evidence of a search in a legal database such as Lexis or Westlaw, there were no handwritten or computer notes, and there was "just . . . no analysis whatsoever." The expert stated that, in his experience, he would have expected to see some evidence of research, particularly in "a serious case like this with such . . . potential penalties." The district court found that the expert was credible and that trial counsel conducted only minimal research on the statute-of-limitations defense.[9] Because we discern no clear error in these findings, we must defer to them. *See Griffin v. State*, 941 N.W.2d 404, 408–09 (Minn. 2020) (explaining that "[t]he district court is in the best position to evaluate witness credibility, and [appellate courts] defer to those determinations absent a clear error"). On this record, we conclude that trial counsel's failure to raise a statute-of-limitations defense is not unreviewable trial strategy and was thus not entitled to deference by the district court. *See Hinton*, 571 U.S. at 274 ("An attorney's ignorance of a point of law that is fundamental to [the] case combined with [the

[8] In the district court's order granting postconviction relief, the court found that the expert "had a breadth of experience practicing criminal law, teaching pro[f]essional responsibility at [the] University of Minnesota Law School, and reviewing cases for ineffective assistance of counsel claims at the Innocence Project."

[9] The district court explained in the postconviction order that, "[a]lthough credible, to the degree the expert is suggesting conclusions of law, th[e district] court reserve[d] those decisions to itself." In exercising our de novo review of the district court's order granting postconviction relief, we likewise do not defer to any suggested conclusions of law that may be inherent to the expert's testimony.

attorney's] failure to perform basic research on that point is a quintessential example of unreasonable performance . . . .").

The state also asserts that trial counsel's representation was reasonable because the facts of the case were "unique" and the law was "unsettled" in this area. During the evidentiary hearing, Gratzer's postconviction counsel asked Gratzer's second trial attorney if he had reviewed any cases related to the statute of limitations. The second attorney responded that he reviewed one case but did not believe it would help Gratzer's defense because A.G. "provid[ed] a retraction the moment she was contacted by the police."

We are mindful of persuasive authority that, when the law is unsettled, an attorney's "failure to anticipate a rule of law that has yet to be articulated by the governing courts surely cannot render counsel's performance professionally unreasonable." *Fields v. United States*, 201 F.3d 1025, 1028 (8th Cir. 2000); *see also State v. McClenton*, 781 N.W.2d 181, 191 (Minn. App. 2010) ("We recognize that although we are not bound to follow precedent from other states or federal courts, these authorities can be persuasive."), *rev. denied* (Minn. June 29, 2010). Here, however, the district court determined that trial counsel's decision to "not even bring the motion was unreasonable." Again, testimony from Gratzer's expert supports the district court's ruling. The expert agreed that the case was "somewhat unique," in that there were no reported cases involving the application of section 628.26(e) where a victim repudiated an accusation of sexual abuse following a report to law enforcement. But the expert explained that, given the uniqueness of these facts, "that's all the more reason to file a motion to dismiss."

And applicable law further establishes that the district court's decision is not erroneous because the controlling statute—section 628.26(e) itself—was not unsettled. As relevant here, the plain language of the statute provides that the limitations period begins to run "three years after the offense was reported to law enforcement authorities." Minn. Stat. § 628.26(e). The statute says nothing about a victim's repudiation or denial of an abuse claim. Nor does it require the report to come directly from the victim, as discussed above in section I.B. The police department's May 2019 report states that law enforcement "received a report from [CPS]" about an alleged instance of sexual abuse. Although the state contends that the allegations in the police report are "vague" and do not sufficiently inform law enforcement that a "criminal offense may have occurred," the report provides that A.G. "disclosed the sexual abuse by stating that her father raped her." And it repeatedly refers to the May 2, 2019 report by CPS as a "report." While there may not be caselaw directly on point, the plain and unambiguous language of section 628.26(e) contradicts the state's claim that the law is unsettled. *Cf. Aili v. State*, 963 N.W.2d 442, 448–50 (Minn. 2021) (notwithstanding that the Minnesota Supreme Court did not decide "that the *Birchfield*[10] rule was a new rule of law that applied retroactively" until "only about 6 weeks before the 2-year window [for filing postconviction petitions under Minnesota Statutes section 590.01, subdivision 4 (2020)] following [the court's] decisions in

[10] In *Birchfield v. North Dakota*, 579 U.S. 438, 474–77 (2016), the United States Supreme Court held that a warrantless blood test may not "be administered as a search incident to a lawful arrest for drunk driving" and that "motorists cannot be deemed to have consented to submit to a blood test on pain of committing a criminal offense."

Thompson and *Trahan*[11] closed," concluding that, because "[t]he plain text of [Minnesota Statute section 590.01,] subdivision 4(b)(3) says that the subdivision 4(c) time limit begins to run when a court decides a case upon which a postconviction petitioner may rely to claim that a new rule of law was announced and applies retroactively to his conviction[,]" defendants seeking postconviction relief "had clear notice of their obligation to bring a claim within two years of the decisions in *Trahan* and *Thompson*").

Relatedly, the state challenges the district court's analysis of nonprecedential caselaw. As noted above, the district court cited nonprecedential decisions in evaluating the requirements for sufficient notification to law enforcement under section 628.26(e). *See Keller*, 2018 WL 4289716, at *4; *Avila*, 2019 WL 3545813, at *2–3. On appeal, the state maintains that these cases are nonbinding and distinguishable. But despite the nonprecedential status and the facts of those opinions, the plain language of Minnesota Statutes section 628.26(e) should have alerted counsel that the facts of this case presented a viable statute-of-limitations defense.

And for the same reasons as discussed earlier in section I.B, we likewise reject the state's reliance on *Soukup* to argue that Gratzer's trial counsel performed reasonably. 746 N.W.2d at 919. Again, *Soukup* did not hold that the limitations period is triggered *only* when the victim reports sexual abuse to the police. Instead, it acknowledged that the

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[11] In *State v. Thompson*, 886 N.W.2d 224 (Minn. 2016), and *State v. Trahan*, 886 N.W.2d 216 (Minn. 2016), the Minnesota Supreme Court "applied the rule announced in *Birchfield* to hold that the warrantless blood and urine test refusal convictions under Minnesota's test refusal statute were unconstitutional." *Aili*, 963 N.W.2d at 444–45.

limitations period began to run when the victim—who was the reporting party in that case—made a report to law enforcement, rather than to a family member. *Id.* Indeed, *Soukup* explained that, "by 'reporting' the statute means notifying law enforcement authorities." *Id.* at 922. And the *Soukup* court cited favorably to the mandated-reporter statute, which "defines 'report' as 'any report received by the local welfare agency, police department, county sheriff, or agency responsible for assessing or investigating maltreatment pursuant to this section,' and instructs those persons who are mandated reporters to make the report to the responsible, official agency." *Id.* (quoting Minn. Stat. § 626.556, subds. 1, 2(h), 3 (2007)). Thus, contrary to the state's position, *Soukup* supports the district court's determination that Gratzer's trial counsel was ineffective.

The state also asserts that trial counsel may have relied on the tolling rule outlined in *Danielski*, 348 N.W.2d at 357, in declining to raise a statute-of-limitations defense. But the testimony adduced at the evidentiary hearing refutes this claim. Gratzer's postconviction counsel asked his first trial attorney whether she was familiar with caselaw providing an exception to the statute of limitations when the victim is a child and is coerced by the perpetrator. Postconviction counsel asked Gratzer's first attorney: "How did that, if at all, play into your decision making in this case?" In response, the first attorney responded: "It did not." She further acknowledged: "We didn't really go into that very much, I've got to say." Accordingly, the evidence does not support the state's claim that Gratzer's trial counsel made a strategic decision not to raise a statute-of-limitations defense. *See Pearson*, 891 N.W.2d at 596.

We therefore conclude that the district court did not err in determining that Gratzer satisfied the first *Strickland* prong by demonstrating that trial counsel's performance fell below an objective standard of reasonableness.

B. The district court did not err in determining that, but for trial counsel's errors, there is a reasonable probability that the result of the proceeding would have been different.

We next consider whether trial counsel's error affected Gratzer's substantial rights.

To satisfy this prong, Gratzer must show that, but for counsel's deficient performance, there is a reasonable probability that the outcome of the proceeding would have been different. *Lussier*, 853 N.W.2d at 154. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694.

The district court determined that Gratzer established that he was prejudiced by trial counsel's deficient performance, reasoning that,

> had trial counsel raised the meritorious statute of limitations claim during pretrial proceedings, [Gratzer's] case would have been dismissed. This matter would not have proceeded to trial, nor would [Gratzer] have been found guilty, convicted, and sentenced to 144 months in prison—almost 10 months of which he has now served. Trial counsel's failure to raise the lapse in [the] statute of limitations undoubtedly prejudiced [Gratzer]. Even if this Court did not find that the statute of limitations issue had merit, failing to raise the issue waived any ability to address it through appellate proceedings.

We discern no error in the district court's conclusion on this issue. At the postconviction evidentiary hearing, Gratzer's expert testified about the objective reasonableness of trial counsel's decision not to raise a pretrial statute-of-limitations claim. Gratzer's postconviction counsel asked the expert: "In your opinion, was Mr. Gratzer

prejudiced by the failure of trial counsel to make a motion to dismiss?" The expert responded: "Well, I believe he was. . . . [T]he prejudice to him is that he's gone to prison when the case should have been dismissed back in 2022 or 2023." As the expert explained, Gratzer was prejudiced because the issue "should have been addressed in a robust and spirited way" and the issue should have been preserved for appeal. The district court found Gratzer's expert to be credible and determined that the case would have been dismissed if Gratzer's trial counsel had raised a statute-of-limitations defense before trial.

Trial counsel's decision not to invoke a pretrial defense based on the statute of limitations, coupled with the district court's determination that it would have granted a motion to dismiss on that basis, establishes a "reasonable probability" that the result of this criminal prosecution would have been different if Gratzer's counsel had rendered effective assistance. Thus, we conclude that the district court did not err in determining that Gratzer satisfied the second *Strickland* prong by demonstrating that, but for trial counsel's errors, there is a reasonable probability that the result of the proceeding would have been different.

Before closing, we take a moment to recognize the effect of our decision, which we do not make lightly. In explaining its determination that *Danielski* did not toll the statute of limitations under the specific facts of this case, the district court aptly noted as follows: "Nothing in this finding should be taken as suggesting the reported cruelty did not happen. The jury found, and th[e district] court agrees, that they did. Nothing here suggests actual innocence. Th[e district] court is simply finding the complaint was filed too late." We likewise acknowledge the consequences of the district court's order granting postconviction relief, particularly in light of the jury's guilty verdict. But because the

district court did not err in determining that Gratzer's ineffective-assistance-of-counsel claim had merit, we must conclude that the court did not abuse its discretion by granting postconviction relief, vacating Gratzer's conviction, and dismissing the complaint.

Affirmed.