

FILED

January 17, 2023

**OFFICE OF
APPELLATE COURTS**

STATE OF MINNESOTA
IN SUPREME COURT

A21-1408

Desean Lamont Thomas, n/k/a
Pharaoh El-Forever Left-I Amen El,

Petitioner,

vs.

State of Minnesota,

Respondent.


O R D E R

Based upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED that the petition of Desean Lamont Thomas, n/k/a
Pharaoh El-Forever Left-I Amen El for further review is denied.

Dated: January 17, 2023

BY THE COURT:



Lorie S. Gildea
Chief Justice

STATE OF MINNESOTA

IN COURT OF APPEALS

A21-1408

FILED

September 19, 2022

**OFFICE OF
APPELLATE COURTS**

Desean Lamont Thomas,
n/k/a Pharaoh El-Forever Left-I Amen El,
petitioner,

Appellant,

vs.

State of Minnesota,

Respondent.

ORDER OPINION

Ramsey County District Court
File No. 62-CR-14-7891

Considered and decided by Jesson, Presiding Judge; Worke, Judge; and Wheelock, Judge.

BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND BECAUSE:

1. In 2014, appellant Desean Lamont Thomas, n/k/a Pharaoh El-Forever Left-I Amen El¹ was charged with ten felony offenses, including first-degree murder, second-degree murder, and crimes committed for the benefit of a gang. *See State v. Thomas*, No. A15-1542, 2017 WL 1375278, at *3 (Minn. App. Apr. 17, 2017), rev. denied (Minn. June 28, 2017). The evidence showed that Thomas and two other gang members were involved in three shootings. The intended target in one shooting was a rival gang member, but Thomas shot and killed his rival's father. The jury found Thomas guilty of four counts

¹ Appellant legally changed his name, but this order opinion will refer to appellant as "Thomas" to be consistent with prior opinions and orders related to this matter.

of aiding and abetting second-degree murder and crimes committed for the benefit of a gang. *Id.*, at *1.

2. Thomas moved for a new trial or judgment of acquittal, arguing that his accomplices' testimony was uncorroborated and that he had an alibi witness. He also argued that he received ineffective assistance of counsel because one of his trial attorneys was not prepared and failed to investigate, call essential witnesses, object to evidence, and conduct effective cross-examination.

3. The district court denied Thomas's motion, concluding that Thomas received effective representation and noting that counsel secured acquittals on six counts, including first-degree murder. The district court stated: "Mr. Thomas, you were convicted because of the evidence in your trial." Thomas filed a direct appeal, but it was stayed while he pursued postconviction relief.

4. In 2016, Thomas filed a petition for postconviction relief, claiming that an accomplice recanted his testimony. The district court denied relief, concluding that the accomplice's testimony at the postconviction evidentiary hearing was not credible and that his trial testimony could have been known only by a person involved in the shooting. The district court also concluded that the jury would not have reached a different verdict without the testimony because "[t]he evidence that was ultimately amassed against [Thomas] was significant."

5. In the reinstated direct appeal, appellate counsel challenged the accomplice testimony and the admission of *Spreigl* evidence. In a pro se supplemental brief, Thomas raised ten claims, none of which was an ineffective-assistance-of-counsel claim. This court

affirmed Thomas's convictions, determining that the accomplice testimony was corroborated, the Spreigl evidence was highly probative, and "[t]he evidence of Thomas's guilt was strong." *Id.*, at *1, *4, *5, *6. The supreme court denied the petition for further review.

6. In 2019, Thomas filed his second petition for postconviction relief, arguing, among other things,² that his trial counsel was ineffective and appellate counsel was ineffective for failing to raise an ineffective-assistance-of-trial-counsel claim.

7. At an evidentiary hearing on the remaining claims, appellate counsel testified that he reviewed the record and did not identify a viable basis for an ineffective-assistance-of-trial-counsel claim because Thomas's complaints related to trial strategy and it would be difficult to establish prejudice considering the evidence against Thomas. Appellate counsel also explained the argument he raised regarding the Spreigl evidence. The district court denied relief, concluding that the ineffective-assistance-of-trial-counsel claim was Knaffla barred, and Thomas failed to show that appellate counsel was ineffective.

8. Thomas now appeals the denial of postconviction relief. This court reviews the denial of postconviction relief for an abuse of discretion. *Davis v. State*, 784 N.W.2d 387, 390 (Minn. 2010). "A court abuses its discretion when its decision is based on an

² The district court denied Thomas's request for an evidentiary hearing on a newly discovered evidence claim but reserved ruling on the ineffective-assistance claims. Thomas appealed, this court affirmed the district court, and the supreme court denied the petition for further review. *See Thomas v. State*, No. A20-0271 (Minn. App. Nov. 19, 2020) (order op.), *rev. denied* (Minn. Jan. 27, 2021).

erroneous view of the law or is against logic and the facts in the record.” *Riley v. State*, 792 N.W.2d 831, 833 (Minn. 2011).

9. The district court determined that Thomas’s ineffective-assistance-of-trial-counsel claim was procedurally barred. See *State v. Knaffla*, 243 N.W.2d 737, 741 (Minn. 1976) (stating that petitioner is not entitled to relief for claims raised on direct appeal or claims that could have been raised on direct appeal). There are two exceptions to the procedural bar—when a novel legal issue presents that was unavailable at the time of direct appeal or when the interests of justice require review. *Zumberge v. State*, 937 N.W.2d 406, 411-12 (Minn. 2019).

10. Thomas raised an ineffective-assistance claim in his posttrial motions and the district court determined that Thomas received effective assistance. Thomas did not raise an ineffective-assistance-of-trial-counsel claim on direct appeal, although he could have. And no exception applies to avoid *Knaffla* because Thomas neither presents a novel legal issue nor does he show that the interests of justice require review. The district court concluded that Thomas received effective assistance and his appellate counsel determined that an ineffective-assistance claim was not viable.

11. The district court determined that Thomas failed to establish an ineffective-assistance-of-appellate-counsel claim. Thomas argues that his appellate counsel was ineffective because he did not raise an ineffective-assistance-of-trial-counsel claim, and this was the strongest claim that he could have raised.

12. Ineffective-assistance-of-counsel claims are reviewed de novo. *State v. Rhodes*, 657 N.W.2d 823, 842 (Minn. 2003). To prove an ineffective-assistance-of-

appellate-counsel claim, Thomas must show that his counsel's performance "fell below an objective standard of reasonableness" and that "there is a reasonable probability that, but for counsel's unprofessional errors," the result would have been different. See *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)).

13. Although Thomas argues that the ineffective-assistance-of-trial-counsel claim was the strongest, he did not raise it on direct appeal in his pro se supplemental brief. If Thomas believed that this was the strongest claim, he could have raised it in his pro se supplemental brief or his first petition for postconviction relief. And appellate counsel testified that the claim was not viable because Thomas's complaints related to trial strategy, which is not reviewed on appeal. See *State v. Jones*, 392 N.W.2d 224, 236 (Minn. 1986) (stating that trial strategy, including which witnesses to call and what information to present to the jury, is within counsel's discretion and not reviewed on appeal); see also *Onyelobi v. State*, 932 N.W.2d 272, 283 (Minn. 2019) (indicating counsel is not ineffective for choosing not to raise a claim that fails on the merits).

14. Finally, Thomas fails to show prejudice. His trial attorneys secured acquittals on six felony counts, including the most serious charge. And it has been repeatedly observed by the district court, appellate counsel, and this court that the evidence against Thomas was strong. After reviewing the record, we agree and conclude that the result would not have been different had appellate counsel raised an ineffective-assistance claim. The district court did not abuse its discretion by denying Thomas's second petition for postconviction relief.

IT IS HEREBY ORDERED:

1. The district court's order is affirmed.
2. Pursuant to Minn. R. Civ. App. P. 136.01, subd. 1(c), this order opinion is nonprecedential, except as law of the case, res judicata, or collateral estoppel.

Dated: September 19, 2022

BY THE COURT

A handwritten signature in cursive script, appearing to read "Renee L. Worke", written over a horizontal line.

Judge Renee L. Worke

**Additional material
from this filing is
available in the
Clerk's Office.**