STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1528

State of Minnesota,
Respondent,

vs.

Mark S. Karras, Jr.,
Appellant.

Filed March 3, 2009
Affirmed
Worke, Judge

Hennepin County District Court
File No. 06054373

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101; and

Michael O. Freeman, Hennepin County Attorney, Thomas A. Weist, Assistant County Attorney, C-2000 Government Center, Minneapolis, MN 55487 (for respondent)

Lawrence Hammerling, Chief Appellate Public Defender, Rochelle R. Winn, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Hudson, Presiding Judge; Worke, Judge; and Connolly, Judge.

U N P U B L I S H E D O P I N I O N

WORKE , Judge

Appellant challenges the district court's denial of his petition for postconviction relief, arguing that he received ineffective assistance of counsel because his attorney failed to challenge the seizure and move to suppress the gun evidence that was used to convict him of felon in possession of a firearm. We affirm.

D E C I S I O N

Appellate courts "afford great deference to a district court's findings of fact and will not reverse the findings unless they are clearly erroneous." *Dukes v. State*, 621 N.W.2d 246, 251 (Minn. 2001). "The decisions of a postconviction court will not be disturbed unless the court abused its discretion." *Id.* The court abuses its discretion if it misinterprets or misapplies the law. *State v. Babcock*, 685 N.W.2d 36, 40 (Minn. App. 2004), *review denied* (Minn. Oct. 19, 2004). "A postconviction court's factual findings will be sustained if they are supported by sufficient evidence, but we independently determine the law as it applies to the facts." *Johnson v. State*, 733 N.W.2d 834, 836 (Minn. App. 2007) (citations omitted), *review denied* (Minn. Sept. 18, 2007).

Appellant Mark S. Karras, Jr. argues that he received ineffective assistance of counsel because his attorney failed to challenge the legality of appellant's seizure, and doing so would have resulted in the suppression of the gun evidence used to convict him of unlawful possession of a firearm. To obtain relief on the grounds of ineffective assistance of counsel, appellant "must affirmatively prove that his 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.' 'A reasonable probability is a probability sufficient to undermine confidence in the outcome.'" *Gates v. State*, 398 N.W.2d 558, 561 (Minn. 1987) (quoting *Strickland v. Washington*, 466 U.S. 668, 688, 694, 104 S. Ct. 2052, 2064, 2068 (1984)). There is a strong presumption that "counsel's performance fell within a wide range of reasonable assistance." *State v. Lahue*, 585 N.W.2d 785, 789 (Minn. 1998). Matters of trial strategy lie within the discretion of trial counsel and will not be second-guessed by appellate courts. *State v. Doppler*, 590 N.W.2d 627, 633 (Minn. 1999).

Appellant's argument that he received ineffective assistance is without merit. Appellant contends that if his attorney had challenged the seizure, the district court would have found the seizure unlawful and the gun evidence would have been suppressed and he would not have been convicted of felon in possession of firearm. We disagree. The United States and Minnesota constitutions prohibit unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. A seizure occurs "when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen." *In re Welfare of E.D.J.*, 502 N.W.2d 779, 781 (Minn. 1993) (quoting *Terry v. Ohio*, 392 U.S. 1, 19 n.16, 88 S. Ct. 1868, 1879 n.16 (1968)). In order for a stop or seizure to be legal, Minnesota law requires that the police must be able to show a reasonable suspicion based on "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *State v. Davis*,

732 N.W.2d 173, 182 (Minn. 2007) (quoting *Terry*, 392 U.S. at 21, 88 S. Ct. at 1880). Articulable, objective facts that would justify an investigatory stop are "facts that, by their nature, quality, repetition, or pattern become so unusual and suspicious that they support at least one inference of the possibility of criminal activity." *State v. Schrupp*, 625 N.W.2d 844, 847-48 (Minn. App. 2001), *review denied* (Minn. July 24, 2001).

The record demonstrates that around 1:00 a.m. police responded to noise complaints, and saw appellant and two other men standing in front of the complained of address. The officers approached the men who began walking away. In a normal tone of voice, an officer asked the men to stop. Appellant and the other men then began to run. A chase ensued, and appellant was apprehended. Because the police, responding to and investigating possible ongoing crimes sought to speak to appellant and appellant attempted to evade the police, they had a reasonable suspicion based on articulable facts to make a legal stop. *See Generally State v. Houston*, 654 N.W.2d 727, 732-33 (Minn. App. 2003). We conclude that appellant was not seized when police asked him to stop so that they could speak to him. *See id.* at 732 (holding seizure does not occur when police approach a citizen in a public place and ask him a question).

Matters of trial strategy lie within the discretion of trial counsel, which we do not second guess. *Doppler*, 590 N.W.2d at 633. Counsel need not object to properly admitted evidence. *See State v. Asfeld*, 662 N.W.2d 534, 546 (Minn. 2003) (holding that representation is reasonable when counsel does not object to properly admitted evidence). Because appellant was not illegally stopped and seized, the gun evidence was properly admitted into evidence. Trial counsel need not challenge a legal stop or move to suppress

properly admitted evidence. The district court did not abuse its discretion in denying appellant's postconviction petition.

Affirmed.