

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1852**

Maksud Ul Mahbub, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed June 19, 2017
Affirmed
Reilly, Judge**

Ramsey County District Court
File Nos. 62-CR-10-3372, 62-CR-10-3373, 62-CR-10-3374, 62-CR-10-3375

Maksud Ul Mahbub, Moose Lake, Minnesota (pro se appellant)

Lori Swanson, Attorney General, St. Paul, Minnesota; and

John J. Choi, Ramsey County Attorney, Peter R. Marker, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Considered and decided by Larkin, Presiding Judge; Johnson, Judge; and Reilly, Judge.

UNPUBLISHED OPINION

REILLY, Judge

Appellant asks us to reverse the district court's summary denial of his second petition for postconviction relief. Because each of appellant's postconviction claims is *Knaffla*-barred or meritless, we affirm.

FACTS

In March 2011, after trial on five consolidated cases, a jury found appellant Maksud Ul Mahbub guilty of one count of third-degree criminal sexual conduct and three counts of fourth-degree criminal sexual conduct.¹ Mahbub was sentenced to 120 months' imprisonment, and he timely appealed his convictions and sentences (direct appeal).

In April 2012, while Mahbub's direct appeal was stayed at his request, Mahbub petitioned for postconviction relief (first postconviction petition). The district court summarily denied Mahbub's first postconviction petition, rejecting the sole postconviction claim on its merits. We then dissolved the stay and affirmed Mahbub's convictions and sentences, as well as the summary denial of Mahbub's first postconviction petition, in an unpublished opinion. *State v. Mahbub*, No. A11-1284, 2013 WL 4779009, at *3-9 (Minn. App. Sept. 9, 2013), *review denied* (Minn. Nov. 26, 2013).²

Almost two years after the Minnesota Supreme Court denied review of that decision, Mahbub brought a second petition for postconviction relief and a lengthy pro se supplemental second postconviction petition (second postconviction petition). The district court summarily denied Mahbub's second postconviction petition on the grounds that the postconviction claims therein are *Knaffla*-barred and are, in any event, meritless. This pro se appeal followed.

¹ The facts of Mahbub's crimes are set forth in *State v. Mahbub*, No. A11-1284, 2013 WL 4779009, at *1-3 (Minn. App. Sept. 9, 2013), *review denied* (Minn. Nov. 26, 2013).

² Mahbub was represented by three different attorneys: a trial attorney, a direct-appeal attorney, and a postconviction attorney.

DECISION

“[A] person convicted of a crime” may petition the district court for relief from his conviction or sentence based on a claim that “the conviction obtained or the sentence . . . made violated the person’s rights under the Constitution or laws of the United States or of the state.” Minn. Stat. § 590.01, subd. 1 (2016). A postconviction petitioner is entitled to an evidentiary hearing “[u]nless the petition and the files and records of the proceeding conclusively show that the petitioner is entitled to no relief.” Minn. Stat. § 590.04, subd. 1 (2016). “[Appellate courts] review a postconviction court’s decision to deny a petition, including its decision to deny the petition without granting an evidentiary hearing, for an abuse of discretion.” *Jones v. State*, 883 N.W.2d 596, 599 (Minn. 2016) (quotation omitted). To determine “whether the postconviction court abused its discretion, [appellate courts] review the postconviction court’s factual findings for clear error and its legal conclusions de novo.” *Id.* at 599-600 (quotation omitted).

Mahbub makes the following claims in his second post-conviction petition: (1) a due-process claim based on the prosecutor’s alleged knowing use of perjured testimony; (2) a due-process claim based on the state’s alleged failure to disclose evidence to the defense at trial; (3) an ineffective-assistance-of-counsel claim as to Mahbub’s counsel in the first postconviction proceedings (postconviction counsel) based on her alleged failure to investigate and raise purportedly meritorious postconviction claims; (4) an ineffective-assistance-of-counsel claim as to Mahbub’s counsel on direct appeal (appellate counsel) based on his failure to raise purportedly meritorious appellate issues; (5) a due-process claim based on the timing of the district court’s denial of Mahbub’s first postconviction

petition; (6) a due-process claim based on the alleged incompleteness of the record on direct appeal; (7) various claims based on the district court's denial of certain motions for disclosure and production in the second postconviction proceedings; (8) a right-to-counsel claim based on the state's alleged conduct of a photo lineup outside the presence of Mahbub's attorney; (9) a claim that Mahbub's unspecified "constitutional right" was violated when a search warrant was executed outside his presence; (10) various claims, including an ineffective-assistance-of-counsel claim, based on appellate counsel's failure to disclose an alleged conflict of interest; (11) a due-process claim based on our denial of a February 2013 motion by Mahbub to stay his direct appeal a second time; and (12) an ineffective-assistance-of-counsel claim based on appellate counsel's alleged failure to pursue postconviction relief.

Claims (5), (6), (7), and (11) challenge actions or omissions by the district court during the first and second postconviction proceedings and by this court on direct appeal. Postconviction relief is not available on those claims, and the district court did not abuse its discretion by summarily denying them. See Minn. Stat. § 590.01, subd. 1 (providing that a petitioner may seek postconviction relief by claiming that the conviction obtained or the sentence imposed violated the person's rights under the Constitution or laws of the United States or the state); *Hannon v. State*, 889 N.W.2d 789, 792 (Minn. 2017) (“[A] postconviction evidentiary hearing is not required when the petitioner alleges facts that, if true, are legally insufficient to grant the requested relief.” (quotation omitted)).

Claims (1), (2), (8), and (9) are based on events that allegedly occurred at or before Mahbub's trial. Thus, those claims were known or should have been known by Mahbub

at the time of the first postconviction proceedings and direct appeal. *See Swaney v. State*, 882 N.W.2d 207, 215 (Minn. 2016) (noting that claims based solely on events that occurred at or before trial are *Knaffla*-barred because these claims were or should have been known to the petitioner at the time of his direct appeal). Mahbub did not raise those claims in his first postconviction petition; they are therefore *Knaffla*-barred. *See Colbert v. State*, 870 N.W.2d 616, 626 (Minn. 2015) (“[T]he *Knaffla* rule bars consideration of claims that . . . could have been raised . . . in a previous postconviction petition.”).

Similarly, claim (3)—an ineffective-assistance-of-counsel claim as to postconviction counsel—could have been raised on direct appeal, which was an appeal of Mahbub’s convictions and sentences *and* an appeal of the district court’s summary denial of Mahbub’s first postconviction petition. Because claim (3) is based on facts that are adequately captured by the record on direct appeal, it also is *Knaffla*-barred. *See Pearson v. State*, 891 N.W.2d 590, 597 (Minn. 2017) (“Under the *Knaffla* rule, once a direct appeal has been taken, . . . all claims that were known or should have been known but were not raised in the direct appeal are procedurally barred.” (quotation omitted)); *cf. Swaney*, 882 N.W.2d at 216 (“But an ineffective-assistance claim is not *Knaffla*-barred when the claim . . . cannot be resolved solely on the basis of the record and the briefs.”). The district court did not abuse its discretion by summarily denying claims (1), (2), (3), (8), and (9). *See Pearson*, 891 N.W.2d at 597 (“[A] postconviction court may summarily deny a claim that is procedurally barred by the *Knaffla* rule.”).

Claims (4), (10), and (12), which are ineffective-assistance-of-counsel claims as to appellate counsel, are not *Knaffla*-barred. *See Reed v. State*, 793 N.W.2d 725, 732 (Minn.

2010) (“[A]n ineffective-assistance-of-*appellate*-counsel claim is not subject to the *Knaffla* bar when it cannot be said that the defendant knew or had a basis to know about the claim at the time of direct appeal.”). They are, however, meritless. Mahbub complains that appellate counsel did not raise certain issues on direct appeal. Appellate counsel raised eight other issues, and Mahbub has not overcome the “strong presumption” that appellate counsel exercised reasonable professional judgment in raising those issues to the exclusion of others. *See Morrow v. State*, 886 N.W.2d 204, 206 (Minn. 2016) (“Appellate counsel does not have a duty to raise all possible issues, and may choose to present only the most meritorious claims on appeal.”), *cert. denied*, 137 S. Ct. 1383 (Mar. 27, 2017). Mahbub also insists that appellate counsel should have, but did not, pursue postconviction relief. Appellate counsel did attempt to pursue postconviction relief, as evidenced by Mahbub’s February 2013 motion for a second stay of his direct appeal. Finally, Mahbub asserts that appellate counsel had a conflict of interest because his pro hac vice sponsor is an advocate for women’s rights and a state representative of a district in which one of the five complainants lived. Mahbub does not attempt to explain how the alleged conflict-of-interest resulted in unreasonable performance by appellate counsel. The district court did not abuse its discretion by summarily denying Mahbub’s unsupported claims that appellate counsel was constitutionally ineffective.

Affirmed.