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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1644**

Earl Anthony Fry, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed July 9, 2018
Affirmed
Reilly, Judge**

Hennepin County District Court
File No. 27-CR-13-34342

Earl A. Fry, Minneapolis, Minnesota (pro se appellant)

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

Michael O. Freeman, Hennepin County Attorney, Linda M. Freyer, Brittany D. Lawonn,
Assistant County Attorneys, Minneapolis, Minnesota (for respondent)

Considered and decided by Bjorkman, Presiding Judge; Reilly, Judge; and Stauber,
Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

REILLY, Judge

Appellant Earl Anthony Fry challenges the district court's denial of his petition for postconviction relief, where it determined that appellant's ineffective-assistance-of-trial-counsel claim was procedurally barred under *Knaffla*, and where it determined that appellant's ineffective-assistance-of-appellate-counsel claim failed on the merits. We affirm.

FACTS

In 2013, appellant and the victim got into a fight. Appellant punched the victim, and the victim fell unconscious. The victim suffered life-threatening bleeding in his brain that required emergency surgery. Appellant was initially charged with first-degree burglary and third-degree assault. The state later dismissed the burglary charge and increased the assault charge to first-degree assault after reviewing medical records and determining the extent of the victim's injuries. Appellant pleaded guilty to first-degree assault. At the sentencing hearing, appellant moved to withdraw his guilty plea. The district court denied appellant's motion and determined that his plea was knowing, voluntary, and intelligent. On appeal, appellant argued that his plea was not intelligently given and that it was not accurate because it lacked proof of the element of causation. Appellant alleged that the victim had a pre-existing condition that caused bleeding in his brain and that appellant's assault was not the cause of the victim's injuries. This court affirmed the district court and determined that the plea was intelligently given and that

causation could be “inferred from the chain of events.” *State v. Fry*, No. A14-1297, 2015 WL 4450647, *1, 4 (Minn. App. June 29, 2015).

In April 2017, appellant filed a pro se postconviction petition in district court, which alleged ineffective assistance of trial counsel and ineffective assistance of appellate counsel. Appellant requested that an expert be appointed “with knowledge of sickness of bleeding in the brain,” that he be provided with medical records to prove the bleeding in the victim’s brain was a pre-existing injury, and that he receive complete disclosure of the state’s evidence used to prepare the case for trial. Appellant argued that his counsel failed “to make a record that the victim had bleeding on the brain prior to the incident in question,” and that both his trial and appellate attorneys failed to raise the issue of causation. Appellant also claimed that his trial attorney provided ineffective assistance when he failed to object when the prosecutor increased the assault charge from third- to first-degree assault. Appellant submitted an affidavit claiming that the victim told him about having pre-existing bleeding in his brain.

The district court denied appellant’s petition for postconviction relief. The district court determined that appellant’s claims were procedurally barred under *State v. Knaffla*, 309 Minn. 246, 243 N.W.2d 737 (1976), and that appellant’s claims failed on the merits.

This appeal follows.

D E C I S I O N

This court reviews a denial of postconviction relief based on the *Knaffla* procedural bar for an abuse of discretion. *Quick v. State*, 692 N.W.2d 438, 439 (Minn. 2005). An abuse of discretion exists if the denial of postconviction relief is “based on an erroneous

view of the law or is against logic and the facts in the record.” *Brown v. State*, 895 N.W.2d 612, 617 (Minn. 2017) (quotation omitted). There is no abuse of discretion in a denial of postconviction claims presented “solely as conclusory, argumentative assertions without factual support.” *Davis v. State*, 784 N.W.2d 387, 391 (Minn. 2010). When a party has exhausted the right of a direct appeal, all claims raised or known but not raised in that appeal will not be considered upon a subsequent petition for postconviction relief. *Knaffla*, 309 Minn. at 252, 243 N.W.2d at 741; *see also* Minn. Stat. § 590.01, subd. 1 (2016).

The district court determined that appellant’s ineffective-assistance-of-trial-counsel claims were *Knaffla*-barred. The district court found that appellant’s direct appeal from the district court’s denial of his motion to withdraw his guilty plea proceeded on a theory of insufficient causation. The court noted that, although appellant brought an ineffective-assistance-of-counsel claim in his petition for postconviction relief, he was actually rearguing the issue of causation. Appellant sought to elicit expert testimony and gather further medical evidence to show the victim had a pre-existing injury so he could show that his actions did not cause the victim’s injuries. The district court determined the court of appeals had already ruled on the issue of causation and therefore the claims were procedurally barred under *Knaffla*. The district court noted that appellant failed to argue either exception to the *Knaffla* bar, but that he would have failed under either exception had the arguments been raised.¹ The district court also determined that appellant’s

¹ A claim is not subject to the *Knaffla* bar: (1) if a novel legal issue is presented; or (2) if the interests of justice require review. *Taylor v. State*, 691 N.W.2d 78, 79 (Minn. 2005). Interests of justice require review if fairness requires it and if appellant did not “deliberately and inexcusably” fail to raise the issue on direct appeal. *Fox v. State*, 474 N.W.2d 821,

ineffective-assistance-of-appellate-counsel claim failed because he was unable to show his trial counsel was ineffective.

We agree with the district court's thorough analysis. Appellant is attempting to relitigate the issue of causation in the guise of an ineffective-assistance-of-counsel claim. Issues raised and addressed on direct appeal are procedurally barred from further consideration in a petition for postconviction relief. *Knaffla*, 309 Minn. at 252, 243 N.W.2d at 741. Further, the record indicates appellant was aware of his trial attorney's conduct on direct appeal and could have raised the issue of ineffective counsel at that time. *Id.* "[C]laims known but not raised . . . will not be considered upon a subsequent petition for postconviction relief." *Id.* Appellant's claims are procedurally barred by *Knaffla*.

Finally, we note that appellant's claims fail on the merits. Defense counsel received discovery from the state regarding the victim's medical examination, and she clearly relied on that evidence during the plea colloquy. Appellant waived certain rights when he pleaded guilty, which included the right to call witnesses and present evidence to a jury. *See State v. Thompson*, 720 N.W.2d 820, 827 (Minn. 2006). Appellant's own plea of guilty prevented his trial attorney from arguing the issues he now claims were insufficiently developed below. Furthermore, even if the matter had proceeded to trial, the decisions of whether to call an expert witness or use medical evidence are matters of unreviewable trial strategy. *Carridine v. State*, 867 N.W.2d 488, 494 (Minn. 2015). Because appellant's

825 (Minn. 1991). The district court was correct: neither of the exceptions to the *Knaffla* bar apply here. Appellant does not present a novel legal issue. Additionally, appellant did not fail to raise the issue of causation on direct appeal.

ineffective-assistance-of-counsel claims against his trial counsel fail on the merits, we determine that his ineffective-assistance claim against his appellate attorney likewise fails. *See Fields v. State*, 733 N.W.2d 465, 468 (Minn. 2007) (requiring appellant to “first show that trial counsel was ineffective” before prevailing on merits against appellate counsel).

Affirmed.