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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1052**

Eddie Niles Hubbard, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed March 25, 2019
Affirmed
Hooten, Judge**

Hennepin County District Court
File No. 27-CR-13-14966

Eddie N. Hubbard, Faribault, Minnesota (pro se appellant)

Michael O. Freeman, Hennepin County Attorney, Michael Richardson, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Hooten, Presiding Judge; Reyes, Judge; and Cochran, Judge.

UNPUBLISHED OPINION

HOOTEN, Judge

Appellant, in a pro se appeal, challenges the postconviction court's denial of his petition for postconviction relief for his conviction of first-degree manslaughter and second-degree assault. We affirm.

FACTS

Appellant Eddie Hubbard was convicted of first-degree manslaughter for shooting and killing a man with a shotgun and second-degree assault for threatening the man's girlfriend with the shotgun. *State v. Hubbard*, No. A14-1259, 2015 WL 4714802, at *1–3 (Minn. App. Aug. 15, 2015), *review denied* (Minn. Oct. 28, 2015). The man, J.C., had been living in Hubbard's house along with his girlfriend, K.S., and her four children. *Id.* at *1. An argument broke out between Hubbard and J.C. because Hubbard wanted the couple and the children to move out. *Id.* at *1–2. Hubbard came into the room where J.C., K.S., and the children were packing up their belongings, pointed a shotgun at K.S., and then shot J.C. in the abdomen. *Id.* at *2. A jury found Hubbard guilty of the two charges, and he was sentenced to prison. *Id.* at *3.

Hubbard appealed his conviction to this court. *Id.* at *1. He argued that there was insufficient evidence to convict him of either charge, he was denied a meaningful opportunity to present a complete defense, the district erred in its jury instructions, and *Spreigl* evidence¹ should have been excluded at trial. *Id.* This court affirmed. *Id.* Hubbard filed a petition for postconviction relief which was denied. This appeal follows.

DECISION

Hubbard appeals the denial of his petition for postconviction relief. We review such denials for an abuse of discretion. *Greer v. State*, 836 N.W.2d 520, 522 (Minn. 2013).

¹ *Spreigl* evidence is evidence of a defendant's prior bad acts. *State v. Thao*, 875 N.W.2d 834, 839 (Minn. 2016); *see also State v. Spreigl*, 139 N.W.2d 167 (Minn. 1965).

This involves reviewing the postconviction court's legal conclusions de novo and its factual findings for clear error. *Id.*

Hubbard makes three principal arguments. First, he argues that he was denied the right to a speedy trial. "The right to a speedy trial is guaranteed by the Sixth Amendment to the United States Constitution and Article I, Section 6 of the Minnesota Constitution." *State v. Griffin*, 760 N.W.2d 336, 339 (Minn. App. 2009) (quotation omitted). The question of whether an appellant was denied his or her speedy-trial rights is reviewed de novo. *Id.*

"A petition for postconviction relief after a direct appeal has been completed may not be based on grounds that could have been raised on direct appeal of the conviction or sentence." Minn. Stat. § 590.01, subd. 1 (2018); *see also State v. Knaffla*, 243 N.W.2d 737, 741 (Minn. 1976). Hubbard could have raised this issue on his direct appeal, but failed to do so. Hubbard essentially concedes that he was aware of the speedy-trial issue before his direct appeal when he states in his brief: "A 'Speedy Trial' was never rescheduled, despite written request to the court and to my attorney." This argument is barred by *Knaffla*.

As part of his speedy-trial argument, Hubbard also seems to argue that he was denied the right to be at an essential hearing when he was not allowed to be present at a July 15, 2013 hearing. "A defendant in a criminal proceeding has a Fourteenth Amendment due process right to be present at all critical stages of trial." *State v. Rodriguez*, 889 N.W.2d 332, 336 (Minn. App. 2017) (quotation omitted). Hubbard contends that he has a letter from a court reporter indicating that a hearing was held "without being monitored or transcripts made," but he also claimed that he has newly discovered evidence in the form

of transcripts from that day. But neither the court reporter's letter nor the newly discovered transcripts are a part of the record on appeal, and Hubbard fails to explain what was done during this supposed hearing or show that it was a "critical stage of trial." Based on this record, Hubbard has failed to show that he was deprived of his right to be present at an essential hearing.

The second principal argument that Hubbard makes is that his trial counsel was ineffective. The postconviction court ruled that Hubbard "provided no proof" that his trial counsel's performance fell below an objective standard of reasonableness. We agree. Hubbard makes allegations of ineffective assistance of counsel, but he did not develop the record to support those allegations. And he does not assert that he was wrongfully denied a postconviction hearing. Accordingly, we conclude that his ineffective-assistance-of-counsel claim fails.

And his third principal argument is that the district court denied his Sixth Amendment right to counsel by not allowing him to discharge his attorney and obtain a different one without inquiring into the basis for the request. But Hubbard fails to explain why he could not have made this argument on direct appeal. Accordingly, it is *Knafl*-barred.

Within his third argument, Hubbard also states that the district court erred when it gave him an "aggravated sentence for children when I . . . had been acquitted of charges of assaulting them." To the extent that this is an argument for the correction of an illegal sentence, Hubbard does not support his argument with any legal authority and therefore forfeits it. See *State v. Bursch*, 905 N.W.2d 884, 889 (Minn. App. 2017) ("Arguments are

forfeited if they are presented in a summary and conclusory form, do not cite to applicable law, and fail to analyze the law when claiming that errors of law occurred.”).

But, even if this argument were not forfeited, it would fail on its merits. Hubbard was charged with three counts of second-degree assault related to the children who were present when he shot J.C. Hubbard was acquitted on all three of those assault charges. But, when the jury found Hubbard guilty of first-degree manslaughter, it also found that “the defendant’s act was committed in the presence of a child.” “[C]ommission of an offense in the presence of a child may be a valid reason to depart from the presumptive sentence.” *State v. Robideau*, 796 N.W.2d 147, 151 (Minn. 2011). Hubbard appears to be operating under the misunderstanding that he would have to be found guilty of child-related assaults in order for this aggravating factor to apply, but the jury clearly found that the first-degree manslaughter occurred in the presence of the children and Hubbard does not challenge this finding. This last argument also fails.

Affirmed.