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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1248**

Arteco Marvell Rhodes, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed June 3, 2019
Affirmed
Kirk, Judge***

Ramsey County District Court
File No. 62-CR-13-3859

Deborah Ellis, Ellis Law Office, St. Paul, Minnesota (for appellant)

Keith Ellison, Attorney General, St. Paul, Minnesota; and

John Choi, Ramsey County Attorney, Adam E. Petras, Assistant County Attorney, St. Paul, Minnesota (for respondent)

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

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

UNPUBLISHED OPINION

KIRK, Judge

Appellant Arteco Marvell Rhodes challenges the district court's denial of his petition for postconviction relief without an evidentiary hearing. Because we conclude that Rhodes's claims are *Knaffla*-barred, we affirm.

FACTS

Following a jury trial in 2013, Rhodes was convicted of sex trafficking under Minn. Stat. § 609.322, subd. 1 (2012), and possession of child pornography under Minn. Stat. § 617.247, subd. 4(a) (2012). At trial, the state introduced several photographs of the minor victim that police found on one of Rhodes's three cellphones. Police found the phones in Rhodes's van when they arrested him in April 2013. Sergeant Bandemer obtained a search warrant to search the phones on May 9, 2013. Officer Siegfried executed the warrant, and was only able to access data on one of the phones because the other two were password protected and not compatible with the data-extracting software that he used. On the phone that he could access, he found the photographs and gave them to Sergeant Bandemer. The photographs were the basis of the child pornography charge and also supported the sex trafficking charge.

Rhodes appealed his conviction and sentence. *State v. Rhodes*, No. A14-0433, 2015 WL 4611883 (Minn. App. Aug. 3, 2015), *review denied* (Minn. Oct. 28, 2015). Rhodes raised two issues in the direct appeal—the introduction of evidence of threats he made to witnesses and the sufficiency of the evidence. *Id.* at *3-4. Rhodes obtained a stay of the appeal to file a postconviction petition. *Id.* at *1. Rhodes argued in the first postconviction

petition that he was improperly sentenced because the district court incorrectly calculated his criminal-history score and because his two convictions arose out of the same course of conduct and therefore violated Minn. Stat. § 609.035 (2012). *Id.* at *5-7. The district court denied the first postconviction petition. *Id.* at *1. When the appeal was reinstated, this court affirmed the district court, including its denial of the first petition. *Id.*

On December 28, 2017, Rhodes brought a second postconviction petition—the subject of this appeal—asserting ineffective assistance of trial counsel. In the petition, Rhodes indicated that he had obtained a copy of his trial attorney’s file in January 2016, after his first appeal concluded. The file included a Saint Paul Police Property Room log relating to the three cell phones that police had seized. A log entry shows that Sergeant Bandemer took the three cellphones out of the property room on April 29, 2013, and returned them on May 14, 2013. Bandemer wrote the word “forensics” in a column labelled “reason.” The next log entry shows that Officer Siegfried took the phones out of the property room on May 17, and returned them on May 20, with “exam” listed as the reason. Rhodes asserts that the log shows that Bandemer conducted a warrantless search on the cellphones because Bandemer did not obtain the search warrant until May 9, 2013, and because Bandemer wrote the word “forensics” as the reason that he took the phones out of the property room.

Rhodes claimed that his trial attorney’s assistance was ineffective because the attorney failed to contest the alleged warrantless search. The district court denied the petition without an evidentiary hearing, concluding that Rhodes did not allege facts that, if

proved, showed that a warrantless search actually occurred or that his trial attorney's performance was ineffective.

Rhodes appeals.

DECISION

Rhodes argues that the district court abused its discretion by denying his postconviction petition without first conducting an evidentiary hearing. The state maintains that the district court properly denied the petition without a hearing because, among other reasons, Rhodes's ineffective-assistance-of-counsel claim is *Knaffla*-barred.

An appellate court reviews the denial of postconviction relief for an abuse of discretion. *Caldwell v. State*, 853 N.W.2d 766, 770 (Minn. 2014). We review legal issues de novo and factual issues to determine whether sufficient evidence in the record supports the district court's findings. *Matakis v. State*, 862 N.W.2d 33, 36 (Minn. 2015).

A court must hold an evidentiary hearing on a postconviction petition "[u]nless the petition and the files and records of the proceedings conclusively show that the petitioner is entitled to no relief." Minn. Stat. § 590.04, subd. 1 (2016). To determine whether an evidentiary hearing is required, the court must consider the "competent evidence presented by the petitioner" and the arguments of the parties in "the light most favorable to the petition." *Martin v. State*, 825 N.W.2d 734, 740 (Minn. 2013). If the petition, evidence and record "conclusively show that the petitioner is not entitled to relief," the court may deny the petition without a hearing. *Id.*

“Claims that were raised on direct appeal, or were known or should have been known but were not raised on direct appeal, are procedurally barred.” *Sontoya v. State*, 829 N.W.2d 602, 604 (Minn. 2013) (citing *State v. Knaffla*, 243 N.W.2d 737, 741 (Minn. 1976)); *see also* Minn. Stat. § 590.01, subd. 1 (2016) (“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.”). A claim is not *Knaffla*-barred, however, if “(1) the claim is novel; or (2) the interests of fairness and justice warrant relief.” *Id.*

“When a claim of ineffective assistance of trial counsel can be determined on the basis of the trial record, the claim must be brought on direct appeal or it is *Knaffla*-barred.” *Id.* “[A]n ineffective-assistance-of-counsel claim is not *Knaffla*-barred when the claim requires examination of evidence outside the trial record and additional fact-finding by the postconviction court because it is not based solely on the briefs and trial court transcript.” *Sanchez-Diaz v. State*, 758 N.W.2d 843, 847 (Minn. 2008). “But if such a claim could have been raised in a previous postconviction petition, the *Knaffla* rule bars consideration of the claim in a subsequent petition for postconviction relief.” *Pearson v. State*, 891 N.W.2d 590, 597 (Minn. 2017).

Accepting that Rhodes did not have personal, actual knowledge of the property room log until January 2016, we conclude that Rhodes should have known about it—and the ineffective-assistance-of-counsel claim that Rhodes now brings—when he filed his first petition for postconviction relief. The property room log was in Rhodes’s trial attorney’s possession before he disclosed it to Rhodes in January 2016. Rhodes and his previous

appellate attorney could have, and should have, known about and reviewed discovery materials that the trial attorney possessed when they filed Rhodes’s first petition and appeal. Because Rhodes could have raised the ineffective-assistance-of-trial-counsel claim in his first postconviction petition but did not, the *Knaffla* rule bars consideration of the claim in Rhodes’s second postconviction petition.¹

Citing *Washington v. State*, 845 N.W.2d 205 (Minn. App. 2014), Rhodes argues that the *Knaffla* rule does not apply here because he could have brought his first petition as a motion to correct sentence under Minn. R. Crim. P. 27.03, subd. 9.² In *Washington*, this court discussed the limits of a district court’s discretion to treat certain claims brought under rule 27.03 as if they were brought in a postconviction petition under Minn. Stat. § 590.01. *Id.* at 211-12. A district court cannot treat a claim properly brought under rule 27.03 as if it were brought as a postconviction petition. *Id.* The procedural rules and limitations of the postconviction petition statutes, including the *Knaffla* rule, do not apply to claims properly invoked under rule 27.03. *State v. Reynolds*, 888 N.W.2d 125, 133 (Minn. 2016); *See also Washington*, 845 N.W.2d at 212. We noted in *Washington* that

[a]s a consequence of the above-described caselaw, an offender wishing to challenge his or her sentence may have a strong incentive to do so in a motion to correct sentence filed pursuant to rule 27.03, subdivision 9, rather than a postconviction

¹ The state notes in its appellate arguments that Rhodes could have brought a petition alleging ineffective assistance of appellate counsel for failing to raise a claim of ineffective assistance of trial counsel in the first petition. Rhodes makes no claim of ineffective assistance of appellate counsel in his postconviction petition or in his appellate arguments. Thus, we do not address the merits of that claim.

² Rule 27.03 provides that “[t]he court may at any time correct a sentence not authorized by law. The court may modify a sentence during a stay of execution or imposition of sentence if the court does not increase the period of confinement.”

petition filed pursuant to chapter 590, if both alternatives are available.

Id.

We stated that “an offender may avoid the procedural requirements of chapter 590 only if a challenge is *properly* filed under rule 27.03.” *Id.* (quotation omitted).

Although Rhodes could have brought his first petition as a motion to correct sentence pursuant to rule 27.03, he chose to file the first petition as a postconviction petition. For that reason, we consider the petition here to be Rhodes’s second postconviction petition and conclude that the *Knaffla* rule applies.

Because Rhodes’s claim is *Knaffla*-barred, the petition and the record of the proceedings conclusively showed that Rhodes was not entitled to relief. The district court acted within its discretion when it denied Rhodes’s second petition without conducting an evidentiary hearing.³

Affirmed.

³ Because we conclude that Rhodes’s ineffective-assistance-of-counsel claim is *Knaffla*-barred, we do not reach the merits of his claim.