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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1310**

Julian Sanchez-Sanchez, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed May 28, 2019
Affirmed
Worke, Judge**

Hennepin County District Court
File No. 27-CR-13-9468

Zachary A. Longsdorf, Longsdorf Law Firm, PLC, Inver Grove Heights, Minnesota (for appellant)

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

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Considered and decided by Slieter, Presiding Judge; Worke, Judge; and Schellhas, Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant challenges the postconviction court’s denial of his claims and refusal to vacate his sentence and order a new sentencing hearing based on the Drug Sentencing Reform Act (the DSRA). We affirm.

FACTS

In 2013, appellant Julian Sanchez-Sanchez was charged with conspiracy to commit a first-degree controlled-substance crime. The charge originated from a federal investigation into a large drug-trafficking network in which Sanchez-Sanchez allegedly held a leadership role and conspired with several others to sell methamphetamine. Prior to trial, the state notified Sanchez-Sanchez that it intended to seek an upward durational sentencing departure, alleging the presence of aggravating factors, and offered him a 172-month sentence in exchange for his guilty plea. Sanchez-Sanchez rejected the offer and entered a straight plea to the charged offense.

Sanchez-Sanchez waived his right to a *Blakely* jury trial.¹ At a bench trial on the aggravating factors, the state presented its case through a single witness, a federal agent. The agent testified about intercepted telephone calls between Sanchez-Sanchez and a co-conspirator arranging for transportation of methamphetamine “consistent with a large-scale Mexican drug trafficking organization.” The agent also testified about statements made by multiple co-conspirators linking Sanchez-Sanchez to the “highest levels of the

¹ A *Blakely* trial requires aggravating sentencing factors to be proven beyond a reasonable doubt. *Blakely v. Washington*, 542 U.S. 296, 301, 124 S. Ct. 2531, 2536 (2004).

conspiracy,” and explained evidence linking Sanchez-Sanchez to a property housing the operation. Finally, the agent testified that the amount of methamphetamine seized was equivalent to supply purchases with 36,000 uses.

The district court sentenced Sanchez-Sanchez to 240 months in prison. The aggravated sentence was based on the district court’s determination that the state proved three aggravating factors beyond a reasonable doubt: (1) Sanchez-Sanchez committed a “major controlled substance offense” because he “occupied a high-level position” within the distribution hierarchy, and the offense involved a “high degree of sophistication and planning”; (2) the conspiracy involved “at least 20 people”; and (3) Sanchez-Sanchez put a large number of people at risk based on the amount of methamphetamine seized and because the substance is “particularly dangerous.”

Sanchez-Sanchez appealed, arguing that the district court erroneously relied on impermissible hearsay in finding the existence of the aggravating factors. This court affirmed the district court. Sanchez-Sanchez petitioned for further review, and the supreme court affirmed, holding that even though the rules of evidence apply in a sentencing proceeding, Sanchez-Sanchez failed to object to the hearsay evidence, and failed to show that the district court plainly erred in failing to apply the rules of evidence in determining whether the hearsay evidence was admissible. *See State v. Sanchez-Sanchez*, 879 N.W.2d 324, 331 (Minn. 2016).

On August 11, 2017, Sanchez-Sanchez petitioned for postconviction relief, requesting that the district court resentence him on the grounds that his sentence violated his constitutional rights because the departure was based on uncorroborated hearsay, and

that he was entitled to resentencing under the DSRA. The district court concluded that the DSRA entitled Sanchez-Sanchez to resentencing,² but it denied a new sentencing hearing based on the use of inadmissible hearsay. Following a hearing on the impact of the DSRA, the district court concluded that the DSRA did not mandate a shorter sentence because Sanchez-Sanchez's sentence involved an upward departure, and was not based on the presumptive sentence. The district court modified Sanchez-Sanchez's sentence "to reflect that under the DSRA his presumptive sentence is 65 months," and retained the 240-month sentence. This appeal followed.

DECISION

Sanchez-Sanchez challenges the district court's denial of his postconviction claims and refusal to reverse his sentence and order a new sentencing hearing. Appellate courts review a postconviction court's denial of a petition for postconviction relief for an abuse of discretion. *Crow v. State*, 923 N.W.2d 2, 9 (Minn. 2019). "A postconviction court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record, or exercises its discretion in an arbitrary or capricious manner." *Id.* (quotation omitted). "The person seeking postconviction relief bears the burden of establishing by a preponderance of the evidence that his claims merit relief," and a court "must hold an evidentiary hearing on the postconviction petition unless the petition and the files and records of the proceeding conclusively show that the petitioner is entitled

² The DSRA's lower presumptive sentences apply to cases, including Sanchez-Sanchez's, which were not yet final when the DSRA took effect. *See State v. Kirby*, 899 N.W.2d 485, 487 (Minn. 2017).

to no relief.” *Id.* at 10 (citation and quotations omitted). “An evidentiary hearing is not required, however, if the facts alleged in the petition . . . establish that the petition is procedurally barred by the rule announced in *Knaffla*, or when the claims are based solely on conclusory, argumentative assertions without factual support.” *Id.* (quotations omitted).

The state argues that Sanchez-Sanchez’s claims are barred because he raised them, or should have raised them, during his direct appeal. Minnesota law bars review of claims that were raised or could have been raised on direct appeal. *State v. Knaffla*, 243 N.W.2d 737, 741 (Minn. 1976) (“[W]here direct appeal has once been taken, all matters raised therein, and all claims known but not raised, will not be considered upon a subsequent petition for postconviction relief.”); Minn. Stat. § 590.01, subd. 1 (Minn. 2018).

We conclude that Sanchez-Sanchez’s claims are barred under *Knaffla*. Here, without holding a hearing, the district court rejected Sanchez-Sanchez’s arguments regarding the district court’s use of inadmissible hearsay because both this court and the supreme court addressed this issue in his direct appeal. The supreme court concluded that the district court did not plainly err in determining that the rules of evidence did not apply and relying on hearsay in reaching its sentence. *Sanchez-Sanchez*, 879 N.W.2d at 331.

Sanchez-Sanchez argues that even if his claims are barred, an exception applies. The *Knaffla* bar is subject to two exceptions:

First, if a claim is known to a defendant at the time of direct appeal *but is not raised*, it will not be barred by the rule if the claim’s novelty was so great that its legal basis was not reasonably available when direct appeal was taken. Second, even if the claim’s legal basis was sufficiently available,

substantive review may be allowed when fairness so requires and when the petitioner *did not deliberately and inexcusably fail to raise the issue* on direct appeal.

Leake v. State, 737 N.W.2d 531, 535 (Minn. 2007) (emphasis added) (citation and quotations omitted). Sanchez-Sanchez argues that both exceptions apply because it is a novel issue regarding how to treat illegitimately proven aggravating factors when a subsequent change in the law requires resentencing, and he did not “deliberately and inexcusably” fail to raise the issue on direct appeal. We disagree.

We first note that Sanchez-Sanchez fails to cite any authority supporting his argument. See *Zornes v. State*, 903 N.W.2d 411, 421 (Minn. 2017) (“Because [defendant]’s attempt to invoke the *Knaffla* exceptions is merely an argumentative assertion without factual support, it fails as a matter of law.”). Second, the aggravating factors supporting Sanchez-Sanchez’s sentence were not “illegitimately proven.” As the supreme court determined, at the time of Sanchez-Sanchez’s direct appeal, the law did not mandate the application of the rules of evidence in a *Blakely* court trial. *Sanchez-Sanchez*, 879 N.W.2d at 331. And these exceptions assume that a defendant did not raise the issue in a prior direct appeal, not as here where Sanchez-Sanchez raised the claim in a direct appeal and it was already decided. Cf. *Leake*, 737 N.W.2d at 535-36 (concluding claim not *Knaffla* barred because it addressed issues arising from a direct appeal that could not have been previously raised). Finally, we discern no novel issue of law that requires this court look past the *Knaffla* bar, as the supreme court had an opportunity to discern such an issue in Sanchez-Sanchez’s direct appeal and affirmed.

Sanchez-Sanchez also argues that the DSRA required the postconviction court to vacate his sentence and grant him a new sentencing hearing at which he could have objected to the impermissible hearsay. Even if we reached this issue, we would conclude that the DSRA does not require a vacation of sentence and new sentencing hearing, and Sanchez-Sanchez cites to no authority mandating such a result.

Here, Sanchez-Sanchez did not receive a new sentencing hearing and he had no opportunity to object to the sentencing court's use of impermissible hearsay. If we were to consider this issue, we would reject Sanchez-Sanchez's argument that the postconviction court erred by not vacating his sentence under the DSRA.³ *Cf. State v. Otto*, 899 N.W.2d 501, 502, 504 (Minn. 2017) (vacating and remanding for resentencing under the DSRA when defendant received bottom-of-the-box sentence); *State v. Longo*, 909 N.W.2d 599, 610 (Minn. App. 2018) (reversing and remanding for resentencing under the DSRA because DSRA reduced the preemptive sentence applicable to defendant who received sentence within presumptive range).

Affirmed.

³ Sanchez-Sanchez cites *State v. Soto*, 855 N.W.2d 303 (Minn. 2014) and *Kirby* for support, but both cases are distinguishable. In *Soto*, the supreme court vacated and remanded for a sentencing court to "conduct additional fact-finding" when a district court erred in sentencing a defendant to a downward departure based on a lack of record support. 855 N.W.2d at 314-15. In *Kirby*, the supreme court vacated a defendant's sentence and remanded for resentencing when the defendant received a presumptive sentence that the DSRA had lowered. 899 N.W.2d at 487, 496. Here, as stated, the postconviction court did not vacate Sanchez-Sanchez's sentence and he did not receive a presumptive sentence; and further, neither *Soto* nor *Kirby* mandate that a defendant must have his aggravated sentence vacated when the DSRA lowers the applicable presumptive sentence.