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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1392**

Daniel Leith Renville, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed June 10, 2019
Affirmed
Rodenberg, Judge**

Redwood County District Court
File No. 64-CR-12-852

Daniel Leith Renville, Faribault, Minnesota (pro se appellant)

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

Jenna Peterson, Redwood County Attorney, Redwood Falls, Minnesota (for respondent)

Considered and decided by Bratvold, Presiding Judge; Rodenberg, Judge; and
Reilly, Judge.

UNPUBLISHED OPINION

RODENBERG, Judge

Appellant Daniel Leith Renville appeals from an order denying his petition for postconviction relief, arguing that the district court erred by denying relief without an

evidentiary hearing on his ineffective-assistance-of-appellate-counsel claim, and by denying relief on grounds that his claim is time-barred. We affirm.

FACTS

On March 13, 2013, a jury found appellant guilty of first-degree criminal sexual conduct. Appellant directly appealed, arguing that the district court erred by excluding evidence that illuminated appellant's relationship with the victim, and by allowing the state to impeach him with prior felony convictions. *State v. Renville*, A13-1265, 2014 WL 3799058, at *1 (Minn. App. Aug. 4, 2014), *review denied* (Minn. Oct. 14, 2014). Appellant argued pro se that his trial counsel admitted his guilt in the presence of the jury and failed to obtain exonerating evidence. We affirmed appellant's conviction, holding that the district court did not abuse its discretion in its evidentiary rulings, that the evidence was sufficient to support appellant's conviction, and that a thorough review of the record showed appellant's pro se claims to lack merit. *Id.* at *1, *4.

On March 5, 2015, appellant petitioned for postconviction relief, alleging that he received ineffective assistance of counsel because trial counsel failed to obtain exonerating evidence and witnesses. The district court denied appellant's petition for postconviction relief. Appellant appealed that decision, arguing that he received ineffective assistance of appellate counsel in his direct appeal. *Renville v. State*, A15-1223, 2016 WL 3222834, at *1 (Minn. App. June 13, 2016). Specifically, appellant argued that his appellate counsel was ineffective in not ordering pretrial transcripts and for failing to argue that appellant's trial counsel was ineffective for not advising him of a plea offer. *Id.* We affirmed the denial of appellant's petition for postconviction relief, declining to consider appellant's

ineffective-assistance-of-appellate-counsel argument because appellant did not include this argument in his postconviction petition. *Id.* (citing *Azure v. State*, 700 N.W.2d 443, 447 (Minn. 2005) (“It is well settled that a party may not raise issues for the first time on appeal from denial of postconviction relief.” (quotation omitted))).

Appellant again petitioned for postconviction relief on June 11, 2018, requesting an evidentiary hearing, and arguing that his appellate counsel was ineffective both for not having ordered pretrial transcripts and for not arguing that appellant’s trial counsel was ineffective for failing to communicate a plea offer.

The postconviction court concluded that appellant’s claims of error concerning the issue of ineffective assistance of appellate counsel in the direct appeal were known but not raised during appellant’s direct appeal and are therefore procedurally barred from consideration in a subsequent petition for postconviction relief. Alternatively, the postconviction court concluded, after a thorough analysis of the record, that appellant did not allege facts that, if proven, would entitle appellant to relief and therefore an evidentiary hearing is not warranted on appellant’s ineffective-assistance-of-appellate-counsel claims. Finally, the postconviction court determined that appellant’s claims are not so novel that their legal basis was not reasonably available to counsel at the time of appellant’s direct appeal, and that fairness does not require a postconviction proceeding given the nature of appellant’s claims. It denied appellant’s petition for postconviction relief.

This appeal followed.

DECISION

A district court may deny a petition for postconviction relief without an evidentiary hearing if “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 (2018). We review the denial of a petition for postconviction relief, as well as a request for an evidentiary hearing, for an abuse of discretion. *Henderson v. State*, 906 N.W.2d 501, 505 (Minn. 2018), *cert. denied*, 139 S. Ct. 271 (2018).

Where a direct appeal has been taken, all matters raised therein, and all claims known but not raised, will not be considered upon a subsequent petition for postconviction relief. *State v. Knaffla*, 243 N.W.2d 737, 741 (Minn. 1976). Also not considered are claims that were not known, but should have been known at the time of the direct appeal. *Hathaway v. State*, 741 N.W.2d 875, 878 (Minn. 2007). Claims that were raised, or could have been raised, in a previous postconviction petition are also procedurally barred. *Colbert v. State*, 870 N.W.2d 616, 626 (Minn. 2015).

Appellant, by his own admission, discussed his trial counsel’s alleged failure to communicate a plea offer and the need for pretrial transcripts with his appellate counsel at the time of his direct appeal. As the postconviction court noted, appellant cites in his 2015 brief to this court conversations between himself and appellate counsel where counsel allegedly told him that there is not “a basis for an ineffective assistance of counsel claim.” Appellant also argued in that brief that counsel refused to look into his claim and appellate counsel would not accept his ideas about such issues raised on direct appeal. Appellant specifically referred to his knowledge of the plea-communication issue before in his direct

appeal, and his latest brief to this court reflects the same. These issues, known to appellant at the time of his direct appeal, are *Knaffla*-barred. *Knaffla*, 243 N.W.2d at 741.

Regardless of whether appellant could have raised his ineffective-assistance-of-appellate-counsel claim on direct appeal,¹ appellant's claim is still *Knaffla*-barred because the claim could have been raised in appellant's previous postconviction petition. See *Colbert*, 870 N.W.2d at 626 (stating that the *Knaffla* rule bars consideration of claims that were raised, or could have been raised, in a previous postconviction petition).

There are two recognized exceptions to the *Knaffla* bar, but neither is applicable here. First, a postconviction court may consider a claim that was previously known but not raised on direct appeal if the claim is so novel that its legal basis was not reasonably available at the time of direct appeal. *Roby v. State*, 531 N.W.2d 482, 484 (Minn. 1995). Appellant's ineffective-assistance-of-counsel claim is not novel at all, and its legal basis was clearly evident at the time of his direct appeal. Second, a postconviction court may consider a claim when fairness requires it and the petitioner did not "deliberately and inexcusably fail to raise the issue on direct appeal." *Id.* (quotation omitted). Appellant has not provided a colorable explanation for why he did not raise these claims in either his direct appeal or in his first postconviction petition, and fairness does not require consideration of these claims.

¹ When an ineffective-assistance-of-counsel claim can be determined on the basis of the trial record, it must be brought on direct appeal or it is *Knaffla*-barred. *Andersen v. State*, 830 N.W.2d 1, 10 (Minn. 2013). But when the claim requires the court to consider evidence outside the trial record, it is not *Knaffla*-barred. *Id.*

The district court acted within its discretion in denying appellant's petition for postconviction relief without an evidentiary hearing, because the record conclusively shows that appellant is not entitled to postconviction relief.

Affirmed.