

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1455**

James Donald Dahl, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed March 18, 2019
Affirmed
Reyes, Judge**

Stearns County District Court
File No. 73-CR-07-14970

James Donald Dahl, Faribault, Minnesota (pro se appellant)

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

Janelle P. Kendall, Stearns County Attorney, Michael J. Lieberg, Assistant County
Attorney, St. Cloud, Minnesota (for respondent)

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

UNPUBLISHED OPINION

REYES, Judge

Appellant challenges the postconviction court's summary denial of his second
petition for postconviction relief. We affirm.

FACTS

A jury found appellant guilty of two counts of first-degree criminal sexual conduct and one count of third-degree criminal sexual conduct in January 2010 for multiple sexual assaults on a 14-year-old girl who lived with him. The district court subsequently sentenced appellant to 173 months in prison. Appellant then moved for a new trial alleging prosecutorial misconduct and that the evidence did not support the jury's verdict. The district court denied the motion.

Appellant then filed a direct appeal of his conviction through a state public defender. In his direct appeal, appellant argued (1) prosecutorial misconduct; (2) insufficiency of the evidence; and (3) that the district court abused its discretion by denying him access to the victim's school, court, and medical records. This court affirmed appellant's conviction, and the supreme court denied review. *State v. Dahl*, A10-1813, 2011 WL 4435325, at *1 (Minn. App. Sept. 26, 2011), *review denied* (Minn. Dec. 21, 2011).

In March 2014, appellant petitioned for postconviction relief through a private attorney. He alleged ineffective assistance by both his trial counsel and appellate counsel. Specifically, appellant alleged that his trial counsel failed to provide him with effective assistance in six different ways, including failure to investigate and present his defense. The postconviction court held a three-day evidentiary hearing in January 2015 before denying the petition in a 52-page order in September 2015. This court affirmed the postconviction court, and the supreme court denied review. *Dahl v. State*, A15-1870, 2016 WL 4263020, at *1 (Minn. App. Aug. 15, 2016), *review denied* (Minn. Oct. 26, 2016).

Appellant, now pro se, filed his second petition for postconviction relief on April 9, 2018. On August 2, 2018, the postconviction court summarily denied this petition as time-barred and *Knaffla*-barred. This appeal follows.

DECISION

Appellant argues that his postconviction petition is not time-barred because (1) dementia precluded him from bringing a timely petition; (2) new evidence shows that his *Miranda* rights were violated; and (3) he received ineffective assistance of trial counsel. We disagree.

We review the denial of a petition for postconviction relief for an abuse of discretion. *Matakis v. State*, 862 N.W.2d 33, 36 (Minn. 2015). A postconviction court abuses its discretion if it acts in an arbitrary or capricious manner, bases its ruling on an erroneous view of the law, or makes clearly erroneous factual findings. *Id.* We review legal issues de novo and factual issues to determine whether the record contains sufficient evidence to sustain the postconviction court’s findings. *Id.*

A petition for postconviction relief may not be filed more than two years after (1) the entry of judgment of conviction or sentence if the petitioner did not file a direct appeal or (2) the appellate court’s disposition of the petitioner’s direct appeal. Minn. Stat. § 590.01, subd. 4(a) (2018). If an appellant’s petition for postconviction relief is filed outside the statute of limitations, the postconviction court may summarily deny the petition unless a statutory exception applies. *Andersen v. State*, 913 N.W.2d 417, 423 (Minn. 2018). “A postconviction court need not grant a hearing on a claim if the files and records of the

proceeding conclusively establish that the petitioner is not entitled to relief.” *Brown v. State*, 863 N.W.2d 781, 786 (Minn. 2015).

I. Appellant has not shown that his dementia precluded him from bringing a timely postconviction petition.

Appellant argues that he suffers from dementia, which precluded him from bringing a timely postconviction petition. We are not persuaded.

The postconviction court can hear an untimely petition if the petitioner establishes that a physical disability or mental disease precluded timely assertion of the claim. Minn. Stat. § 590.01, subd. 4(b)(1) (2018). In *Brown*, the supreme court concluded that this exception to the statute of limitations did not apply when the documents submitted by Brown did not suggest that he had a mental illness or that he was incapable of asserting a claim. 863 N.W.2d at 787. Moreover, the supreme court emphasized that Brown’s alleged illness did not prevent him from filing four earlier requests for postconviction relief. *Id.*

Similarly, here, the record lacks anything, other than appellant’s own assertions, to suggest that his dementia prevented him from bringing his claims. And, similar to *Brown*, appellant filed a direct appeal, a postconviction petition, and his first postconviction appeal during the time of his alleged dementia. This contradicts his argument that his dementia precluded him from filing a timely postconviction petition. The postconviction court did not abuse its discretion because appellant has not established that his dementia prevented him from timely asserting his claim.

II. Appellant's claim that his *Miranda* rights were violated does not meet the newly discovered evidence exception.

Appellant argues that new evidence shows the police officers did not read him his *Miranda* rights the night of his arrest when the victim's mother called him and urged him to confess. Appellant's argument lacks merit.

Appellant did not raise this issue in his postconviction petition to the postconviction court, and the postconviction court did not consider it. We generally do not consider issues not argued to or considered by the postconviction court. *Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996).

A petitioner can overcome the two-year statutory limitation based on newly discovered evidence if it (1) was not ascertainable by the exercise of due diligence by the petitioner or his attorney within the two-year filing period for a postconviction petition; (2) is not cumulative to the trial evidence; (3) is not impeachment evidence; and (4) establishes by a clear and convincing standard that the petitioner is innocent of his convicted offenses. Minn. Stat. § 590.01, subd. 4(b)(2) (2018).

This evidence does not meet the statutory requirements to overcome the time bar. Law enforcement recorded the phone conversation to which appellant refers. He knew of this conversation before trial and before the two-year postconviction statute of limitations expired. Appellant fails to meet the first statutory requirement. Further, this phone conversation does not establish by clear and convincing evidence that appellant is innocent. Appellant appears to allege that his conviction should be reversed because his *Miranda* rights were violated. In the phone conversation at issue, appellant repeatedly denies what

happened and refuses to discuss it; he did not make any incriminating statements. *Miranda* protects against self-incrimination, *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602 (1966), which is not present here. In addition to being forfeited, this claim is time-barred and does not meet the newly discovered evidence exception.

III. Appellant’s ineffective-assistance-of-counsel claim is *Knaffla*-barred.

Finally, appellant argues that a police officer made a statement to his sister outside of the courtroom that he did not think appellant was guilty. He alleges that he informed his attorney of this information “but he just turned a blind eye.” We construe this argument to be an ineffective-assistance-of-counsel claim for failure to investigate whether to call his sister as a witness. We are not persuaded.

Appellant argued to the postconviction court that he “was denied effective assistance of trial counsel because of counsel[’]s total failure . . . to properly investigate” The postconviction court concluded that appellant’s ineffective-assistance-of-counsel claim was *Knaffla*-barred because he sought similar relief in his first postconviction appeal.

“[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.” *State v. Knaffla*, 243 N.W.2d 737, 741 (Minn. 1976). The *Knaffla* rule applies equally to prior postconviction petitions. *Hooper v. State*, 838 N.W.2d 775, 787-88 (Minn. 2013). Appellant argued ineffective assistance of trial counsel in his first postconviction appeal based on his attorney’s failure to investigate to determine whether he should call his sister as a witness, as she may have possessed favorable information. Similarly, in this

appeal, he again claims that his counsel failed to properly investigate regarding favorable information his sister had. Appellant's ineffective-assistance claim for failure to investigate has already been analyzed and rejected by this court in *Dahl*, 2016 WL 4263020 at *3. Therefore, the postconviction court did not abuse its discretion by summarily denying appellant's petition.

Affirmed.