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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0238**

James Michael Soderbeck, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed October 21, 2019
Affirmed
Johnson, Judge**

Ramsey County District Court
File No. 62-CR-16-3123

James M. Soderbeck, Faribault, Minnesota (*pro se* 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 Cochran, Presiding Judge; Connolly, Judge; and
Johnson, Judge.

UNPUBLISHED OPINION

JOHNSON, Judge

In 2016, James Michael Soderbeck pleaded guilty to third-degree criminal sexual conduct. On direct appeal, he challenged the validity of his guilty plea, but this court rejected the challenge and affirmed his conviction. In 2018, Soderbeck filed a *pro se* post-

conviction petition in which he again challenged the validity of his guilty plea. The post-conviction court denied the petition on the ground that Soderbeck's claims are procedurally barred. We affirm.

FACTS

In April 2016, the state charged Soderbeck with first-degree criminal sexual conduct, in violation of Minn. Stat. § 609.342, subds. 1(e)(i), 2(a) (2014), and third-degree criminal sexual conduct, in violation of Minn. Stat. § 609.344, subds. 1(c), 2 (2014). The complaint alleged that, on January 2, 2016, during a female friend's visit to his home, he became sexually aggressive toward her and inserted his fingers and his penis into her vagina without her consent.

In July 2016, Soderbeck and the state entered into a plea agreement. Soderbeck agreed to plead guilty to the second charge, and the state agreed to dismiss the first charge and to recommend the shortest prison sentence within the presumptive guidelines range. Soderbeck signed a plea petition that stated that, if the district court did not approve the plea agreement, he would have an absolute right to withdraw his plea, unless he failed to cooperate with the preparation of a pre-sentence investigation report. During the plea hearing, the district court reiterated that Soderbeck was required to cooperate with the preparation of a pre-sentence investigation report and that, if he did not do so, the district court could impose any lawful sentence. Soderbeck subsequently refused to cooperate with a probation officer's preparation of the pre-sentence investigation report. At the sentencing hearing in September 2016, the district court accepted Soderbeck's guilty plea and imposed the longest prison sentence within the presumptive guidelines range.

On direct appeal, Soderbeck argued that his guilty plea was invalid on the ground that it was not accurate because the record did not contain the facts necessary to establish the element of coercion. This court rejected his argument and affirmed his conviction. *State v. Soderbeck*, No. A16-1908, 2017 WL 3863833, at *2-3 (Minn. App. Sept. 5, 2017), *review denied* (Minn. Nov. 28, 2017).

In December 2018, Soderbeck filed a *pro se* petition for post-conviction relief in which he again challenges the validity of his guilty plea. The post-conviction court construed the petition to have made two claims: first, that the guilty plea was not accurate, and, second, that it was not intelligently entered. The post-conviction court summarily denied the petition. The post-conviction court determined that both of Soderbeck's claims concerning the validity of his guilty plea are procedurally barred. The post-conviction court reasoned that the first claim is barred because it was raised on direct appeal and that the second claim is barred because it could have been raised on direct appeal but was not raised. Soderbeck appeals.

D E C I S I O N

In his *pro se* brief, Soderbeck argues that the post-conviction court erred by denying his post-conviction petition. He does not challenge the post-conviction court's reasoning concerning the procedural bar. Instead, Soderbeck addresses the merits of each of his claims. But Soderbeck cannot obtain appellate relief unless he can establish that the post-conviction court erred by concluding that his claims are procedurally barred.

After reviewing the record, we agree with the post-conviction court that both of Soderbeck's claims concerning the validity of his guilty plea are procedurally barred. A

criminal offender may file a post-conviction petition to challenge his or her criminal conviction. Minn. Stat. § 590.01, subd. 1 (2018). But if the offender has had a direct appeal, “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); *see also Quick v. State*, 757 N.W.2d 278, 280 (Minn. 2008).

Soderbeck’s first claim, that the guilty plea was not accurate, was raised and decided on direct appeal. *See Soderbeck*, 2017 WL 3863833, at *2-3. To the extent that Soderbeck makes a slightly different argument as to why the guilty plea was not accurate, his claim is nonetheless barred because the new theory could have been raised on direct appeal. *See Zornes v. State*, 903 N.W.2d 411, 420-21 (Minn. 2017).

Soderbeck’s second claim, that the guilty plea was not intelligently entered, was not raised on direct appeal. But there is no apparent reason why the claim could not have been raised on direct appeal. Accordingly, the claim is procedurally barred because it was “known or should have been known at the time of a direct appeal.” *See Cooper v. State*, 745 N.W.2d 188, 191 (Minn. 2008).

Before concluding, we note that the post-conviction court construed Soderbeck’s petition to include a claim of ineffective assistance of counsel. On appeal, Soderbeck has not challenged the post-conviction court’s analysis or disposition of that claim. Accordingly, we need not address the issue.

In sum, the post-conviction court did not err by denying Soderbeck's petition for post-conviction relief.

Affirmed.