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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0373**

Marcus Kendrick Jones, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed October 14, 2019
Affirmed
Ross, Judge**

Ramsey County District Court
File Nos. 62-CR-16-4580, 62-CR-16-6804

Marcus Kendrick Jones, Moose Lake, Minnesota (pro se appellant)

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

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

Considered and decided by Reilly, Presiding Judge; Ross, Judge; and Slieter, Judge.

U N P U B L I S H E D O P I N I O N

ROSS, Judge

Marcus Jones pleaded guilty to two counts of first-degree possession of cocaine with intent to sell after Saint Paul police found cocaine in the back seat of his car in May 2016 and Minneapolis police found cocaine in the apartment where he lived two days later. The district court sentenced Jones on both counts. Jones appeals, arguing that one of his

convictions must be vacated because the offenses were both part of the same course of conduct. He relatedly contends that the district court exaggerated the criminality of his conduct by *Hernandizing* his sentences. And he argues that the district court erroneously failed to depart from the presumptive guidelines sentence. Because Jones's convictions resulted from different behavioral incidents and because the district court did not abuse its discretion by denying his request for a durational or dispositional sentencing departure, we affirm.

FACTS

On May 18, 2016, Saint Paul police officers stopped a car with a broken light and spoke with its driver, Marcus Jones. The officers noticed a plastic bag on the rear floor containing over 25 grams of cocaine. Two days later, Minneapolis police officers obtained a warrant to search Jones and the apartment where he was staying. They found a brick-shaped package and 17 baggies containing cocaine. In total, the officers recovered about 1,603 grams of cocaine from the apartment.

The state charged Jones based on the apartment search with one count of first-degree possession of cocaine with intent to sell and one count of first-degree possession of cocaine. In a separate complaint, the state charged Jones based on the traffic stop with one count of first-degree possession of cocaine with intent to sell and one count of first-degree possession of cocaine.

Jones pleaded guilty to both counts of first-degree possession with intent to sell, and the state agreed to dismiss the remaining charges. Before sentencing, Jones argued that the district court could convict him on only one count because the two offenses were part of a

single behavioral incident. He also requested either a dispositional or a durational sentencing departure. The district court found that Jones's two offenses were not part of the same behavioral incident and declined to depart from the sentencing guidelines, citing Jones's prior drug convictions, the fact that he was on probation when the two crimes occurred, and the amount of drugs found in his apartment. The district court sentenced Jones to 158 months' imprisonment for the May 18 offense and 161 months for the May 20 offense, with the terms to be served concurrently.

Jones appealed. We stayed the appeal at Jones's request so he could pursue postconviction relief. In his postconviction petition, Jones requested that his sentences be reduced under the 2016 Drug Sentencing Reform Act. 2016 Minn. Laws ch. 160, § 18 at 590–91. The district court reduced his sentences, and Jones voluntarily dismissed his initial appeal.

Jones petitioned for additional postconviction relief in 2018, arguing that he could not be sentenced for both of his offenses because they were part of the same course of conduct and that the district court erred by not departing from the sentencing guidelines. The district court recounted its single-behavioral-incident determination and affirmed its presumptive-sentence decision. But it ultimately concluded that Jones forfeited his claims by failing to raise them in his prior postconviction petition.

Jones appeals.

D E C I S I O N

Jones argues that the district court erred by finding that his offenses were not part of the same behavioral incident and by failing to depart from the sentencing guidelines. We

will overturn a district court’s summary denial of a postconviction petition only if the denial reflects an abuse of discretion. *Andersen v. State*, 913 N.W.2d 417, 422 (Minn. 2018). A district court may deny a postconviction petition without an evidentiary hearing if the petition and the record “conclusively show that the petitioner is entitled to no relief.” *Id.* (citing Minn. Stat. § 590.04, subd. 1 (2016)).

The state argues that we need not reach the merits of Jones’s arguments because he is barred from raising them. When a petitioner has already directly appealed, any issues raised in that appeal or those issues that were known but not raised cannot be raised in a later postconviction petition. *State v. Knaffla*, 243 N.W.2d 737, 741 (Minn. 1976). This *Knaffla* bar extends to issues that were raised or should have been raised in a prior postconviction petition. *Lussier v. State*, 853 N.W.2d 149, 152 (Minn. 2014). But if a petitioner’s claims fail on the merits, we need not decide whether they are *Knaffla*-barred. *Walen v. State*, 777 N.W.2d 213, 216 (Minn. 2010). Because none of Jones’s arguments succeeds on the merits, we affirm.¹

Jones unconvincingly argues that his two convictions stemmed from the same course of conduct. Whether Jones’s offenses were part of a single behavioral incident presents a mixed question of fact and law, so we review the district court’s findings for clear error and its application of the law de novo. *See State v. Bakken*, 883 N.W.2d 264,

¹ Jones argues that he received ineffective assistance of counsel during his first postconviction petition. He contends his first petition ought to have been presented as a motion to correct his sentence, *see* Minn. R. Crim. P. 27.03, subd. 9, sparing him from the district court’s *Knaffla*-bar ruling. Because we conclude Jones’s arguments fail on their merits, we need not address his ineffective-assistance argument.

270 (Minn. 2016). Unless an exception applies, if a defendant has committed multiple offenses within the same course of conduct, he cannot be punished for both offenses. Minn. Stat. § 609.035, subd. 1 (2016). Courts consider three factors to determine whether multiple offenses were part of the same behavioral incident: “time, place, and whether the offenses were motivated by a desire to obtain a single criminal objective.” *State v. Gould*, 562 N.W.2d 518, 521 (Minn. 1997). Jones’s convictions resulted from his possessing drugs on two different days and in two separate locations. It is true that in both instances Jones had the same criminal objective to sell drugs. But the broad goal of selling drugs “is too broad an objective to constitute a single criminal goal.” *Id.* Jones’s two offenses were part of different behavioral incidents.

We are not persuaded otherwise by Jones’s argument that Saint Paul police and Minneapolis police worked together toward the charges. The focus of the single-criminal-objective test is the defendant’s conduct. *State v. Johnson*, 141 N.W.2d 517, 522 (Minn. 1966). Police objectives are not our focus. That the two police agencies allegedly worked together does not render erroneous the district court’s decision to convict Jones for both offenses.

Jones relatedly argues that the district court improperly exaggerated the criminality of his conduct when it used the *Hernandez* method in sentencing him. Under that method, a district court sentencing a defendant for multiple convictions can use the convictions that occurred earlier in time to calculate the defendant’s criminal-history score. *State v. Hernandez*, 311 N.W.2d 478, 480–81 (Minn. 1981). A district court can use the *Hernandez* method only if the offenses were not part of the same behavioral incident. *Id.* at 481.

Because Jones's offenses were not part of the same behavioral incident, the district court did not improperly use the *Hernandez* method to calculate his sentence.

Jones also argues that the district court erred by not granting his request for a sentencing departure. We review a district court's sentencing decision for an abuse of discretion. *State v. Soto*, 855 N.W.2d 303, 307–08 (Minn. 2014). The district court may depart from the sentencing guidelines only if there are “identifiable, substantial, and compelling circumstances” supporting departure. Minn. Sent. Guidelines 2.D.1 (2015). The supreme court opined in dicta that “it would be a rare case which would warrant reversal of the refusal to depart.” *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981). The district court decided not to depart from the sentencing guidelines because of the large amount of cocaine found in Jones's apartment, his prior convictions, and the fact that he was on probation at the time he committed the crimes. The district court's sentencing decision is supported by the record and does not reflect an abuse of discretion.

Affirmed.