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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0778**

Chim LoVan, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed January 13, 2020
Affirmed
Rodenberg, Judge**

Nobles County District Court
File No. 53-CR-15-553

Chim LoVan, Faribault, Minnesota (pro se appellant)

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

Joseph N. Sanow, Nobles County Attorney, Worthington, Minnesota; and

Travis J. Smith, Special Assistant County Attorney, Slayton, Minnesota (for respondent).

Considered and decided by Jesson, Presiding Judge; Ross, Judge; and Rodenberg,
Judge.

UNPUBLISHED OPINION

RODENBERG, Judge

Appellant Chim LoVan appeals from the district court's order denying his petition for postconviction relief, arguing that (1) his right to a fair trial was violated because the

district court denied his request for a change of venue; (2) his right to a fair trial was violated because the district court refused to provide an interpreter who accurately interpreted his language; and (3) the criminal complaint was constitutionally defective. We affirm.

FACTS

On June 22, 2016, a jury found appellant guilty of second-degree felony murder under Minn. Stat. § 609.19, subd. 2(1) (2014), second-degree assault under Minn. Stat. § 609.222, subd. 2 (2014), third-degree murder under Minn. Stat. § 609.195(a) (2014), and first-degree manslaughter under Minn. Stat. § 609.20(2) (2014). The district court sentenced appellant to 200 months in prison.

Appellant filed a direct appeal, arguing that “his constitutional right to confrontation was violated when the district court allowed a police officer to testify that a homicide victim identified appellant as the person who had stabbed him.” *State v. LoVan*, No. A16-1750, 2017 WL 3687503, at *1 (Minn. App. Aug. 28, 2017), *review denied* (Minn. Nov. 14, 2017). We affirmed appellant’s conviction in an unpublished opinion. The supreme court denied review. *Id.*

Appellant subsequently petitioned for postconviction relief, arguing that (1) the criminal complaint was defective; (2) the district court violated the constitution by finding the complaint was supported by probable cause; (3) appellant’s trial counsel violated his right to effective assistance of counsel; (4) the state committed prosecutorial misconduct by withholding evidence and vindictively amending the complaint; (5) the district court violated appellant’s constitutional right to an unbiased court and violated the Minnesota

Judicial Code of Conduct by failing to rule on appellant's request for a change of venue and allowing media to observe the trial; and (6) his sentence was unconstitutional. Appellant also requested assistance from the public defender's office. The district court summarily denied appellant's motion for an evidentiary hearing and petition for postconviction relief.

Concerning appellant's right to counsel, the district court found that appellant was ineligible for appellate public defender services on his petition for postconviction relief because this was appellant's "second challenge to his conviction." See Minn. Stat. § 590.05 (2018) (stating that the state public defender shall represent a petitioner for postconviction relief if the petitioner has not already had a direct appeal).

Concerning his request for postconviction relief, the district court cited *State v. Knaffla*, 243 N.W.2d 737, 741 (Minn. 1976), and concluded that appellant raised six issues in his petition, all of which were known, but none of which were raised on direct appeal. The district court further found that appellant failed to present any novel legal issues and that the "interests of justice do not require additional review."

This appeal followed.

D E C I S I O N

Appellant argues that the district court abused its discretion by "arbitrarily denying" his petition for postconviction relief "on several grounds." Appellant contends that (1) his right to a fair trial was violated because the district court denied his request for a change of venue; (2) his right to a fair trial was violated because the district court refused to provide

an interpreter who was able to accurately interpret his unique “cultural language”; and (3) the criminal complaint was constitutionally defective.

“We review a postconviction court’s summary denial of a petition for postconviction relief for an abuse of discretion.” *Andersen v. State*, 913 N.W.2d 417, 422 (Minn. 2018) (quotations and citations omitted). “A postconviction court abuses its discretion when it has exercised its discretion in an arbitrary or capricious manner, based its ruling on an erroneous view of the law, or made clearly erroneous factual findings.” *Pearson v. State*, 891 N.W.2d 590, 596 (Minn. 2017) (quotations omitted).

“Upon filing a petition for postconviction relief, an evidentiary hearing must be held unless the petition and the files and records of the proceeding conclusively show that the petitioner is entitled to no relief.” *Andersen*, 913 N.W.2d at 422 (quotations omitted). “A petition for postconviction relief after a direct appeal has been completed may not be based on grounds that could have been raised on direct appeal of the conviction or sentence.” Minn. Stat. § 590.01, subd. 1(2) (2018). “A hearing is not required . . . when the petition is procedurally barred by the *Knaffla* rule.” *Fairbanks v. State*, 882 N.W.2d 226, 229 (Minn. 2016).

Under *Knaffla*, when “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.” 243 N.W.2d at 741. This *Knaffla* bar includes “claims which appellant should have known but did not raise at the time of an earlier review.” *Quick v. State*, 757 N.W.2d 278, 280 (Minn. 2008). “There are two exceptions to the *Knaffla* [bar]:

(1) if a novel legal issue is presented, or (2) if the interests of justice require review.”
Taylor v. State, 691 N.W.2d 78, 79 (Minn. 2005).

Because the district court denied appellant’s petition for postconviction relief, appellant is not entitled to relief on appeal unless he can show error in the district court’s determination that his postconviction claims are *Knaffla*-barred. Appellant fails to do so.

The record makes clear that appellant knew or should have known at the time of his direct appeal of the existence of the three claims raised by his postconviction petition. If appellant wanted to raise these three claims, he should have done so in his direct appeal.

Moreover, appellant’s claims do not appear to meet either of the exceptions to the *Knaffla* bar, and he makes no argument in his briefing that either exception applies.

The district court acted within its discretion when it denied appellant’s petition for postconviction relief. Appellant’s claims are *Knaffla*-barred.

Affirmed.