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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0924**

Nathan Christopher Braun, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed March 2, 2020
Affirmed
Bratvold, Judge**

Benton County District Court
File No. 05-CR-16-1323

Nathan C. Braun, Stillwater, Minnesota (pro se appellant)

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

Philip K. Miller, Benton County Attorney, Kathleen L. Reuter, Assistant County Attorney,
Foley, Minnesota (for respondent)

Considered and decided by Bratvold, Presiding Judge; Worke, Judge; and Connolly,
Judge.

UNPUBLISHED OPINION

BRATVOLD, Judge

Appellant, who was convicted of third-degree criminal sexual conduct in 2017 and is self-represented in this appeal, challenges the denial of his second postconviction petition. We conclude that appellant raises three issues that are procedurally barred, the

postconviction court did not abuse its discretion when it denied appellant's request for an evidentiary hearing, and appellant raises six issues for the first time in this appeal for which we decline review. Thus, we affirm.

FACTS

In August 2016, the state charged appellant Nathan Christopher Braun with third-degree criminal sexual conduct under Minn. Stat. § 609.344, subd. 1(b) (2014), alleging that he engaged in sexual penetration with the victim, who was between 13 and 16 years old, and that Braun was more than 24 months older than the victim. The complaint alleged that then 24-year-old Braun was in a sexual relationship with a 14-year-old female, and that Braun told her that he was 17 years old. After a jury trial in July 2017, the jury found Braun guilty of third-degree criminal sexual conduct. The district court sentenced Braun to 91 months in prison.

Braun appealed from his judgment of conviction and our opinion sets out the facts proven at trial, which we do not repeat here. *See State v. Braun*, No. A17-1889, 2018 WL 4201208 (Minn. App. Sept. 4, 2018), *review denied* (Minn. Oct. 24, 2018). In his opening brief and pro se supplemental brief, Braun raised issues that we rejected as grounds for a new trial. First, we concluded that the district court did not abuse its discretion in admitting evidence of Braun's conduct towards the victim's friends, including photographs taken by Braun. *Id.* at *3. Second, we determined that the district court did not commit plain error in admitting evidence about a pornographic video that Braun made with a woman other than the victim and which came before the jury when Braun mentioned the video in a recorded statement that was played during an officer's testimony. *Id.* We reasoned that

Braun did not object, his recorded statement was otherwise admissible, and “no rule or caselaw clearly imposes a duty on the district court to sua sponte redact any and all inadmissible portions of an otherwise admissible recorded statement.” *Id.*

Third, we reviewed Braun’s claim of prosecutorial misconduct and determined that three pieces of evidence were prior bad acts under Minn. R. Evid. 404(b) of which the state failed to give the required *Spreigl* notice, which was “plain and obvious error.” *Id.* at *3-4. We concluded, however, that there was no reasonable likelihood that the plain error had a “significant effect” on the jury’s verdict because the evidence against Braun was “substantial” and, in particular, the victim’s testimony “strongly supports [Braun’s] guilt, standing alone.” *Id.* at *4-5.

Finally, we determined that Braun forfeited the four issues raised in his pro se supplemental brief because they were “without merit or support” and did not include “citations to relevant facts before this court or legal authority.” *Id.* at *5. Braun argued that (1) his attorney failed to disclose the state’s evidence to him directly and failed to subpoena two witnesses to testify on his behalf; (2) the state failed to prove that his statement to police was false; (3) Braun’s statements to one witness were taken out of context; and (4) police received a computer hard drive from the victim, who said Braun had left it at her home; Braun claimed the victim was biased and the state failed to establish chain of custody. *Id.* We affirmed Braun’s conviction, *id.* at *5, and he petitioned for review, which the Minnesota Supreme Court denied.

Roughly two weeks after the supreme court denied review, Braun petitioned for postconviction relief on the grounds of prosecutorial misconduct, insufficiency of the

evidence, the state's failure to obtain and disclose exculpatory evidence, the state's failure to disclose other evidence before trial, improper admission of character evidence, witness perjury, and ineffective assistance of trial counsel. Braun also requested that the postconviction court appoint counsel. The postconviction court forwarded Braun's pro se petition to the appellate public defender's office, who denied Braun's request because the office had represented Braun in his direct appeal. *See* Minn. Stat. § 590.05 (2018). The postconviction court denied Braun's petition without a hearing because his petition "contain[ed] only argumentative assertions without factual support and raise[d] issues that have been, or should have been, asserted on direct appeal."

Three months later, Braun filed a second petition for postconviction relief, in which Braun appears to have raised issues of (1) prosecutorial misconduct; (2) insufficiency of the evidence; (3) the state's failure to obtain and disclose exculpatory evidence; (4) the district court's error in instructing the jury; (5) the district court's error in admitting evidence; and (6) ineffective assistance of trial counsel.

The postconviction court denied Braun's request for relief in a 30-page memorandum and order without an evidentiary hearing. The postconviction court determined that each issue in the second postconviction petition was either procedurally barred or lacked merit. Braun appeals.

D E C I S I O N

This court reviews a summary denial of postconviction relief for an abuse of discretion. *Roberts v. State*, 856 N.W.2d 287, 290 (Minn. App. 2014), *review denied* (Minn. Jan. 28, 2015). Minnesota's postconviction statute requires a postconviction court

to hold an evidentiary hearing on a postconviction petition “[u]nless 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). A postconviction court is permitted to “summarily deny a second or successive petition for similar relief on behalf of the same petitioner” or “when the issues raised in [the petition] have previously been decided by the court of appeals or the supreme court in the same case.” *Id.*, subd. 3 (2018).

Two procedural bars are relevant to our analysis of Braun’s appeal. First, we consider the *Knaffla* rule, which states that “where 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). *Townsend v. State* recognized a second procedural bar and held that postconviction courts “will not consider claims that were raised or were known and could have been raised in an earlier petition for postconviction relief.” 723 N.W.2d 14, 18 (Minn. 2006).

I. Braun raises issues that are procedurally barred.

The postconviction court concluded that Braun’s claims regarding sufficiency of the evidence, ineffective assistance of counsel, and prosecutorial misconduct are procedurally barred. We address each claim in turn.

Braun challenges the sufficiency of the evidence and argues that his conviction rests on “mere speculation.” He also claims ineffective assistance of trial counsel. Both claims, however, were known to Braun at the time of his direct appeal. Thus, these issues are barred

by *Knaffla*. 243 N.W.2d at 741. Additionally, both issues were raised in Braun’s first postconviction petition, rendering them barred by *Townsend*. 723 N.W.2d at 19.

We read Braun’s brief to identify four instances of prosecutorial misconduct. *Knaffla* bars one of these instances because Braun raised prosecutorial misconduct with regard to exculpatory evidence in his direct appeal, and the remaining claims of prosecutorial misconduct were known to Braun at the time of his direct appeal. 243 N.W.2d at 741; *see also Braun*, 2018 WL 4201208, at *4. Additionally, *Townsend* bars Braun’s other prosecutorial misconduct arguments because he raised them in his first postconviction petition. 723 N.W.2d at 19.

Thus, we conclude that the postconviction court did not abuse its discretion because these three claims were raised, or should have been raised, either in Braun’s direct appeal or his first postconviction petition.

II. The postconviction court did not abuse its discretion when it denied an evidentiary hearing.

Braun argues the postconviction court erred when it denied his request for an evidentiary hearing. The state responds that Braun “has not established facts that meet the standard for an evidentiary hearing.” A postconviction court’s denial of an evidentiary hearing is reviewed for an abuse of discretion. *Caldwell v. State*, 853 N.W.2d 766, 770 (Minn. 2014). We review factual findings for clear error and legal conclusions de novo. *Id.* “[I]f the files and records of the proceeding conclusively establish that the petitioner is not entitled to relief,” a postconviction court is not required to grant an evidentiary hearing.

Colbert v. State, 870 N.W.2d 616, 622 (Minn. 2015); *see also* Minn. Stat. § 590.04, subd. 1. But if the postconviction court finds that “material facts are in dispute and that the allegations in the petition, if true, would entitle the petitioner to relief, then the court must schedule an evidentiary hearing.” *Martin v. State*, 825 N.W.2d 734, 740 (Minn. 2013).

The postconviction court denied Braun’s petition without a hearing because Braun did not raise any issue of material fact and was not entitled to his requested relief. Most of Braun’s claims are procedurally barred, and our review of the record does not indicate that he is entitled to relief. The postconviction court did not abuse its discretion when it denied Braun’s petition without an evidentiary hearing.

III. We decline to review issues that Braun raises for the first time in his appellate brief.

In his brief to this court, Braun raises issues that he failed to assert in his second postconviction petition. Generally, we will not consider issues raised for the first time on appeal, and “[i]t is well settled that a party may not raise issues for the first time on appeal from denial of postconviction relief.” *Schleicher v. State*, 718 N.W.2d 440, 445 (Minn. 2006) (refusing to decide postconviction claims raised for the first time on appeal) (quoting *Azure v. State*, 700 N.W.2d 443, 447 (Minn. 2005)); *see Davis v. State*, 784 N.W.2d 387, 391 (Minn. 2010) (“We will not address [an] argument for the first time on appeal from a postconviction petition.”).

Braun raises six issues for the first time on appeal: (1) the state’s plea offer was coercive; (2) the district court made “improper” statements during jury instructions;

(3) Braun’s statutory right to counsel was violated because the district court did not appoint counsel for either of his first or second postconviction petitions or for this appeal; (4) his right to a fair trial was violated by unspecified but “multiple prosecutorial and judicial malfeasances and nonfeasances”; (5) this court abused its discretion when we concluded that Braun forfeited the issues in his pro se supplemental brief in his direct appeal; and (6) the postconviction court was biased.

We recognize that this court may consider issues raised for the first time on appeal if the interests of justice require it, and if the record is adequate and consideration would not unfairly surprise a party. *Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996); *State v. Berrios*, 788 N.W.2d 135, 141 (Minn. App. 2010) (refusing to consider the merits of an issue raised for the first time on appeal without an adequate record), *review denied* (Minn. Nov. 16, 2010). Braun does not explain why he did not present any of these six issues in his second postconviction petition, nor does he argue that the interests of justice require review. We therefore decline to review these issues.

Even so, we observe that five of the six issues are procedurally barred. Issues one, two, and four were all known to Braun at the time of trial and, therefore, are *Knaffla*-barred. 243 N.W.2d at 741. Issue three is also procedurally barred because this issue was raised in Braun’s first postconviction petition. *See Townsend*, 723 N.W.2d at 18-19 Issue five, which challenges this court’s determination that Braun forfeited issues raised in his pro se supplemental brief filed in his direct appeal, is also procedurally barred. Braun filed his first postconviction petition after this court issued its opinion; Braun was thus aware of this

issue before he filed his first postconviction petition. Because Braun did not raise this issue in his first postconviction petition, it is barred. *See Townsend*, 723 N.W.2d at 19.

Issue six claims that the postconviction court is biased. Braun fails to support this issue by specific argument or citations to legal authority. Thus, even if we were to consider issue six, we would conclude that Braun forfeited the issue. *See State v. Bartylla*, 755 N.W.2d 8, 22 (Minn. 2008) (“We will not consider pro se claims on appeal that are unsupported by either arguments or citations to legal authority.”).

Affirmed.