

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0632**

James Michael Soderbeck, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed January 19, 2021
Affirmed
Smith, Tracy M., Judge**

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

James Michael Soderbeck, Faribault, Minnesota (pro se appellant)

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

John J. Choi, Ramsey County Attorney, Jeffrey A. Wald, Assistant County Attorney,
St. Paul, Minnesota (for respondent)

Considered and decided by Johnson, Presiding Judge; Smith, Tracy M., Judge; and
Klaphake, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

Appellant James Michael Soderbeck challenges an order summarily denying his second petition for postconviction relief following direct appeal. Soderbeck argues that (1) the district court abused its discretion by concluding that his claims for postconviction relief were procedurally barred because, he contends, he had not previously raised those claims and (2) the district court judge who issued the order was biased against him. We affirm.

FACTS

The facts and procedural history underlying this case are discussed in detail in previous opinions of this court.¹ In brief, respondent State of Minnesota charged Soderbeck with one count of first-degree and one count of third-degree criminal sexual conduct. *Soderbeck I*, 2017 WL 3863833, at *1. The complaint alleged that, during a female friend's visit to his home, he became sexually aggressive toward her and inserted his fingers into her vagina without her consent. *Soderbeck II*, 2019 WL 5304187, at *1. Soderbeck pleaded guilty to third-degree criminal sexual conduct. *Id.* The district court accepted the plea and sentenced Soderbeck to a 15-year prison term. *Soderbeck I*, 2017 WL 3863833, at *1.

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

¹ See *Soderbeck v. State*, No. A19-0238, 2019 WL 5304187 (Minn. App. Oct. 21, 2019) (*Soderbeck II*) (affirming denial of Soderbeck's first postconviction petition); *State v. Soderbeck*, No. A16-1908, 2017 WL 3863833 (Minn. App. Sept. 5, 2017), *review denied* (Minn. Nov. 28, 2017) (*Soderbeck I*) (affirming Soderbeck's conviction on direct appeal).

the element of coercion. *Id.* at *2-3. This court rejected his argument and affirmed his conviction. *Id.* at *3.

Soderbeck then filed a petition for postconviction relief in which he again challenged the validity of his guilty plea. *Soderbeck II*, 2019 WL 5304187, at *1. The district court construed his petition to have made the following three claims: (1) the guilty plea was not accurate, (2) he did not intelligently enter into the guilty plea, and (3) he received ineffective assistance of counsel because his lawyer did not provide him with the complaint or with the evidence against him before he entered his plea. The district court denied the petition. It determined that both of Soderbeck's claims challenging the validity of his guilty plea were procedurally barred—the first because it was raised on direct appeal, and the second because it could have been raised on direct appeal but was not. *Id.* The district court also determined that the ineffective-assistance-of-counsel claim was procedurally barred because it could have been raised on direct appeal but was not, and that, in any event, the claim failed on its merits because Soderbeck's petition failed to allege facts showing prejudice.

On appeal, this court affirmed the order denying postconviction relief. *Id.* We agreed with the district court that Soderbeck's challenges to the validity of his plea were procedurally barred, and we decided that we need not address the ineffective-assistance-of-counsel claim because Soderbeck did not challenge the district court's disposition of that claim on appeal. *Id.* at *2.

We now arrive at the subject of this appeal: the district court's order denying Soderbeck's second petition for postconviction relief. In his petition, Soderbeck purported

to challenge the procedural bar to his plea-withdrawal claims and to assert an ineffective-assistance-of-counsel claim based on discovery disclosures, including the absence of a victim's statement, made before his guilty plea. The district court denied Soderbeck's petition because it determined that Soderbeck's claims were all procedurally barred and that Soderbeck "[did] not raise any claim, argument, or evidence in his Second Petition that was not fully addressed" in the first postconviction order.

Soderbeck appeals.

DECISION

Soderbeck challenges the district court's determination that his plea-withdrawal claims and his ineffective-assistance-of-counsel claim are procedurally barred. In addition, raising the argument for the first time on appeal, Soderbeck contends that the chief judge of the district court should have decided the merits of his second petition for postconviction relief because the district court judge was biased against him.

We review a district 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). "A postconviction court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record." *Id.* (quoting *Brown v. State*, 895 N.W.2d 612, 617 (Minn. 2017)). *See also Zornes v. State*, 903 N.W.2d 411, 416 (Minn. 2017) (applying this same standard).

I. Soderbeck’s plea-withdrawal and ineffective-assistance-of-counsel claims are procedurally barred.

The Minnesota Supreme Court has held that “when a petition for postconviction relief follows a direct appeal of a conviction, all claims raised in the direct appeal and all claims of which the defendant knew or should have known at the time of the direct appeal are procedurally barred.” *Davis v. State*, 880 N.W.2d 373, 377 (Minn. 2016) (quoting *Buckingham v. State*, 799 N.W.2d 229, 231 (Minn. 2011)); *see also* Minn. Stat. § 590.01, subd. 1 (2018) (“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.”). This rule is known as the *Knaffla* bar. *See State v. Knaffla*, 243 N.W.2d 737, 741 (Minn. 1976). The *Knaffla* bar also applies to issues that were raised or could have been raised in a previous postconviction petition. *Pearson v. State*, 891 N.W.2d 590, 597 (Minn. 2017). Persons seeking postconviction relief bear the burden of establishing by a preponderance of the evidence that their claims merit relief. *Hannon v. State*, 889 N.W.2d 789, 792 (Minn. 2017).

Soderbeck contends that his first petition for postconviction relief did not raise plea-withdrawal claims or an ineffective-assistance-of-counsel claim and that the claims are therefore not procedurally barred. But, in *Soderbeck II*, we held that Soderbeck’s plea-withdrawal claims in his first petition for postconviction relief were procedurally barred because they were either raised on direct appeal or could have been raised on direct appeal. *Soderbeck II*, 2019 WL 5304187, at *2. Moreover, as we also observed, Soderbeck brought an ineffective-assistance-of-counsel claim in his first petition for postconviction relief and

did not challenge the district court's rejection of that claim on appeal. *Id.* Thus, under *Soderbeck II*, Soderbeck's plea-withdrawal and ineffective-assistance-of-counsel claims in his second petition for postconviction relief are procedurally barred.

Soderbeck contends that his ineffective-assistance-of-counsel claim is not barred because the district court erroneously construed his first petition as including an ineffective-assistance-of-counsel claim. Not only did Soderbeck forfeit the ability to make that argument because he did not pursue the issue on appeal in *Soderbeck II*, but it would not make a difference here. The *Knaffla* bar precludes ineffective-assistance-of-counsel claims that were not, but could have been, raised on direct appeal. *Vance v. State*, 752 N.W.2d 509, 514 (Minn. 2008) (holding that ineffective-assistance-of-counsel claims were *Knaffla* barred because they were based on facts that the appellant knew or should have known about at the time of his direct appeal). Soderbeck claims that his counsel was ineffective for allegedly not obtaining a victim's statement and disclosing it to him. Those are facts that Soderbeck either knew or should have known at the time of his direct appeal. Thus, the claim is procedurally barred.

II. Soderbeck's argument of judicial bias fails.

Soderbeck maintains that the district court chief judge should have decided the merits of his second petition for postconviction relief because the district court judge was biased against him. But Soderbeck did not raise the issue of judicial bias in the district court or seek to disqualify the judge for cause. We do not consider issues that were not raised to and considered by the district court. *See Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996)

(stating appellate courts generally do not address issues or theories not raised in district court). This argument is therefore forfeited.

Even if this argument were not forfeited, it nevertheless fails. Soderbeck complains that the district court judge is biased against him because she has denied his petition for postconviction relief twice. But Soderbeck did not articulate any facts to support his claim of bias. *See Hooper v. State*, 680 N.W.2d 89, 93 (Minn. 2004) (“[A] petitioner’s subjective belief that the judge is biased does not necessarily warrant [disqualification].”). The fact that the same judge previously denied his first petition does not compel the determination that she was biased against him regarding the denial of his second petition. *See State v. Kramer*, 441 N.W.2d 502, 505 (Minn. App. 1989) (“A judge’s prior adverse ruling in a case is not sufficient to show prejudice which would disqualify the judge.”), *review denied* (Minn. Aug. 9, 1989). It is common practice for the same judge to preside over both a trial or plea hearing and the postconviction proceedings. *See Rossberg v. State*, 874 N.W.2d 786, 790 (Minn. 2016). As the supreme court has held, “[t]his practice does not—by itself—present an adequate ground for disqualification.” *Id.* Thus, Soderbeck’s general dissatisfaction with the district court’s rulings on his first and second postconviction petitions is not sufficient to conclude that the district court judge was biased against him.

Affirmed.