

*This opinion is nonprecedential except as provided by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
A22-0076**

Lannon Lavar Burdunice, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed August 22, 2022
Affirmed
Larkin, Judge**

Hennepin County District Court
File No. 27-CR-16-19342

Lannon L. Burdunice, Bayport, Minnesota (pro se appellant)

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

Michael O. Freeman, Hennepin County Attorney, Anna R. Light, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Larkin, Presiding Judge; Reilly, Judge; and Reyes, Judge.

NONPRECEDENTIAL OPINION

LARKIN, Judge

Appellant challenges the postconviction court's determinations that his claims are procedurally barred, that he failed to assert an exception to the procedural bar, and that his postconviction petition was his second or successive petition. We affirm.

FACTS

Appellant Lannon Lavar Burdunice was indicted on charges of first-degree murder and unlawful possession of a firearm. A jury found Burdunice guilty of the firearm charge but deadlocked on the first-degree murder charge. The district court accepted the guilty verdict, discharged the jury, and scheduled another trial on the murder charge. The second jury found Burdunice guilty of a lesser-included offense of second-degree intentional murder.

The district court sentenced Burdunice to 60 months in prison for the firearm offense and imposed a concurrent 40-year prison term for the second-degree murder offense. Burdunice appealed, and this court affirmed the convictions. *State v. Burdunice*, No. A18-1269, 2019 WL 3000714, at *1 (Minn. App. July 8, 2019), *rev. denied* (Minn. Sept. 17, 2019).

In April 2021, Burdunice moved the district court for sentence correction under Minn. R. Crim. P. 27.03, subd. 9, arguing, in part, that his sentences violated Minn. Stat. § 609.04 (2020), which precludes multiple convictions in some instances. *See State v. Goodridge*, 352 N.W.2d 384, 389 (Minn. 1984) (discussing section 609.04). In its response, the state characterized Burdunice's motion as a postconviction petition. The district court deemed Burdunice's motion a postconviction petition and summarily denied relief. Burdunice appealed, and this court affirmed the denial of Burdunice's postconviction petition. *Burdunice v. State*, No. A21-0888, 2022 WL 1298118, at *1 (Minn. App. May 2, 2022), *rev. denied* (Minn. July 19, 2022). In doing so, this court

concluded that the district court properly treated Burdunice's motion as a postconviction petition. *Id.*

In July 2021, Burdunice petitioned for postconviction relief. He challenged the validity of his murder conviction because second-degree murder was "not charged in the original indictment," and he asserted that the district court failed to properly analyze a double-jeopardy issue raised in a pretrial motion. He also argued that the prosecutor engaged in misconduct at sentencing and that his appellate counsel was ineffective during his direct appeal. Burdunice subsequently moved to amend his postconviction petition to add a claim of ineffective assistance of trial counsel.

In November 2021, the postconviction court summarily denied Burdunice's petition. The court concluded that Burdunice's claims were known, or should have been known, at the time of his direct appeal or first postconviction petition and that the claims therefore were barred under *State v. Knaffla*, 243 N.W.2d 737 (Minn. 1976). The court further found that Burdunice failed to assert an exception to the *Knaffla* bar.

Burdunice appeals.

DECISION

Under Minnesota's postconviction statute, a person convicted of a crime may seek relief by filing a petition claiming that the conviction "violated the person's rights under the Constitution or laws of the United States or of the state." Minn. Stat. § 590.01, subd. 1(1) (2020). "The person seeking postconviction relief bears the burden of establishing by a preponderance of the evidence that his claims merit relief." *Crow v. State*, 923 N.W.2d 2, 10 (Minn. 2019). An evidentiary hearing on a postconviction petition must be held

unless “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 (2020); *Hannon v. State*, 957 N.W.2d 425, 434 (Minn. 2021) (quotation omitted).

“[W]here 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.” *Knaffla*, 243 N.W.2d at 741. The *Knaffla* rule also “bars claims that were raised or could have been raised in an earlier postconviction petition.” *Doppler v. State*, 771 N.W.2d 867, 873 (Minn. 2009).

We review the denial of a postconviction petition for an abuse of discretion. *Colbert v. State*, 870 N.W.2d 616, 621 (Minn. 2015). In doing so, we review legal issues de novo and factual findings for clear error. *Id.* The 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.” *State v. Nicks*, 831 N.W.2d 493, 503 (Minn. 2013) (quotation omitted).

I.

Burdunice challenges the postconviction court’s determination that his claims are *Knaffla* barred. He does not dispute that his claims were known, or should have been known, at the time of his direct appeal and motion for sentence correction. Instead, he argues that the *Knaffla* rule does not apply because he raised “subject-matter jurisdiction defect[s].”

The district court lacks subject-matter jurisdiction if it “does not have the authority to hear and determine a particular class of actions and the particular questions that the court assumes to decide.” *Vang v. State*, 788 N.W.2d 111, 117 (Minn. 2010). Burdunice

primarily argues that the district court lacked subject-matter jurisdiction in this case because the original indictment did not contain a charge of second-degree murder, the charge for which he was convicted and sentenced.

Jurisdiction over criminal offenses is governed by Minn. Stat. § 609.025 (2020). Jurisdiction to convict and sentence a defendant is established if the defendant “commits an offense in whole or in part within this state.” Minn. Stat. § 609.025. Because there is no dispute that Burdunice committed an offense within the state, the district court had jurisdiction to convict and sentence him. *See Perry v. State*, 731 N.W.2d 143, 147 (Minn. 2007) (reaching a similar conclusion).

Moreover, recent supreme court precedent indicates that a postconviction claim may be procedurally barred even if it alleges a lack of subject-matter jurisdiction. In *Aili v. State*, the supreme court held that the two-year time limit in the postconviction statute barred untimely claims. 963 N.W.2d 442, 444 (Minn. 2021). The supreme court disagreed that the time bar could not apply to challenges to a district court’s “underlying jurisdiction to convict.” *Id.* at 451. The supreme court noted that the legislature “has the power to place a procedural limit on petitioners who seek to challenge their convictions” using the postconviction statute. *Id.* “The fact that a postconviction petitioner claims that the court that entered the original judgment of conviction lacked subject matter jurisdiction to do so . . . does not change this analysis.” *Id.* at 452; *see also* Minn. Stat. § 590.01, subd. 1 (2020) (providing that “[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”).

Burdunice cites *United States v. Cotton*, 535 U.S. 625 (2002), for the proposition that jurisdictional defects cannot be procedurally barred. In *Cotton*, the Supreme Court defined jurisdiction as a court’s statutory or constitutional power to adjudicate a case. 535 U.S. at 630. The Court said that the issue of subject-matter jurisdiction can never be forfeited or waived, but the Court did not consider or address the issue of procedural bars to jurisdictional claims. *Id.* Moreover, the Court stated that “defects in an indictment do not deprive a court of its power to adjudicate a case.” *Id.* Thus, *Cotton* does not prohibit application of a procedural bar to a jurisdictional claim, and it suggests that Burdunice’s claim—which largely focuses on the legitimacy of the underlying indictment—is not jurisdictional. *See also Lamarr v. Nunn*, No. 22-6063, 2022 WL 2678602, at *1-2 (10th Cir. July 12, 2022) (affirming denial on procedural grounds of habeas petition challenging subject-matter jurisdiction).

In sum, the postconviction court did not err by applying the *Knaffla* bar to Burdunice’s purported subject-matter jurisdiction claims.

II.

Burdunice challenges the postconviction court’s determination that he did not assert an exception to the *Knaffla* bar.

“There are two exceptions to the *Knaffla* rule: (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). A petition raising the interests-of-justice exception “must have substantive merit and must be asserted without deliberate or inexcusable delay.” *Andersen v. State*, 830 N.W.2d 1, 8 (Minn. 2013).

Burdunice argues that he raised the interests-of-justice exception. But as noted by the state, although Burdunice made general references to the interests of justice in his postconviction submissions and “employed the phrase to argue that his conviction should be reversed,” he did not argue “that his otherwise-barred claims were entitled to review in the interests of justice.” The postconviction court therefore did not err in determining that Burdunice failed to assert a viable exception to the *Knaffla* bar.

III.

Burdunice challenges the postconviction court’s treatment of his petition for relief as a successive postconviction petition. Specifically, he argues that the district court should have given him notice and an opportunity to withdraw his earlier motion for sentence correction before deeming it a request for postconviction relief.

Burdunice relies on *Castro v. United States*, 540 U.S. 375 (2003). In *Castro*, the Supreme Court held that before a court recharacterizes a motion “labeled differently” as a request for habeas relief, a prisoner is entitled to notice and an opportunity to withdraw the motion.¹ 540 U.S. at 377. The Eighth Circuit reached a similar conclusion in *Morales v. United States*, 304 F.3d 764, 765 (8th Cir. 2002).

The Minnesota Supreme Court has approved of the recharacterization of certain motions as postconviction petitions. *See Washington v. State*, 845 N.W.2d 205, 211-12 (Minn. App. 2014) (discussing supreme court cases addressing the issue). But it does not

¹ In so holding, the Supreme Court concluded that the law-of-the-case doctrine did not restrict the Court from retroactively imposing the notice requirement. 540 U.S. at 384; *see Smith v. State*, 974 N.W.2d 576, 581 (Minn. 2022) (“The law of the case doctrine functions to bar issues that were previously considered and denied in the same case.”).

appear that the Minnesota Supreme Court has ever addressed the merits of Burdunice’s argument for adoption of the *Castro* rule. *See Bolstad v. State*, 966 N.W.2d 239, 242 (Minn. 2021) (stating that the standard of review for a postconviction court’s decision to treat a motion to correct a sentence as a postconviction petition “remains an open question”).

In *Castro*, the Supreme Court adopted the notice requirement in an exercise of its supervisory powers, noting that the requirement was “judicially created.” *Id.* at 382-83. In relying on *Castro*, Burdunice acknowledges that he asks this court to adopt a “judiciary-created rule.” Thus, Burdunice effectively asks this court to impose the notice requirement in an exercise of “supervisory powers.”

“As an intermediate appellate court, this court will not exercise supervisory powers reserved to the Minnesota Supreme Court.” *State v. Gilmartin*, 535 N.W.2d 650, 651 (Minn. App. 1995), *rev. denied* (Minn. Sept. 20, 1995); *see also State v. Scales*, 518 N.W.2d 587, 592 (Minn. 1994) (involving supreme court’s exercise of supervisory powers). Thus the supreme court—and not this court—is the appropriate court to determine whether to adopt the *Castro* rule in Minnesota.

Burdunice petitioned for review of this court’s May 2022 opinion, urging the Minnesota Supreme Court to adopt the *Castro* rule in an exercise of its supervisory powers. His petition for review stated that review of the issue was “indispensable” because it called for the supreme court “to exercise its inherent supervisor[y] authority to establish a new principle/application or rule of law, limiting the district court’s ability to create the risks of harming pro se litigant’s pleadings, which may ultimately deprive them of their

constitutionally protected right to effective collateral review.” The supreme court denied Burdunice’s petition for review, effectively ending his quest for adoption of the *Castro* rule in Minnesota.

Affirmed.