

*This opinion will be unpublished and  
may not be cited except as provided by  
Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A07-0799**

Baron M. Jones, petitioner,  
Appellant,

vs.

State of Minnesota,  
Respondent.

**Filed May 20, 2008  
Affirmed  
Klaphake, Judge**

Hennepin County District Court  
File No. 03071227

Baron Montero Jones, 2926 Penn Avenue North, Minneapolis, MN 55411 (pro se appellant)

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Michael O. Freeman, Hennepin County Attorney, Michael K. Walz, Assistant County Attorney, C-2000 Government Center, 300 S. 6th Street, Minneapolis, MN 55487 (for respondent)

Considered and decided by Klaphake, Presiding Judge; Minge, Judge; and Wright,  
Judge.

## UNPUBLISHED OPINION

**KLAPHAKE**, Judge

In this pro se postconviction appeal, Baron Montero Jones argues that there were “structural errors” in his trial that mandate reversal of his conviction. Appellant claims that the jury instructions given by the district court demonstrated the court’s bias and partiality; the prosecutor committed misconduct; and appellant’s counsel was ineffective. Appellant entered a college dormitory room on October 4, 2003, and had nonconsensual sexual contact with a victim, who was nonresponsive because of alcohol consumption. After appellant was convicted of first-degree burglary under Minn. Stat. § 609.582, subd. 1(c) (2002), and third-degree criminal sexual conduct under Minn. Stat. § 609.344, subd. 1(d) (2002), the district court imposed a 72-month executed sentence. This court upheld appellant’s conviction in his direct appeal. Because appellant’s claims either were known or should have been known at the time of his direct appeal, and because the evidence is sufficient to support the postconviction court’s denial of appellant’s claim of ineffective assistance of appellate counsel, we affirm.

### DECISION

This court reviews a denial of a postconviction petition for abuse of discretion, including a postconviction court’s denial of relief under *State v. Knaffla*, 309 Minn. 246, 252, 243 N.W.2d 737, 741 (1976) (ruling that once a petitioner has directly appealed a conviction, “all matters raised therein, and all claims known but not raised, will not be considered upon a subsequent petition for postconviction relief”). *Quick v. State*, 692 N.W.2d 438, 439 (Minn. 2005). This court’s “review is limited to whether there is

sufficient evidence to sustain the postconviction court's findings." *State v. Hooper*, 620 N.W.2d 31, 40 (Minn. 2000).

From a fair reading of appellant's submissions to this court, we construe appellant's request for postconviction relief as dependent on three claims: bias on the part of the district court; ineffective assistance of counsel; and prosecutorial misconduct. Appellant's claim of judicial bias seems to be based on an assumption that two particular jury instructions given by the court prejudicially referred to appellant as a witness. Because appellant did not testify at trial and was not a witness, this claim is unsupported by the record, and the postconviction court properly concluded that these instructions were given with regard to other witnesses.

As the postconviction court also properly concluded, any conduct by trial or appellate counsel in failing to object to these instructions was not ineffective representation because there were no grounds to object to the instructions. Further, a review of the trial transcript does not suggest that appellant's counsel's performance was substandard or that the result of the case would have been different but for counsel's errors. *See Carney v. State*, 692 N.W.2d 888, 892 (Minn. 2005) (requiring ineffective assistance of counsel claim to demonstrate substandard representation and reasonable probability of different outcome but for counsel's errors).

Finally, while appellant claims that the prosecutor committed misconduct by failing to timely disclose the existence of a tape-recording of appellant's statement to a security guard, this argument and appellant's other arguments could have been, but were not, raised in appellant's direct appeal. As such, we decline to address this issue or any

of the other arguments raised by appellant. *Knaffla*, 309 Minn. at 252, 243 N.W.2d at 741. We conclude that the postconviction court's denial of relief was not an abuse of discretion.

**Affirmed.**