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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A08-0691**

Karon Kenyatta Baldwin, petitioner,  
Appellant,

vs.

State of Minnesota,  
Respondent.

**Filed May 19, 2009  
Affirmed  
Lansing, Judge**

Hennepin County District Court  
File No. 27-CR-96-013781

Karon Kenyatta Baldwin, MCF-Stillwater #188857, 970 Pickett Street North, Bayport,  
MN 55003 (pro se appellant)

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

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

Considered and decided by Kalitowski, Presiding Judge; Lansing, Judge; and  
Schellhas, Judge.

## UNPUBLISHED OPINION

LANSING, Judge

The postconviction court denied, without an evidentiary hearing, Karon Baldwin's petition raising sentencing issues and alleging ineffective assistance of trial and appellate counsel. We affirm the summary denial because the record does not provide a basis for a claim of ineffective assistance of appellate counsel and Baldwin's remaining claims, which were known and partially raised in his direct appeal, are procedurally barred by *State v. Knaffla*, 309 Minn. 246, 243 N.W.2d 737 (1976).

### FACTS

A jury found Karon Baldwin guilty in 1996 of nine felony counts, five of which merged at sentencing, for his participation in an armed burglary during which two people were shot, one fatally. On direct appeal Baldwin raised multiple sentencing issues. *State v. Baldwin*, No. CX-96-2336, 1997 WL 632889, at \*1-\*3 (Minn. App. Oct. 14, 1997). His sentences were affirmed as modified by reducing a 2.48 upward departure on his presumptive sentence for first-degree burglary to a double departure. *Id.* Baldwin did not seek further review in the supreme court.

In July 2007, Baldwin filed a pro se postconviction-relief petition raising five challenges that relate to his 1996 sentencing. He alleges substantive and procedural deficiencies in the sentencing departures and claims that the representation provided by his trial and appellate counsel was constitutionally ineffective, primarily because of failure to pursue the sentencing issues that Baldwin now raises in his postconviction petition. The postconviction court summarily denied relief on four of the claims but

requested that Baldwin and the state submit further argument on Baldwin's claim that appellate counsel's representation was ineffective because of failure to inform Baldwin of his right to pursue further review in the United States Supreme Court. After receiving additional written argument, the postconviction court also denied, without hearing, the fifth claim for postconviction relief.

## D E C I S I O N

The district court must grant a hearing for a postconviction appeal “[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 (2008). An evidentiary hearing is necessary when a material issue of fact is in dispute. *State ex rel. Roy v. Tahash*, 277 Minn. 238, 244-45, 152 N.W.2d 301, 305-06 (1967). To place material facts in dispute, the petitioner must allege facts that, if proven, would entitle the petitioner to the requested relief. *Fratzke v. State*, 450 N.W.2d 101, 102 (Minn. 1990). And, under the *Knaffla* rule, the postconviction court may deny a postconviction-relief petition without an evidentiary hearing on all claims that were either known or available at the time of a petitioner's direct appeal or earlier postconviction petition. *Knaffla*, 309 Minn. at 252, 243 N.W.2d at 741. We review the decisions of a postconviction court for an abuse of discretion. *Lee v. State*, 717 N.W.2d 896, 897 (Minn. 2006).

The postconviction court determined that Baldwin's sentencing and ineffective-assistance-of-trial-counsel claims were barred under the rule in *Knaffla*. It did not abuse its discretion in making this determination because the record on which the claims are based existed at the time of Baldwin's direct appeal. Similarly, the court did not abuse its

discretion by denying a hearing on these claims because the petition, files, and records conclusively showed that the *Knaffla* bar applied and that Baldwin was entitled to no relief on the claims. Minn. Stat. § 590.04, subd. 1; *Scales v. State*, 620 N.W.2d 706, 707-08 (Minn. 2001).

Two exceptions allow a claim to be considered despite the *Knaffla* bar. Review is allowed when (1) the failure to raise a claim was not deliberate and fairness otherwise requires consideration of the claim, or (2) a claim is so novel that the legal basis for the appeal was not available at the time of the direct appeal. *Perry v. State*, 731 N.W.2d 143, 146 (Minn. 2007). Baldwin argues that the fairness exception applies to his claims and that he should, therefore, be granted a hearing. Baldwin's fairness argument, however, is based on an assertion that his appellate counsel unfairly prevented him from raising his sentencing and trial-counsel issues. We construe this, not as a *Knaffla* issue, but as a claim relating to Baldwin's allegations of ineffective assistance of appellate counsel.

We, therefore, turn to the issue of ineffectiveness of appellate counsel. The right to effective assistance of counsel extends to a defendant's initial review of his conviction, whether by direct appeal or postconviction petition. *Deegan v. State*, 711 N.W.2d 89, 98 (Minn. 2006). As with ineffective-trial-counsel claims, the petitioner is required to show that appellate counsel's performance was objectively deficient and that a reasonable probability exists that the outcome would otherwise have been different. *Arredondo v. State*, 754 N.W.2d 566, 571 (Minn. 2008). Postconviction denial of a claim of ineffective assistance of counsel raises questions both of law and fact; on undisputed facts we review

the determination as a matter of law. *Opsahl v. State*, 677 N.W.2d 414, 420 (Minn. 2004).

Baldwin first argues that appellate counsel's representation was prejudicially deficient because counsel failed to properly raise Baldwin's sentencing issues and his ineffective-trial-counsel claim. This claim, however, must be viewed in light of caselaw that provides that, when an appellant and counsel disagree about the issues to raise on appeal, "counsel has no duty to include claims which would detract from other more meritorious issues." *Black v. State*, 560 N.W.2d 83, 86 (Minn. 1997) (quotation omitted). Baldwin stated in his postconviction affidavit that his appellate counsel asked him which issues he wanted to raise, and Baldwin said he wanted to raise everything related to his sentencing departures.

This court's opinion on direct appeal shows that appellate counsel did raise multiple sentencing issues, and successfully obtained a twenty-eight-month reduction in Baldwin's sentence. Baldwin's appellate counsel's decisions about which issues to raise receive a presumption of competent performance. *See Bruestle v. State*, 719 N.W.2d 698, 705 (Minn. 2006) (observing that presumption of counsel's competency receives particular deference when it relates to trial strategy). Furthermore, Baldwin has not demonstrated that he was prejudiced by appellate counsel's failure to raise the sentencing and trial-counsel issues set forth in his petition. Having carefully reviewed these claims and the record, we perceive no reasonable probability that this court's decision would have been any different had the issues been raised in Baldwin's direct appeal.

Baldwin's second claim is that appellate counsel's performance was prejudicially deficient because of failure to advise Baldwin of the opportunity for review by the United States Supreme Court. At the outset, we note that certiorari review by the United States Supreme Court is only available for "final judgments or decrees rendered by the highest court of a [s]tate in which a decision could be had." After direct appeal to this court, Baldwin did not file a petition for review to the *Minnesota* Supreme Court. Review by writ of certiorari to the U.S. Supreme Court was, therefore, not available. 28 U.S.C. § 1257 (2008).

It would be possible to construe Baldwin's argument as encompassing the failure to petition for *any* further review, including review by the Minnesota Supreme Court. But Baldwin has made no factual allegations relating to review by the Minnesota Supreme Court: his affidavits do not address the extent to which he discussed with his appellate attorney any petition for further review to the state supreme court. Absent any allegations or affidavit addressing review by the state court, we cannot assess whether appellate counsel's representation could amount to ineffective assistance.

For these reasons we conclude that Baldwin has not met his burden of raising an issue that warrants an evidentiary hearing. We, therefore, hold that the postconviction court did not abuse its discretion when it denied, without an evidentiary hearing, Baldwin's petition for postconviction relief.

**Affirmed.**