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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0404**

David N. Garcia, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed January 6, 2009
Affirmed
Stoneburner, Judge**

Ramsey County District Court
File No. K2991093

David N. Garcia, 970 Pickett Street North, Bayport, MN 55003-1490 (pro se appellant)

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

Susan Gaertner, Ramsey County Attorney, Mark Nathan Lystig, Assistant County
Attorney, Suite 315, 50 West Kellogg Boulevard, St. Paul, MN 55102-1657 (for
respondent)

Considered and decided by Stoneburner, Presiding Judge; Kalitowski, Judge; and
Halbrooks, Judge.

UNPUBLISHED OPINION

STONEBURNER, Judge

Appellant challenges denial of his pro se petition for postconviction relief from
convictions of second-degree intentional murder and attempted second-degree murder.

Because the district court did not err in concluding that appellant's claims are barred by appellant's failure to raise them in his direct appeal, we affirm.

FACTS

Appellant David Nicholas Garcia was convicted of second-degree intentional murder and attempted second-degree murder for an October 1997 shooting that killed one person and left another severely injured. Garcia was sentenced to 306 months (25.5 years) and a consecutive term of 153 months (12.75 years). He appealed, challenging the sufficiency of the evidence of intent. This court affirmed. *State v. Garcia*, C0-00-21, 2000 WL 1808992, at *5 (Minn. App. Dec. 12, 2000).

In August 2007, Garcia petitioned for postconviction relief asserting that the district court erroneously instructed the jury and that the verdicts were contrary to the evidence and the law. The postconviction court denied the petition under *State v. Knaffla*, 309 Minn. 246, 243 N.W.2d 737 (1976). Garcia then moved to amend his postconviction petition, but the postconviction court treated the motion as a second petition for postconviction relief. In this petition, Garcia asserted (1) ineffective assistance of trial counsel; (2) error in entering convictions for both the crime charged and lesser-included offenses; and (3) ineffective assistance of appellate counsel.¹ The postconviction court denied this petition after concluding that the first two claims are *Knaffla* barred and that Garcia failed to provide any evidence of ineffective assistance of appellate counsel. This appeal followed.

¹ On appeal, Garcia does not address denial of his claim for ineffective assistance of appellate counsel, therefore we do not reach this issue.

DECISION

Where a direct appeal has been taken, all matters raised, and all claims known but not raised, will not be considered on a subsequent petition for postconviction relief.

Knaffla, 309 Minn. at 252, 243 N.W.2d at 741. There are two exceptions to the rule: (1) if a known claim is so novel that its legal basis was not reasonably available when direct appeal was taken, and (2) when the petitioner did not deliberately and inexcusably fail to raise an issue on direct appeal and fairness requires review. *Roby v. State*, 531 N.W.2d 482, 484 (Minn. 1995); *Russell v. State*, 562 N.W.2d 670, 672 (Minn. 1997). Summary denial of a postconviction petition is reviewed for an abuse of discretion. *Powers v. State*, 695 N.W.2d 371, 374 (Minn. 2005).

In this case, the postconviction court did not abuse its discretion by concluding that any concerns Garcia had about his convictions, including the effectiveness of counsel and jury instructions, were known at the time of his direct appeal. His claims are not novel, and he has not presented any justification for not presenting them on direct appeal.

Affirmed.