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**STATE OF MINNESOTA
IN COURT OF APPEALS
A06-2469**

Douglas Michael Edling, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed January 22, 2008
Affirmed
Peterson, Judge**

St. Louis County District Court
File No. K3-00-600928

Douglas Michael Edling, OID No. 206574, MCF – Oak Park Heights, 5329 Osgood Avenue North, Stillwater, MN 55082 (pro se appellant)

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

Melanie Ford, St. Louis County Attorney, John E. DeSanto, Assistant County Attorney, 100 North Fifth Avenue West, Suite 501, Duluth, MN 55082 (for respondent)

Considered and decided by Peterson, Presiding Judge; Willis, Judge; and Wright,
Judge.

UNPUBLISHED OPINION

PETERSON, Judge

In this appeal from an order summarily denying his second postconviction petition, pro se appellant Douglas Edling argues that the upward durational departure in

his sentence was improper and that the postconviction court erred in ruling that the claims in his petition are procedurally barred because he raised them or could have raised them in his direct appeal or in his first postconviction petition. We affirm.

FACTS

Edling was charged with second-degree murder. Pursuant to a plea agreement, the state agreed not to seek a grand-jury indictment for first-degree murder and Edling pleaded guilty to second-degree murder. The plea agreement also called for a sentence one-and-a-half times greater than the presumptive sentence for second-degree murder.

Shortly after pleading guilty, Edling requested a competency evaluation under Minn. R. Crim. P. 20.01. The sentencing court ordered the evaluation and later found that Edling was competent to proceed. Edling then moved to withdraw his guilty plea. The district court denied Edling's motion, and, on March 5, 2001, imposed a 480-month sentence, which was nine months less than one-and-a-half times the 326-month presumptive sentence for second-degree murder ($326 \times 1.5 = 489$). On March 6, 2001, the sentencing court issued a departure report stating the reasons for the upward durational departure. On direct appeal, this court affirmed Edling's conviction. *State v. Edling*, No. C0-01-949 (Minn. App. Apr. 30, 2002), *review denied* (Minn. July 16, 2002).

Edling filed a postconviction petition on May 5, 2004. Based on its determination that the claims in the petition were procedurally barred because Edling either raised them or could have raised them in his direct appeal, the district court summarily denied the petition. Edling filed the current postconviction petition on July 21, 2006. The postconviction court summarily denied the petition based on its determination that the

claims asserted are procedurally barred because Edling knew of the claims and could have raised them either in his direct appeal or in his first postconviction petition. This appeal followed.

D E C I S I O N

An evidentiary hearing is not required on a postconviction petition unless facts are alleged which, if proved, would entitle the petitioner to the requested relief. *Townsend v. State*, 582 N.W.2d 225, 229 (Minn. 1998).

Once a petitioner has directly appealed his criminal conviction and has filed previous petitions for postconviction relief, any matter raised in the direct appeal or matters that were known to the defendant and could have been raised in the previous petitions will not be considered upon a subsequent petition for postconviction relief.

Jones v. State, 671 N.W.2d 743, 746 (Minn. 2003). The supreme court has recognized two exceptions from this rule, which is known as the *Knaffla* rule.¹ When a claim is so novel that it can be said that its legal basis was not reasonably available to counsel at the time the direct appeal was taken and decided, postconviction relief will be allowed. *Case v. State*, 364 N.W.2d 797, 800 (Minn.1985). And in limited circumstances where fairness demands, substantive review of a case is warranted even if the petitioner knew of the issue at the time of the direct appeal unless the petitioner deliberately and inexcusably failed to raise the issue on direct appeal. *Fox v. State*, 474 N.W.2d 821, 825 (Minn. 1991).

¹ *State v. Knaffla*, 309 Minn. 246, 252, 243 N.W.2d 737, 741 (1976).

The postconviction court concluded that because the claims in Edling’s petition were based on many of the same arguments and information “previously provided to the Court in his First Petition for Post-Conviction Relief or to the Minnesota Court of Appeals in his direct appeal,” the claims were barred under the *Knaffla* rule. We review a denial of a postconviction petition based on the *Knaffla* rule for an abuse of discretion. *Quick v. State*, 692 N.W.2d 438, 439 (Minn. 2005).

The claims in Edling’s petition challenge the upward durational departure in his sentence. Edling contends that the reasons given for the departure were not substantial and compelling and that the departure was excessive and unjustifiably disparate compared to what durational departures have been for other defendants who were convicted of second-degree intentional murder. Edling argues that in his supplemental pro se brief in his direct appeal, he raised claims that the reasons given for the departure were not substantial and compelling and, although this court ruled against him on these claims in his direct appeal, it viewed the claims as constituting “a declaration of innocence,” not as challenges to the durational departure. Therefore, Edling contends, the sentencing claims should not be barred because this court did not rule on the merits of those claims.

We need not decide whether the *Knaffla* rule applies when a claim was raised but not addressed in a direct appeal because Edling did not raise any claims challenging the upward departure during his direct appeal. In his supplemental pro se brief, Edling identified three reasons for the upward departure that the sentencing court stated on the record at the sentencing hearing, but he did not assert that the reasons were insufficient to

support the upward departure. The brief only challenged whether Edling's guilty plea was accurate, voluntary, and intelligent.

Edling also failed to challenge the upward departure in his first postconviction petition. Because the sentencing court stated the reasons for the departure during the sentencing hearing, Edling's claims regarding the sufficiency of the reasons for the departure were known, or should have been known, by Edling at the time of his first postconviction petition. But, as in his direct appeal, Edling only challenged whether his guilty plea was accurate, voluntary, and intelligent. Because his claims regarding the sufficiency of the reasons for the departure should have been known by Edling at the time of his first postconviction petition, they will not be considered upon a later postconviction petition.

Edling argues that even if he did not raise his claims challenging the upward departure in his direct appeal or in his first postconviction petition, those claims should still be considered because he did not "deliberately and inexcusably" fail to raise them and fairness requires review. Edling explains that his failure to challenge the departure in his direct appeal and his first postconviction petition should be excused because he did not receive a copy of the sentencing court's departure report and did not know that the report existed until August 2004. But even if Edling did not receive a copy of the departure report, the sentencing court stated the reasons for the departure on the record at the sentencing hearing, and Edling's supplemental pro se brief in his direct appeal, which identifies three reasons for the departure and cites the lines in the sentencing transcript where the sentencing court stated these reasons, demonstrates that Edling was aware of

the reasons for the departure at the time of his direct appeal. Therefore, fairness does not demand that Edling be allowed to claim now that the reasons for the departure were insufficient after he failed to assert this claim in either his direct appeal or his first petition for postconviction relief.

Edling's final claim, that the upward departure was excessive and unjustifiably disparate compared to what durational departures have been for other defendants who were sentenced for second-degree intentional murder, is not properly before this court because Edling did not present this claim to the postconviction court. Therefore, we will not consider the claim. *State v. Roby*, 547 N.W.2d 354, 357 (Minn. 1996) (appellate court generally will not decide issues that were not raised before the district court). But we note that it is not apparent why this claim could not have been raised in either Edling's first appeal or his first postconviction petition.

Because Edling could have raised the claims in his current postconviction petition in either his direct appeal or his first postconviction petition, and fairness does not demand that substantive review of the claims is warranted, the claims are barred, and the district court did not abuse its discretion by summarily denying Edling's second petition for postconviction relief.

Affirmed.