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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0435**

Raymond Dale Moseley, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed March 25, 2008

Affirmed

Wright, Judge

Hon. Michael J. Lieberg
Stearns County District Court
File No. KX-04-5644

Raymond Moseley, c/o Ron & Sandy Kelm, 150 Ninth Avenue North, Waite Park, MN
56387 (pro se appellant)

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

Janelle Kendall, Stearns County Attorney, Michael J. Lieberg, Assistant County
Attorney, Administration Center, Room 448, 705 Courthouse Square, St. Cloud, MN
56303 (for respondent)

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

UNPUBLISHED OPINION

WRIGHT, Judge

Appellant challenges the denial of postconviction relief, arguing that the district court abused its discretion by summarily denying his claims of ineffective assistance of counsel and prosecutorial misconduct. We affirm.

FACTS

Appellant Raymond Moseley was charged with first-degree burglary, Minn. Stat. § 609.582, subd. 1(a) (2004), and third-degree criminal sexual conduct, Minn. Stat. § 609.344, subd. 1(d) (2004). After a jury trial, Moseley was convicted of both offenses. A detailed recitation of the facts is set forth in *State v. Moseley*, No. A05-1367, 2006 WL 1806189, at *1-*2 (Minn. App. July 3, 2006), *review denied* (Minn. Aug. 15, 2006). Moseley appealed, arguing that there is insufficient evidence to support his convictions and that his request for substitute counsel was erroneously denied. *Mosley*, 2006 WL 1806189, at *1. We affirmed Moseley's conviction, and the Minnesota Supreme Court denied review. *Id.*

In November 2006, Moseley petitioned the district court for postconviction relief, claiming that his trial counsel provided ineffective assistance and the prosecutor committed prejudicial misconduct. The district court summarily denied Moseley's postconviction petition as procedurally barred under *State v. Knaffla*, 309 Minn. 246, 252, 243 N.W.2d 737, 741 (1976). This appeal followed.

DECISION

A petitioner seeking postconviction relief has the burden of establishing by “a fair preponderance of the evidence” the facts alleged in the petition. Minn. Stat. § 590.04, subd. 3 (2006). Postconviction relief may be available if the petitioner’s conviction was obtained in violation of the petitioner’s rights under the constitution or laws of the United States or the State of Minnesota. Minn. Stat. § 590.01, subd. 1 (2006). But when a direct appeal has been taken, all matters raised in the appeal and all claims that are known but not raised “will not be considered upon a subsequent petition for postconviction relief.” *State v. Knaffla*, 309 Minn. 246, 252, 243 N.W.2d 737, 741 (1976). The *Knaffla* rule applies “if the defendant knew or should have known about the issue at the time of appeal.” *King v. State*, 649 N.W.2d 149, 156 (Minn. 2002); *see also* Minn. Stat. § 590.01, subd. 1 (barring postconviction relief for claims that petitioner “could have . . . raised on direct appeal”). “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.” *Powers v. State*, 731 N.W.2d 499, 502 (Minn. 2007).

We review the district court’s decision in a postconviction proceeding for an abuse of discretion. *Schleicher v. State*, 718 N.W.2d 440, 444-45 (Minn. 2006). Summary denial of a petition for postconviction relief does not constitute an abuse of discretion if the petition is procedurally barred by the *Knaffla* rule. *Id.* at 450.

I.

Although Moseley argues that he received ineffective assistance of trial counsel in his postconviction petition, he did not raise this issue in his direct appeal. A claim of

ineffective assistance of counsel generally should be raised on direct appeal; but it may be raised in the first petition for postconviction relief if the claim cannot be reviewed on the basis of the trial record. *State v. Gustafson*, 610 N.W.2d 314, 321 (Minn. 2000). The *Knaffla* rule bars a postconviction claim of ineffective assistance of trial counsel when the grounds for the claim were known but not raised on direct appeal and additional fact-finding was unnecessary. *Schneider v. State*, 725 N.W.2d 516, 520-21 (Minn. 2007). Additional fact-finding is necessary only if evidence outside the trial record, such as attorney-client communications, is necessary to the determination of the validity of the claim. *Schleicher*, 718 N.W.2d at 447.

When Moseley filed his direct appeal, he was aware of his trial counsel's actions before and during trial. Because Moseley knew the nature of his trial counsel's performance at the time of his direct appeal, his postconviction claim of ineffective assistance of counsel is procedurally barred by the *Knaffla* rule unless additional fact-finding was necessary to evaluate his claim. *Schneider*, 725 N.W.2d at 520-21.

Moseley first argues that his trial counsel's performance was deficient because his counsel failed to interview the victim's 14-year-old son in preparation for trial. Moseley maintains that the victim's son, who was sleeping on a chair in the victim's room, awoke while Moseley was in the room. Therefore, Moseley contends, the victim's son could "completely exonerate [Moseley] of all charges." But contrary to Moseley's assertions, the victim's son testified that he slept through the incident and did not see or hear anything. Moseley also asserts that his trial counsel's performance was deficient because

his counsel failed to impeach or otherwise challenge the testimony of the victim's son and that of other witnesses.

When deciding a claim of ineffective assistance of counsel, an evaluation of the objective reasonableness of counsel's performance does not include challenges to counsel's trial strategy. *State v. Blanche*, 696 N.W.2d 351, 376 (Minn. 2005). The extent of counsel's investigation and decisions regarding the scope of cross-examination are matters of trial strategy. *Opsahl v. State*, 677 N.W.2d 414, 421 (Minn. 2004) (investigation); *State v. Voorhees*, 596 N.W.2d 241, 255 (Minn. 1999) (cross-examination). Because Moseley's postconviction challenge to trial strategy neither requires additional fact-finding nor is within the scope of an ineffective-assistance-of-counsel claim, *Schleicher*, 718 N.W.2d at 448, 450, the district court correctly concluded that *Knaffla* bars this postconviction claim.

II.

Moseley also argues that the prosecutor committed prejudicial misconduct by permitting false testimony at trial. Moseley also raised this claim for the first time in his postconviction petition. But Moseley was aware of the prosecutor's trial conduct when he pursued the direct appeal. Thus, this claim also is procedurally barred unless an exception to the *Knaffla* rule applies. *Schleicher*, 718 N.W.2d at 446-47.

It is undisputed that Moseley's prosecutorial-misconduct claim does not present a novel legal issue. We, therefore, consider whether the other exception applies, namely, that the interests of justice require review. *See Spears v. State*, 725 N.W.2d 696, 700 (Minn. 2006) (articulating the two exceptions to *Knaffla* rule). Under the interests-of-

justice exception, a petitioner must demonstrate that (1) fairness requires the district court to address the issue, (2) the petitioner did not deliberately and inexcusably fail to raise the issue previously, and (3) the claim has substantive merit. *Id.*

Moseley has not demonstrated that fairness required the district court to address his prosecutorial-misconduct claim despite his failure to raise it on direct appeal. Moseley asserts that he discovered the prosecutorial misconduct after months of research. But he was represented by counsel on direct appeal, and he does not argue that his prosecutorial-misconduct claim required further fact-finding that would have prevented review on direct appeal. Thus, Moseley has not established that his prosecutorial-misconduct claim satisfies an exception to the *Knaffla* rule.

Because it is apparent from the postconviction petition and the record that Moseley's claims for relief are barred, the district court's summary denial was a sound exercise of its discretion.

Affirmed.