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

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A10-594**

Perry Shawn Hardesty, petitioner,  
Appellant,

vs.

State of Minnesota,  
Respondent.

**Filed December 21, 2010  
Affirmed  
Lansing, Judge**

Dakota County District Court  
File No. 19-KX-06-000081

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Perry Shawn Hardesty, Bayport, Minnesota (pro se appellant)

Lori Swanson, Attorney General, St. Paul, Minnesota; and

James C. Backstrom, Dakota County Attorney, Kevin J. Golden, Assistant Dakota  
County Attorney, Hastings, Minnesota (for respondent state)

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

## UNPUBLISHED OPINION

LANSING, Judge

The district court denied, without an evidentiary hearing, Perry Hardesty's second postconviction petition. Because the sentencing issue raised in this appeal was raised and decided in Hardesty's earlier postconviction appeal, the district court did not abuse its discretion by applying the *Knaffla* procedural bar to summarily deny the petition, and we affirm.

### FACTS

A jury found Perry Hardesty guilty of first-degree, attempted aggravated robbery in July 2006. In a bifurcated sentencing trial, a jury found that Hardesty had five or more prior felony convictions, and the district court sentenced him to 120 months in prison as a career offender.

Hardesty appealed his conviction and sentence. *State v. Hardesty*, No. A07-290, 2008 WL 2245815, \*4 (Minn. App. June 3, 2008) (*Hardesty I*), review denied (Minn. Aug. 19, 2008). The sentencing issue raised in *Hardesty I*, was whether the evidence was sufficient to sustain the jury's finding that Hardesty had committed the five prior felonies that are required for imposition of a career-offender sentence. *Id.* at \*9. The *Hardesty I* opinion concluded that the evidence was sufficient and affirmed the sentence. *Id.* at \*9-10, \*13

After Hardesty's direct appeal was decided, he filed a petition for postconviction relief that again challenged the sentence for his July 2006 conviction. He requested that his sentence be reviewed under Minn. R. Crim. P. 27.03, subd. 9, which allows the court

to “correct a sentence not authorized by law.” He argued that he was improperly sentenced as a career offender because at least one of the five felonies that were used as the predicate for his career-offender status did not conform to the required sentencing sequence and was therefore excluded from the statutory definition of “prior felony conviction.” See *State v. Huston*, 616 N.W.2d 282, 284 (Minn. App. 2000) (interpreting statutory definition of “prior felony conviction” for purposes of career-offender status).

The district court denied Hardesty’s petition, without a hearing, based on its determination that this issue was raised and decided in Hardesty’s direct appeal and further consideration of this issue was barred by *State v. Knaffla*. 309 Minn. 246, 252, 243 N.W.2d 737, 741 (1976) (defining procedural bar that applies to successive requests for postconviction relief).

Hardesty appealed, arguing that a stayed adjudication that was incorrectly treated as a stayed imposition of sentence created an error in determining the number of his prior felony convictions for purposes of determining his career-offender status. *Hardesty v. State*, No. A08-2146, 2009 WL 3172184, \*3 (Minn. App. Oct. 6, 2009) (*Hardesty II*), review denied (Minn. Jan. 19, 2010). The *Hardesty II* opinion affirmed the district court’s summary denial that relied on the *Knaffla* bar. *Id.* at \*6.

Following the decision on the first postconviction appeal, Hardesty brought a motion requesting the correction of clerical mistakes in the sentencing record. Hardesty’s motion for correction raised the same issue of whether one of his prior convictions was improperly considered because its sequence was determined based on a stayed imposition of sentence rather than a stayed adjudication. The district court treated this motion as

Hardesty's second petition for postconviction relief and, relying on the *Knaffla* bar, denied the petition without a hearing. Hardesty now appeals.

## DECISION

A postconviction court must grant a hearing on a petition for postconviction relief unless the petition and record show that the petitioner is not entitled to relief. Minn. Stat. § 590.04, subd. 1 (2010). A postconviction court “may summarily deny a second or successive petition for similar relief on behalf of the same petitioner and may summarily deny a petition when the issues raised in it have previously been decided by the [c]ourt of [a]ppeals or the [s]upreme [c]ourt in the same case.” Minn. Stat. § 590.04, subd. 3 (2010).

When “direct appeal has once been taken,” all issues raised in the appeal, and all issues “known but not raised, will not be considered [in] a subsequent petition for postconviction relief.” *Knaffla*, 309 Minn. at 252, 243 N.W.2d at 741. In addition, issues “raised or known but not raised in an earlier petition for postconviction relief will generally not be considered in subsequent petitions for postconviction relief.” *Powers v. State*, 731 N.W.2d 499, 501 (Minn. 2007). We review a denial of postconviction relief based on the *Knaffla* procedural bar for an abuse of discretion. *Id.*

Hardesty was sentenced as a career offender, which permits an upward departure from the sentencing guidelines up to the statutory maximum. Minn. Stat. § 609.1095, subd. 4 (2010); see *Huston*, 616 N.W.2d at 283 (identifying Minn. Stat. § 609.1095, subd. 4, as “career offender statute”). An upward departure is permissible “if the factfinder determines that the offender has five or more prior felony convictions and that the present

offense is a felony that was committed as part of a pattern of criminal conduct.” *Id.* A prior conviction is “a conviction that occurred before the offender committed the next felony resulting in a conviction and before the offense for which the offender is being sentenced under this section.” *Id.*, subd. 1(c) (2010). A prior conviction in the context of a prior felony conviction means that “five sequential felony offenses and convictions are required (i.e., offense/conviction, offense/conviction, offense/conviction, etc.).” *Huston*, 616 N.W.2d at 283.

Hardesty claims that two of his felony convictions from 1993, possession of heroin and assault, were not sequential. He claims that he received a stay of adjudication on his heroin offense that was not vacated and did not result in a conviction until November 1993, after he had committed the assault. *See* Minn. Stat. § 152.18, subd. 1 (2010) (deferring prosecution for first-time drug offenders); *State v. Roloff*, 562 N.W.2d 29, 31 (Minn. App. 1997) (holding that stay of adjudication is not equivalent to conviction for sentencing purposes). Hardesty contends that the sequence is as follows: (1) Hardesty committed the possession of heroin crime in December 1992; (2) Hardesty committed the assault in October 1993; (3) Hardesty was convicted of the possession of heroin crime in November 1993 when the stay of adjudication was vacated; and (4) Hardesty was convicted of the assault in December 1993. In other words: offense; offense; conviction; conviction.

Hardesty’s challenge to his sentence in this appeal derives from an inconsistency in the sentencing record which he contends is a clerical mistake. Some documents in the record indicate that he received a stay of adjudication and others indicate that he received

a stay of imposition. This inconsistency in the record was raised by Hardesty and considered in *Hardesty II*. 2009 WL 3172814, at \*4-5.

The *Hardesty II* opinion recognized the inconsistencies in a Minnesota Court Information System printout and Exhibit 1A of the sentencing trial. *Id.* at \*4. After noting the conflicting evidence in the record, the *Hardesty II* opinion concluded that Hardesty's petition to correct his sentence presented "a challenge to the jury's finding that he has five prior felony convictions," and that the jury's finding must stand unless the verdict is set aside. *Id.* at \*5 (citing *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004)). *Hardesty II* reaffirmed the sufficiency of the evidence for the jury to reach that determination and affirmed the district court's summary denial of Hardesty's postconviction petition. *Id.* at \*5-6

In this postconviction proceeding, by denying Hardesty's motion to "correct a clerical error," the postconviction court determined that Hardesty's arguments had already been heard and decided, and that further consideration was barred by the *Knaffla* rule. Although Minn. R. Crim. P. 27.03, subd. 9, authorizes the court to correct at "any time" a "sentence not authorized by law," once the petitioner has raised the sentencing issue and that precise issue has been decided on the merits in the district court and on appeal, *Knaffla* bars consideration of that issue in subsequent postconviction petitions. *See Powers*, 731 N.W.2d at 500-01 (holding that sentencing arguments raised in previous postconviction petition subsequently brought under Minn. R. Crim. P. 27.03, subd. 9, are barred by *Knaffla*); *State v. Stutelberg*, 435 N.W.2d 632, 635 (Minn. App. 1989) (holding

that sentencing arguments raised under Minn. R. Crim. P. 27.03, subd. 9, must be reviewed on the merits before *Knaffla* procedural bar applies).

The specific issue of whether Hardesty received a stay of adjudication or a stay of imposition on one of his 1993 felonies was raised and decided on the merits in *Hardesty II*. *See id.* (concluding that Hardesty's petition was without merit because there was sufficient evidence to support jury's finding of five prior felony convictions). Because Hardesty's petition raises the same sentencing issues that he raised in *Hardesty II* and because *Hardesty II* was decided on the merits, the district court did not abuse its discretion by summarily denying Hardesty's petition for postconviction relief.

**Affirmed.**