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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0394**

David Richard Carlson, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed November 13, 2012
Affirmed
Hudson, Judge**

St. Louis County District Court
File No. 69DU-CR-05-2261

David Richard Carlson, Moose Lake, Minnesota (pro se appellant)

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

Mark S. Rubin, St. Louis County Attorney, Gary W. Bjorklund, Assistant County Attorney, Duluth, Minnesota (for respondent)

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

UNPUBLISHED OPINION

HUDSON, Judge

Appellant challenges the district court's summary denial of his request for postconviction relief. Because we conclude that the district court did not err by denying

certain of appellant's claims as untimely and that appellant's additional claims are barred by the application of *State v. Knaffla*, 309 Minn. 246, 243 N.W.2d 737 (1976), we affirm.

FACTS

A jury convicted appellant David Richard Carlson of first-degree criminal sexual conduct, two counts of third-degree criminal sexual conduct, and solicitation of a child to engage in sexual conduct, after he approached a 13-year-old girl in his van and forced her to engage in sexual conduct in August 2004. The district court initially granted appellant's motion for acquittal of first-degree criminal sexual conduct, determining that insufficient evidence existed to support the jury's verdict on the required element of the complainant's fear of great bodily harm. This court reversed, concluding that the district court erred by granting a judgment of acquittal because the evidence sufficiently supported appellant's conviction. *State v. Carlson*, No. A06-961 (Minn. App. Apr. 10, 2007), *review denied* (Minn. June 27, 2007).

After sentencing, appellant challenged his conviction in this court, which concluded that (1) appellant's sufficiency-of-the-evidence challenge was precluded by the doctrine of law of the case; (2) the district court did not abuse its discretion by admitting *Spreigl* evidence; (3) the district court did not violate appellant's constitutional right of confrontation by prohibiting cross-examination of the complainant about a prior sexual-assault accusation and the complainant's status as a runaway and a truant; (4) appellant's ineffective-assistance claim, which asserted that the district court's evidentiary rulings restricted his trial counsel's ability to mount a defense, amounted to a Confrontation Clause claim and lacked merit; and (5) appellant's claims relating to a

taped interview, including his *Miranda* claim, also lacked merit. *State v. Carlson*, No. A07-2144 (Minn. App. Feb. 10, 2009), *review denied* (Minn. Apr. 29, 2009). This court did not reach the merits of appellant's additional claims regarding jury misconduct, a biased witness, and probable cause.

In May 2009, appellant filed his first petition for postconviction relief, arguing that his right to confront witnesses had been violated and that he had received ineffective assistance of trial and appellate counsel. The district court denied the petition without an evidentiary hearing, concluding that appellant's arguments, which had been raised in his direct appeal, were barred under the rule in *Knaffla*, 309 Minn. at 252, 243 N.W.2d at 741. This court affirmed, concluding that appellant's Confrontation Clause, *Spreigl*, and ineffective-assistance-of-trial-counsel claims were procedurally barred because they had been previously raised, and that his claim of ineffective assistance of appellate counsel lacked merit. *Carlson v. State*, No. A09-1558 (Minn. App. Jan. 25, 2010) (order op.), *review denied* (Minn. Apr. 20, 2010). Appellant also filed a petition of habeas corpus with the United States District Court, which was dismissed with prejudice. He then appealed to the Eighth Circuit Court of Appeals and to the United States Supreme Court, which both denied review.

In August 2010, appellant wrote to the district court, advancing an argument that he had not been read his *Miranda* rights at a first appearance. The district court informed him by letter that this issue did not apply to a first appearance. In late August and September 2010, appellant wrote again to the district court, arguing that he had no attorney at his first appearance and that a conference had occurred in the judge's

chambers without his presence before that appearance. In September 2010, the district court apparently notified appellant that it would not accept his further submissions. In December 2010, June 2011, and July 2011, respectively, appellant sent the district court additional letters, alleging that a *Miranda* violation had occurred, that he had received ineffective assistance of trial counsel, and that the evidence was insufficient to support his conviction because the lack of DNA evidence linking him to the offense created reasonable doubt. Although the district court did not then issue an order addressing the merits of these letters, they were filed and retained in the record.

On July 14, 2011, while appellant's request for review of the habeas petition was pending before the Eighth Circuit, the district court issued an interim order stating that appellant had failed to abide by the conditions of its previous order regarding filing motions. The district court also stated that appellant's argument regarding the requirement for DNA evidence was inaccurate, that it would make no further order while the matter was pending in federal court, and that it did not appear that appellant had a basis for legal relief in state court.

In December 2011, appellant filed another postconviction petition in district court. He argued that: (1) he was deprived of due process by the failure to order DNA testing, which would have shown that the complainant did not enter the van; (2) no probable cause existed; (3) he was deprived of his confrontation right by police misconduct in failing to allow testing or cross-examination as to certain evidence; and (4) the prosecutor committed misconduct by failing to investigate and ask additional questions about the van during trial. The district court denied his petition without a hearing, concluding that

more than two years had elapsed since the Minnesota Supreme Court had denied review of his last postconviction petition and that he had failed to present any exception that would apply to the two-year time limitation for requesting postconviction relief under Minn. Stat. § 590.01, subd. 4(a)(2) (2010). This appeal follows.

D E C I S I O N

A person who is convicted of a crime and who claims that the conviction violated his or her rights may file a petition for postconviction relief with the district court. Minn. Stat. § 590.01, subd. 1(1) (2010). A petitioner seeking postconviction relief “has the burden of establishing, by a fair preponderance of the evidence, facts [that] warrant a reopening of the case.” *State v. Rainer*, 502 N.W.2d 784, 787 (Minn. 1993). The allegations must consist of more than “conclusory, argumentative assertions, without factual support.” *State v. Turnage*, 729 N.W.2d 593, 599 (Minn. 2007).

Denial of a petition without a hearing is appropriate if “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 (2010). And the district 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 an appellate court. *Id.*, subd. 3 (2010). This court reviews the district court’s summary denial of a postconviction petition for abuse of discretion. *Lee v. State*, 717 N.W.2d 896, 897 (Minn. 2006).

Minnesota law provides that, absent listed exceptions, a postconviction petition must be filed within two years of the disposition of a direct appeal. Minn. Stat. § 590.01,

subd. 4 (2010). A conviction becomes final when the time for petitioning the United States Supreme Court for review expires. *Moua v. State*, 778 N.W.2d 286, 288 (Minn. 2010); *see also Hutchinson v. State*, 679 N.W.2d 160, 162 (Minn. 2004) (holding that a conviction is final for retroactivity purposes when “a judgment of conviction has been rendered, the availability of appeal exhausted, and the time for a petition for certiorari elapsed or . . . [was] finally denied” (ellipses in original) (quotation omitted)).

This court affirmed appellant’s conviction in February 2009; the Minnesota Supreme Court denied review on April 29, 2009, and the time for petitioning the United States Supreme Court for certiorari review ended 90 days after that, on July 28, 2009. *See Sup. Ct. R. 13* (setting the time limit to file a petition for a writ of certiorari in the United States Supreme Court at 90 days from the entry of judgment by a state court of last resort). Appellant filed his postconviction petition in December 2011. The district court concluded that the petition was filed after the two-year statutory time limitation and therefore was untimely.

Claims asserted in December 2011

We agree with the district court’s conclusion that appellant’s request for relief was untimely as to the claims asserted in his petition of December 2011, which was more than two years after the time for petitioning for review of appellant’s direct appeal had elapsed. These claims include appellant’s claim of a due-process right to DNA testing, challenge to probable cause, Confrontation Clause argument based on police misconduct, and claim of prosecutorial misconduct. Therefore, the district court did not err by denying appellant relief on the ground that these claims were untimely.

And we reject appellant's argument that these claims were subject to a statutory exception to the timeliness bar because a new interpretation of constitutional or statutory law is retroactively applicable to his case. *See* Minn. Stat. § 590.01, subd. 4(b)(3). Appellant maintains that his conviction should be vacated based on the application of due process principles stated in *Perry v. New Hampshire*, 132 S. Ct. 716 (2012). But the United States Supreme Court in *Perry* merely reiterated long-established law that due process precludes the admission of evidence that would violate principles of fundamental fairness. *Id.* at 723 (citing *Dowling v. United States*, 493 U.S. 342, 352, 110 S. Ct. 668, 674 (1990)). *Perry* did not enunciate a new interpretation of constitutional or statutory law that would apply retroactively to appellant's case, and thus this exception does not apply.

We also disagree with appellant that, notwithstanding the filing deadline, the district court should have considered his petition "in the interests of justice" under Minn. Stat. § 590.01, subd. 4(b)(5). The "interests of justice" provision is applied only in exceptional situations. *Gassler v. State*, 787 N.W.2d 575, 586 (Minn. 2010). Appellant has failed to make a credible argument that the interests of justice require consideration of his arguments made after the filing deadline.

Claims asserted before July 29, 2011

We come to a different conclusion, however, as to appellant's claims asserted by letter before July 29, 2011, the two-year filing deadline. Although the record contains a note that additional filings were not to be accepted from appellant during the pendency of his federal claims, the district court nonetheless received and filed additional claims from

appellant in August, September, and December 2010, and in June and early July 2011. In these letters, appellant requested relief based on *Miranda* violations, his right to counsel at a first appearance, ineffective assistance of trial counsel, and the state's failure to produce DNA evidence, without which, he alleged, the evidence was insufficient to sustain his conviction. In an interim July 14, 2011 order, the district court stated that appellant's argument relating to DNA evidence was inaccurate and that it did not appear that his claims afforded him a basis for relief in state court.

Because the district court accepted additional filings from appellant before July 29, 2011, the expiration of the two-year limitation period, we conclude that, to the extent that the district court concluded that those claims were barred as untimely under Minn. Stat. § 590.01, subd. 4, it erred in doing so. Nonetheless, we may affirm the district court's dismissal of the petition as to those claims on alternative grounds. *See, e.g., Hummel v. State*, 617 N.W.2d 561, 563 (Minn. 2000) (affirming postconviction court's decision on alternative grounds).

Under the rule in *Knaffla*, all claims that have been raised by a defendant on direct appeal, and all claims which the defendant could have raised on direct appeal but did not, will not be considered in a review of a subsequent petition for postconviction relief. *Knaffla*, 309 Minn. at 252, 243 N.W.2d at 741. In appellant's direct appeal, this court rejected appellant's arguments relating to *Miranda* violations, ineffective assistance of counsel, and sufficiency of the evidence. Therefore, those claims are barred under *Knaffla*. *See id.* And because appellant could have raised his argument relating to the right to counsel at his first appearance on direct appeal, but failed to do so, this claim is

also *Knaffla*-barred. Therefore, the district court did not abuse its discretion by denying appellant's additional claims for postconviction relief without an evidentiary hearing.

Affirmed.