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**STATE OF MINNESOTA
IN COURT OF APPEALS
A06-2156**

Dale Allen Jones, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed January 15, 2008
Affirmed
Shumaker, Judge**

Crow Wing County District Court
File No. K8-01-2478

Dale Allen Jones, OID # 119129, 1000 Lakeshore Drive, Moose Lake, MN 55767 (pro se appellant)

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

Kristine R. Demay, Assistant Crow Wing County Attorney, 322 Laurel Street, Brainerd, MN 56401 (for respondent)

Considered and decided by Klaphake, Presiding Judge; Shumaker, Judge; and Worke, Judge.

UNPUBLISHED OPINION

SHUMAKER, Judge

In this pro se appeal from a denial of postconviction relief, appellant contends that he was denied effective assistance of counsel when his attorney did not challenge a search warrant for the premises at which appellant did not live or the informant's credibility, that he was denied a speedy trial, and that the district court abused its discretion in admitting *Spreigl* evidence. Because appellant has waived these claims by failing to cite to the factual record or to legal authority and because appellant's claims are procedurally barred by the *Knaffla* rule, we affirm.

FACTS

In October 2001, acting on an informant's tip, law enforcement officers executed a warrant to search for evidence of methamphetamine manufacturing on a property in Merrifield in Crow Wing County. Officers found appellant Dale Allen Jones in a shed on the property. Jones was charged with three counts of first-degree controlled substance crime under Minn. Stat. §§ 152.021, subd. 2a, 3(a), 609.05 (2000) (aiding and abetting methamphetamine manufacture); Minn. Stat. §§ 152.021, subds. 2a, 3(a), 152.096 (2000) (conspiracy to manufacture methamphetamine); and Minn. Stat. §§ 152.021, subd. 2(1), 609.05 (2000) (aiding and abetting possession of methamphetamine). A jury found Jones guilty on all three counts, and the district court sentenced Jones to the presumptive sentence of 146 months on conspiracy to manufacture methamphetamine, but did not impose a sentence for the other charges.

Jones filed a direct appeal, *State v. Jones*, No. A03-1136, 2004 WL 1825588 (Minn. App. 2004), *review denied* (Minn. Oct. 20, 2004), where he unsuccessfully (1) contended the evidence was insufficient to support his conviction; (2) challenged the admission of *Spreigl* evidence regarding two incidents; and (3) raised numerous pro se claims, including (a) that the search warrant for the Merrifield property was issued in error, (b) that the informant was unreliable, (c) that he was denied a right to a speedy trial, and (d) that he was denied effective assistance of counsel.

Later, in August 2006, Jones petitioned for postconviction relief, challenging the denial of a speedy trial, his attorney's failure to challenge the search warrant at the omnibus hearing, and the admission of testimony from a lab-store employee, evidence of a leather coat, and *Spreigl* evidence where he had no opportunity to contest such evidence at an omnibus hearing. The postconviction court denied the petition without an evidentiary hearing, explaining that Jones had essentially restated the arguments made and decided on direct appeal. This appeal followed.

D E C I S I O N

We review the summary denial of a postconviction petition under an abuse of discretion standard. *Powers v. State*, 695 N.W.2d 371, 374 (Minn. 2005). “The [postconviction] court . . . may summarily deny a petition when the issues raised in it have previously been decided by the Court of Appeals or the Supreme Court in the same case.” Minn. Stat. § 590.04, subd. 3 (2006). An evidentiary hearing is not required if the petition and record “conclusively show that the petitioner is entitled to no relief.” *Id.*, subd. 1 (2006). Because the issues raised in Jones's petition for postconviction relief

were previously addressed on direct appeal, we conclude that the postconviction court did not abuse its discretion in denying the petition.

At the outset, we point out that Jones has failed to support his arguments with any citation to the factual record or to legal authority. Jones is not relieved of his duty to provide citations to legal authority and to the factual record simply because he is acting as attorney pro se. See *Thorp Loan & Thrift Co. v. Morse*, 451 N.W.2d 361, 363 (Minn. App. 1990) (“When an appellant acts as attorney pro se, appellate courts are disposed to disregard defects in the brief, but that does not relieve appellants of the necessity of providing an adequate record and preserving it in a way that will permit review.”), *review denied* (Minn. Apr. 13, 1990). A pro se defendant’s assertions are deemed waived if they contain no argument or legal authority to support the arguments. *State v. Krosch*, 642 N.W.2d 713, 719 (Minn. 2002); see also *State v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997) (“An assignment of error in a brief based on mere assertion and not supported by argument or authorities . . . is waived unless prejudicial error is obvious on mere inspection.”). Material assertions of fact in a brief must be supported by citation to the record. *Hecker v. Hecker*, 543 N.W.2d 678, 681 n.2 (Minn. App. 1996), *aff’d* 568 N.W.2d 705 (Minn. 1997); see also *State v. Manley*, 664 N.W.2d 275, 286 (Minn. 2003) (refusing to consider portions of pro se briefs that contain only argument and are not supported by the facts in the record). Because Jones has not provided citation to the record or to legal authority, we conclude that he has waived the claims raised in his pro se brief.

Jones's claims are also procedurally barred because the issues he raises on this appeal duplicate those raised, and previously addressed by this court, on his direct appeal.

A defendant is not precluded from postconviction relief following an unsuccessful direct appeal, but claims made on direct appeal may not be renewed, and claims known, but not raised, will not be considered on a subsequent petition for postconviction relief. *McKenzie v. State*, 687 N.W.2d 902, 905 (Minn. 2004) (citing *State v. Knaffla*, 309 Minn. 246, 252, 243 N.W.2d 737, 741 (1976)). This rule, known as the *Knaffla* rule, has two exceptions, which apply (1) if the claim "is 'so novel that its legal basis was not reasonably available at the time of the direct appeal'" or (2) if "fairness would require a review of the claim in the interest of justice and there was no deliberate or inexcusable reason for the failure to raise the issue on direct appeal." *Id.* at 905-06 (quoting *Greer v. State*, 673 N.W.2d 151, 155 (Minn. 2004)).

On this appeal, Jones again claims that the district court erred in admitting the *Spreigl* evidence, that he was denied effective assistance of counsel when his lawyer did not challenge the search warrant or the informant's credibility at the omnibus hearing, and that he was denied the right to a speedy trial. He unsuccessfully raised these claims on his direct appeal. Even if the arguments made in his pro se brief differ slightly from those made on direct appeal, we could not review them here because the claims are not novel and there is no indication he excusably failed to raise the arguments on his direct appeal.

Spreigl Evidence

At Jones's jury trial, the district court admitted *Spreigl* evidence regarding two incidents. *State v. Jones*, No. A03-1136, 2004 WL 1825588, at *2 (Minn. App. 2004), *review denied* (Minn. Oct. 20, 2004). The first incident was a 2001 conviction for fifth-degree methamphetamine possession in Rice County, which was admitted for purpose of establishing motive for manufacture. *Id.* The second incident, in March 2003, occurred in Crow Wing County and involved Jones's purchase of ephedrine and possession of items used in the process of methamphetamine manufacture; it was admitted to show knowledge and intent. *Id.*

Jones contends that his constitutional right to due process was violated when the district court allowed the *Spreigl* evidence, specifically evidence related to the March 2003 incident. However, this court has already addressed issues related to the *Spreigl* evidence on Jones's direct appeal and concluded that the district court did not abuse its discretion in admitting the evidence. *Id.* at *3, *5; *see also id.* at *6 (addressing arguments related to the *Spreigl* evidence raised in Jones's pro se supplemental and response briefs on his direct appeal). Because this court has already considered and addressed the issues related to the *Spreigl* evidence, including the evidence related to the March 2003 incident, Jones cannot renew those claims on this subsequent appeal.

Ineffective Assistance of Counsel

Jones contends that his constitutional right to due process was denied when his attorney told him he could not challenge the search warrant and the credibility of the informant at the omnibus hearing because he did not live at the house that was searched.

Jones explicitly raised an ineffective-assistance-of-counsel claim on his direct appeal, “arguing that his attorney failed to investigate his status as a visitor on the Merrifield property, failed to obtain a speedy trial, and failed to object to the testimony of the employee from whom Jones purchased iodine at the BME Labstore.” *Id.* at *7. But, this court “discern[ed] no basis for an ineffective-assistance-of-counsel claim.” *Id.* “Ineffective assistance of counsel claims raised by a defendant on direct appeal in a supplemental pro se brief, and resolved adversely, may not be relitigated in a subsequent proceeding for postconviction relief.” 9 Henry W. McCarr & Jack S. Nordby, *Minnesota Practice* § 39.1(B) (3d ed. 2001); *see also Roby v. State*, 531 N.W.2d 482, 483-84 (Minn. 1995) (affirming denial of subsequent petition for postconviction relief where the Minnesota Supreme Court had previously found appellant’s ineffective-assistance-of-counsel claim to be without merit). Because Jones already made an ineffective-assistance-of-counsel claim on his direct appeal, he is not allowed to relitigate this claim in his subsequent petition for postconviction relief or on this appeal.

Moreover, this court specifically addressed Jones’s claims that the search warrant was issued in error and that the informant was unreliable on direct appeal. In resolving those two issues, this court explained: “Similarly, we see no error in the issuance of the search warrant for the Merrifield property. Jones expressly waived an omnibus hearing, which is the proper forum for this claim, and the record discloses no apparent unreliability of the informant or the informant’s statements to the police.” *Jones*, 2004 WL 1825588 at *6. Because he raised similar, if not identical, arguments on his first appeal, the arguments are procedurally barred by the *Knaffla* rule.

Speedy Trial

On direct appeal, Jones claimed his right to a speedy trial was violated. *Id.* We rejected his claim because “Jones was released from custody pending trial and was present in the courtroom when the trial date was continued by agreement.” *Id.* Under the *Knaffla* rule, Jones is barred from renewing this claim, which was already raised unsuccessfully on his direct appeal.

Affirmed.