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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0393**

Umer Muhammed Masood, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed December 30, 2008
Affirmed
Bjorkman, Judge**

Winona County District Court
File No. 85-CV-07-3632

Umer Muhammed Masood, 271 South Baker Street, Winona, MN 55987 (pro se appellant)

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

Charles MacLean, Winona County Attorney, Thomas E. Gort, Assistant County Attorney, 171 West 3rd Street, Winona, MN 55987 (for respondent)

Considered and decided by Ross, Presiding Judge; Connolly, Judge; and
Bjorkman, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

In this postconviction appeal, appellant argues that the district court abused its discretion by summarily denying his postconviction petition as untimely and procedurally barred. We affirm.

FACTS

Appellant Umer Masood was convicted of aggravated first-degree witness tampering and second-degree assault for his involvement in a retaliatory attack on a police informant. The district court sentenced Masood to 144 months' imprisonment. Masood appealed, and we affirmed his convictions. *State v. Masood*, No. A03-0081, 2004 WL 235477, at *1 (Minn. App. Feb. 10, 2004), *review denied* (Minn. Apr. 28, 2004).

On December 4, 2007, Masood filed a petition for postconviction relief, arguing that his trial counsel was ineffective, the prosecutor committed misconduct, and his conviction was based on unlawfully seized evidence. The district court summarily denied Masood's postconviction petition as untimely and procedurally barred. This appeal follows.

DECISION

We will not disturb the decision of a postconviction court absent an abuse of discretion. *Zenanko v. State*, 688 N.W.2d 861, 864 (Minn. 2004). Our review on issues of fact is limited to determining whether the evidence is sufficient to support the

postconviction court's findings. *Williams v. State*, 692 N.W.2d 893, 896 (Minn. 2005).

We review the district court's application of law de novo. *Id.*

I. Timeliness

Postconviction petitioners like Masood whose convictions became final prior to August 1, 2005, when a time limit was added to the postconviction statute, "shall have two years after [August 1, 2005] to file a petition for postconviction relief." 2005 Minn. Laws ch. 136, art. 14, § 13, at 1097-98. Therefore, Masood was required to either file a petition for postconviction relief by July 31, 2007, or expressly invoke one of the exceptions listed in Minn. Stat. § 590.01, subd. 4(b) (2006). *Nestell v. State*, ___ N.W.2d ___, ___, No. A07-2215, slip op. at 6-7 (Minn. App. Dec. 23, 2008). Masood did neither of these things.

Masood filed his postconviction petition on December 4, 2007, well after the July 31, 2007 deadline. He did not expressly invoke or even acknowledge any of the listed exceptions in his petition, nor does he now claim to have done so. Because Masood filed his postconviction petition after the statutory deadline and did not explicitly invoke any of the exceptions to the time limit, the district court did not abuse its discretion by denying the petition as untimely.

II. Knaffla bar

Petitioners seeking postconviction relief who knew or should have known of a legal claim at the time of their direct appeal generally cannot raise such a claim in their postconviction petition. *State v. Knaffla*, 309 Minn. 246, 252, 243 N.W.2d 737, 741 (1976). Exceptions to this rule are made for claims that present novel legal issues or if

the interests of justice require review. *Spears v. State*, 725 N.W.2d 696, 700 (Minn. 2006). On appeal, we review the denial of postconviction relief based on the *Knaffla* procedural bar for an abuse of discretion. *Quick v. State*, 692 N.W.2d 438, 439 (Minn. 2005).

Masood's postconviction petition presents three claims: ineffective assistance of trial counsel, prosecutorial misconduct, and unlawful seizure of evidence.¹ His prosecutorial-misconduct and unlawful-seizure-of-evidence claims were or should have been known at the time of his direct appeal and he did not raise them. Similarly, Masood's claim of ineffective assistance of trial counsel, based on allegations of poor performance at trial, was known but not raised at the time of his direct appeal, despite the fact that it could have been reviewed on the trial record. *See Schneider v. State*, 725 N.W.2d 516, 520-21 (Minn. 2007) (stating that the *Knaffla* rule bars a postconviction claim of ineffective assistance of trial counsel if the grounds for the claim were known but not raised on direct appeal and additional fact-finding was unnecessary). None of Masood's postconviction claims present a novel legal issue, nor has he demonstrated that the interests of justice require their review. The district court did not abuse its discretion in denying Masood's postconviction petition pursuant to *Knaffla*.

¹ Although Masood now claims to have asserted various other claims, they are presented in his postconviction petition as elements of or explanations for his claim of ineffective assistance of trial counsel. Even if viewed independently, these claims are barred by the *Knaffla* rule. And although Masood's purported claim of ineffective assistance of appellate counsel would not have been barred by *Knaffla*, *Townsend v. State*, 723 N.W.2d 14, 19 (Minn. 2006), Masood has not independently argued or supported a claim of ineffective assistance of appellate counsel. *See State by Humphrey v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997) (stating that a claim unsupported by argument or authority is waived unless prejudicial error is obvious on mere inspection).

III. Evidentiary hearing

To warrant an evidentiary hearing on a postconviction petition, a petitioner must allege facts that, if proved, would entitle him to the requested relief. Minn. Stat. § 590.04, subd. 1 (2006); *State v. Kelly*, 535 N.W.2d 345, 347 (Minn. 1995). Summary denial of a petition for postconviction relief does not constitute an abuse of discretion if the petition is procedurally barred by *Knaffla*. *Schleicher v. State*, 718 N.W.2d 440, 450 (Minn. 2006). Nor is it an abuse of discretion for the district court to summarily deny an untimely postconviction petition that does not invoke a listed exception. *See Nestell*, ___ N.W.2d at ___, ___, slip op. at 2, 8 (holding that untimely postconviction petition is subject to dismissal if it fails to expressly identify any of the listed exceptions in Minn. Stat. § 590.01, subd. 4(b)). Masood's petition was untimely and procedurally barred. The district court did not abuse its discretion in denying the petition without an evidentiary hearing.

Affirmed.