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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1449**

Michael Carlton Lowe, Sr., petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed April 27, 2010
Affirmed
Lansing, Judge**

Hennepin County District Court
File No. 27-CR-07-22594

Michael C. Lowe, Sr., Rush City, Minnesota (pro se appellant)

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

Michael O. Freeman, Hennepin County Attorney, Michael K. Walz, Assistant County
Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Toussaint, Chief Judge; Lansing, Judge; and Collins,
Judge.*

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals
by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

LANSING, Judge

The district court denied, without an evidentiary hearing, Michael Lowe's second and third postconviction petitions. Because the district court did not abuse its discretion in summarily denying Lowe's petitions, we affirm.

FACTS

Michael Lowe was charged with terroristic threats; third-degree assault; and first-degree, criminal sexual conduct in April 2007. Following a jury trial in August 2007, Lowe was found guilty on each of the three charges. Based on the jury's additional findings that multiple aggravating factors existed, the district court sentenced Lowe to 360 months in prison, an upward durational departure from the presumptive sentence.

On direct appeal, Lowe argued that the district court abused its discretion by denying his motion for a mistrial after the prosecutor elicited inadmissible evidence of his previous imprisonment, and erred by imposing a double upward departure without a jury finding that Lowe is a danger to public safety under the dangerous-offender statute. *State v. Lowe*, No. A07-2321, 2009 WL 437493, at *1 (Minn. App. Feb. 24, 2009). In a pro se supplemental brief, Lowe raised nine additional arguments: the evidence was insufficient to show motive and opportunity; his arrest was illegal, requiring dismissal of the complaint; the physician who testified to the medical records was not a competent witness; his ex-wife should not have been allowed to provide *Spreigl* testimony of a similar assault; he received double punishment because the charges stemmed from one behavioral incident; physical evidence was improperly obtained from his person because

his arrest was illegal; his due process rights were violated by arraignment procedures and the timing of the *Rasmussen* hearing; he was denied his right to a speedy trial; and the prosecutor committed misconduct by fabricating evidence on the source of Lowe's wounds. *Id.* at *3-7. In an unpublished opinion, this court addressed and rejected each of Lowe's claims, and affirmed Lowe's conviction and sentence. *Id.*

Lowe filed his first petition for postconviction relief in June 2009, arguing that the district court had lacked subject-matter jurisdiction to hear his case. He also raised a number of arguments that were previously raised in his pro se supplemental brief on direct appeal. In an order filed on July 24, 2009, the district court denied the petition on substantive and *Knaffla* grounds. The court specifically addressed and rejected Lowe's challenge to the court's subject-matter jurisdiction, which was based on Lowe's claim that the statutes under which he was convicted lack an enacting clause and a title in violation of the Minnesota Constitution. The district court also rejected, as having been raised on direct appeal, Lowe's claims challenging the sufficiency of the evidence, the legality of his arrest, the admissibility of testimony by the physician-witness at his trial, his conviction on lesser-included offenses, and violation of his due process rights at arraignment. Finally, the court concluded that Lowe was not entitled to an evidentiary hearing to present evidence of DNA testing in support of his innocence because Lowe's allegations were conclusory, and the DNA evidence was available at the time of trial. Lowe did not appeal the district court's order denying his first petition for postconviction relief.

In August and September 2009, Lowe filed his current postconviction petition—characterized by the district court as his second and third postconviction petitions. In these proceedings, Lowe argues that insufficient evidence supports his sentencing departure, the district court lacks subject-matter jurisdiction, the records require a correction to reflect the lack of subject-matter jurisdiction, and he is entitled to withdraw his plea. In an order filed November 5, 2009, the district court concluded that Lowe’s challenges to his sentence and to the court’s jurisdiction were raised in Lowe’s direct appeal and in his first postconviction petition, and were thus barred by *Knaffla* and by Minn. Stat. § 590.04, subd. 3 (2008). The district court further concluded that Lowe’s requests for plea withdrawal and correction of the records were unsupported in fact and law; the court observed that Lowe’s convictions were based on a jury verdict, not a plea, and that Lowe’s request to correct the records by vacating previous convictions was without merit.

In this appeal from the denial of his second and third petitions for postconviction relief, Lowe raises arguments about subject-matter jurisdiction that differ slightly from those raised in his earlier petition and also makes a series of arguments that he made in his direct appeal and in his earlier postconviction petition. In his reply brief, Lowe argues that *Knaffla* does not apply to these arguments because subject-matter jurisdiction can be raised at any time.

D E C I S I O N

We review the district court’s summary denial of a postconviction petition for an abuse of discretion. *Lee v. State*, 717 N.W.2d 896, 897 (Minn. 2006). If the petition,

files, and records conclusively show that no relief is warranted, a postconviction court may deny the petition without an evidentiary hearing. Minn. Stat. § 590.04, subd. 1 (2008).

Claims that have been raised on direct appeal or that could have been raised when the direct appeal was taken, may not be considered in a petition for postconviction relief. *State v. Knaffla*, 309 Minn. 246, 252, 243 N.W.2d 737, 741 (1976). Two exceptions to this rule permit review: when the failure to raise an issue was not deliberate and the interests of justice require review or when a claim is so novel that its legal basis was not available on direct appeal. *Perry v. State*, 731 N.W.2d 143, 146 (Minn. 2007).

After a full review of the record, we conclude that the claims that Lowe raises in this current postconviction proceeding are barred by *Knaffla*. The arguments and factual support that Lowe directs to the issues of sovereign status, statutory titles, and enacting clauses, are based on principles of law that have remained unchanged since Lowe's direct appeal and were clearly known at the time of that appeal. Lowe's specific challenge to his sentence was plainly raised on direct appeal and rejected by this court. *Lowe*, 2009 WL 437493, at *3. Lowe does not allege or establish any exception to *Knaffla* that would defeat its application.

In addition, the cognizable claims raised in this appeal are without merit. Lowe first argues that his conviction must be vacated because the statutes under which he was convicted lack an enacting clause and title. Lowe contends that the statutes are not valid because the absence of an enacting clause violates Minn. Const. art. IV, § 22. This claim, and similar arguments, have been specifically rejected by Minnesota courts. *See, e.g.*,

Thompson v. State, 691 N.W.2d 841, 843 n.3 (Minn. 2005) (noting that enacting clause claim, which was barred by *Knaffla*, also fails on its merits); *Koskela v. State*, 690 N.W.2d 133, 134-35 n.3 (Minn. 2004); (same); *Ledden v. State*, 686 N.W.2d 873, 874 (Minn. App. 2004) (rejecting postconviction petitioner’s claim that Minnesota courts lack subject-matter jurisdiction because criminal-sexual-conduct statutes do not contain enacting clauses), *review denied* (Minn. Dec. 22, 2004). Each of the acts creating the statutes that govern Lowe’s convictions, as published in the Laws of Minnesota, begins with the precise phrase “Be it enacted by the [] legislature of the state of Minnesota.” *See* 1979 Minn. Laws ch. 258, § 6, at 549, 550 (enacting statute criminalizing third-degree assault); 1975 Minn. Laws ch. 374, § 3, at 1243, 1245 (first-degree criminal sexual conduct); 1971 Minn. Laws ch. 845, § 19, at 1648, 1654 (terroristic threats). The statutes thus comply with the Minnesota Constitution. *See Ledden*, 686 N.W.2d at 877.

Lowe’s second claim is that the statutes that describe his offenses lack a title in violation of Minn. Const. art. IV, § 17. A common thread is necessary between the title of a statute and its subjects, but “it is not essential that the best or even an accurate title be employed.” *Associated Builders & Contractors v. Ventura*, 610 N.W.2d 293, 301 (Minn. 2000). The titles of the designated statutes satisfy the constitutional requirements. *See* 1979 Minn. Laws ch. 258, § 6, at 548, 550 (enacting Minn. Stat. § 609.223, and specifying in title that it is “[a]n act relating to crimes; . . . creating a new category of offense for assault”); 1975 Minn. Laws ch. 374, § 3, at 1243, 1245 (enacting Minn. Stat. § 609.342, and entitling it as “[a]n act relating to crimes; specifying the acts constituting sexual offenses”); 1971 Minn. Laws ch. 845 § 19, at 1647, 1654 (enacting Minn. Stat.

§ 609.713, and entitling it as “[a]n act relating to public safety; defining certain crimes and penalties,” including terroristic threats).

Lowe’s third claim, relating to his status as a sovereign, challenges the district court’s subject-matter jurisdiction over his prosecution because of his sovereign status. Analogous claims have been summarily rejected by federal courts. *See, e.g., United States v. Hilgeford*, 7 F.3d 1340, 1342 (7th Cir. 1993); *United States v. Jagim*, 978 F.2d 1032, 1036 (8th Cir. 1992). The Minnesota Constitution provides that the “district court has original jurisdiction in all civil and criminal cases and shall have appellate jurisdiction as prescribed by law.” Minn. Const. art. VI, § 3. Under Minnesota law, a person may be convicted and sentenced under the laws of this state if that person “[c]ommits an offense in whole or in part within this state.” Minn. Stat. § 609.025(1) (2006). Lowe was properly charged, convicted, and sentenced under the laws of Minnesota. His challenges to the subject-matter jurisdiction of the district court are without merit.

Lowe’s fourth claim alleges that his sentence, which he claims was improper, must be modified according to “truth in sentencing.” On direct appeal, we addressed and rejected Lowe’s challenge to his sentence, an upward departure from the presumptive sentence. *Lowe*, 2009 WL 437493, at *3 (concluding that because jury-determined findings were sufficient to support imposition of aggravated sentence, district court did not abuse its discretion in applying upward departure). Lowe provides no reason to question the district court’s sentencing decision, and no error is obvious on facial inspection of the record.

In his reply brief, Lowe asserts that none of his issues are barred by *Knaffla* because they involve challenges to subject-matter jurisdiction, which can be raised at any time. But characterizing his current claims as a challenge to subject-matter jurisdiction does not save them from the *Knaffla* procedural bar. *See Perry*, 731 N.W.2d at 145-46 (rejecting claim that because second postconviction petition involves issue of subject-matter jurisdiction, *Knaffla* does not apply).

Lowe's remaining arguments do not raise a discernible legal argument or are insufficiently supported to allow for appellate review. Alleged error that is based only on vague assertions and not supported by legal authority does not provide a basis for review. *See State v. Ahmed*, 708 N.W.2d 574, 585 (Minn. App. 2006) (stating that this court need not address allegations not supported by legal analysis and citation).

We therefore conclude that Lowe's claims are procedurally barred by *Knaffla*, because the claims were known at the time of his direct appeal and were raised in that appeal or in Lowe's previous postconviction proceeding and because Lowe has failed to allege or establish any exception to the *Knaffla* bar. Even if the claims were not barred by *Knaffla*, they are without merit. Thus, the district court did not abuse its discretion in denying Lowe's second and third petitions for postconviction relief.

Affirmed.