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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0177**

Randall Wallace Hancock, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed April 1, 2008
Affirmed
Toussaint, Chief Judge**

Ramsey County District Court
File No. K304-3743

Randall Wallace Hancock, OID #186172, 445 South Munsterman Street, Appleton, MN 56208 (pro se appellant)

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

Susan Gaertner, Ramsey County Attorney, Mark Nathan Lystig, Assistant County Attorney, 50 West Kellogg Boulevard, Suite 315, St. Paul, MN 55102 (for respondent)

Considered and decided by Toussaint, Chief Judge; Hudson, Judge; and Worke,
Judge.

UNPUBLISHED OPINION

TOUSSAINT, Chief Judge

Appellant Randall Wallace Hancock argues that: (1) he should be allowed to withdraw his guilty plea because the calculation of custody credit and the sentence imposed denied him the benefit of his bargain; and (2) in light of the allegedly improper sentence, he was denied the effective assistance of counsel because his attorney failed to seek the withdrawal of his guilty plea at the time of sentencing. Because appellant's arguments are barred by the *Knaffla* rule, we affirm.

DECISION

On review of a postconviction decision, this court determines whether there is sufficient evidence to support the postconviction court's findings. *White v. State*, 711 N.W.2d 106, 109 (Minn. 2006). The postconviction court's decision will not be overturned unless the court has abused its discretion. *Id.* A postconviction court's legal determinations are reviewed de novo, but its factual findings will not be set aside unless they are clearly erroneous. *Schleicher v. State*, 718 N.W.2d 440, 445 (Minn. 2006); *Doppler v. State*, 660 N.W.2d 797, 801 (Minn. 2003).

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 if the claim "is so novel that its legal basis was not reasonably

available at the time of the direct appeal” or 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) (quotation marks omitted).

Following appellant’s guilty plea to first-degree criminal sexual conduct, the district court sentenced appellant to 134 months in prison in accordance with the plea agreement. The district court reduced that sentence by 213 days because appellant had been in custody at various times during the investigation. The court computed the custody credit from January 26, 2004, the day on which the police obtained the victim’s report of appellant’s sexual offenses. Appellant appealed only the custody credit, claiming that he was entitled to 1,054 days, calculated from the date on which the victim first told her mother she was pregnant and that appellant was the father. *See State v. Hancock*, A05-963, 2006 WL 1604078, at *1 (Minn. App. June 13, 2006), *review denied* (Minn. Aug. 15, 2006). This court affirmed appellant’s sentence on the basis that the district court properly calculated appellant’s custody credit from the time the victim reported appellant’s criminal sexual conduct to the police and that appellant was properly sentenced in accordance with the plea agreement. *Id.* at *2.

Appellant now argues that he should be allowed to withdraw his guilty plea because the calculation of custody credit and the sentence imposed denied him the benefit of his bargain. He also appears to argue that, in light of the allegedly improper sentence, he was denied the effective assistance of counsel because his defense attorney failed to seek the withdrawal of his guilty plea at the time of sentencing.

We disagree. Although phrased as a claim of ineffective assistance of counsel and an argument that he be allowed to withdraw his guilty plea, appellant's claims are essentially recharacterizations of his argument that he was improperly sentenced because of a miscalculation of his custody credit. Appellant cannot avoid the *Knaffla* rule by simply recasting an issue that was raised on direct appeal. See *Sutherlin v. State*, 574 N.W.2d 428, 435 (Minn. 1998) (stating that defendant's ineffective assistance of appellate counsel claim was "recharacterizing an issue that he should have raised on direct appeal"); see also *Black v. State*, 560 N.W.2d 83, 86 (Minn. 1997) (stating that appellant cannot avoid *Knaffla* limitation by simply recasting evidentiary issues as claim of ineffective assistance of trial counsel). Because appellant's argument regarding his sentence was previously decided by this court in appellant's direct appeal, and neither of the two exceptions to the *Knaffla* rule applies, appellant's claim for postconviction relief is procedurally barred.

Affirmed.