**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A07-1478**

State of Minnesota,
Respondent,

vs.

Ronny Auburn Doran,
Appellant.

**Filed July 22, 2008**
**Affirmed**
**Shumaker, Judge**

Clay County District Court
File No. K7-02-1247

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

Brian J. Melton, Clay County Attorney, Jenny M. Samarzja, Assistant Clay County Attorney, 807 North 11th Street, P.O. Box 280, Moorhead, MN 56560 (for respondent)

Ronny Auburn Doran, MCF – OID No. 210357, 1000 Lake Shore Drive, Moose Lake, MN 55767 (pro se appellant)

Considered and decided by Hudson, Presiding Judge; Shumaker, Judge; and Schellhas, Judge.

## U N P U B L I S H E D  O P I N I O N

**SHUMAKER,** Judge

Pro se appellant challenges the district court's order denying his petition for postconviction relief. Because appellant's claims are procedurally barred by the *Knaffla* rule or otherwise lack merit, we affirm.

## FACTS

The facts underlying this case are fully set out in this court's prior unpublished opinions. *Doran v. State*, No. A05-1144, 2006 WL 997923, at *1-*2 (Minn. App. Apr. 18, 2006) (*Doran II*); *State v. Doran*, No. C8-03-198, 2003 WL 22480310, at *1-*2 (Minn. App. Nov. 4, 2003) (*Doran I*), *review denied* (Minn. Jan. 20, 2004). Nevertheless, we briefly summarize them here.

In June 2002, appellant Ronny Auburn Doran and his wife got into a heated argument after a day of heavy drinking. Doran's wife went to a neighbor's apartment. Doran followed her there and burst into the neighbor's apartment, wielding a knife. He pointed the knife at his wife; held the knife to her throat; threatened to kill her; threatened to kill his neighbor; and threatened to kill himself. When police arrived Doran refused to cooperate and became physically aggressive towards them.

On these facts, Doran was charged with second-degree assault, in violation of Minn. Stat. § 609.222, subd. 1 (2000); obstructing legal process, in violation of Minn.Stat. § 609.50, subds. 1(2), 2(2) (2000); two counts of first-degree burglary, in violation of Minn. Stat. § 609.582, subd. 1(a), (c) (2000); and two counts of terroristic threats, in violation of Minn. Stat. § 609.713, subd. 1 (2000). The jury found Doran

guilty on all counts, and the district court imposed consecutive sentences of 88 months for one first-degree burglary conviction; 12 months and one day for one terroristic threats conviction, and 21 months for the second-degree assault conviction.[1]

Doran directly appealed his convictions, arguing "that the trial court abused its discretion by denying his request to instruct the jury on fifth-degree assault as a lesser-included offense of second-degree assault." *Doran I*, 2003 WL 22480310, at *1. He also contended "that the trial court committed plain error" by "instructing the jury not to consider the lesser offense of trespass unless it first determined [he] was not guilty of burglary in the first degree," and by "not instructing the jury to convict [him] of the lesser offense of trespass if it had a reasonable doubt as to whether [he] was guilty of trespass or burglary." *Id.* He further raised several pro se claims. *Id.* at *5. We affirmed Doran's convictions and his sentence, but preserved Doran's right to pursue, in a petition for postconviction relief, his ineffective-assistance-of-counsel claim, his claim that transcripts were altered, and his claim that the courtroom was improperly closed. *Id.* at *5-*6. The Minnesota Supreme Court denied Doran's petition for further review.

In February 2005, Doran filed his first petition for postconviction relief, raising a myriad of claims, including ineffective assistance of counsel, alteration of transcripts, improper closing of the courtroom during trial, miscellaneous trial court errors, and prosecutorial misconduct. The district court denied the petition for postconviction relief, and Doran appealed, raising six issues. We affirmed and addressed Doran's claims

[1] The district court did not address or sentence Doran on the one count of obstructing legal process.

relating to ineffective assistance of counsel, altered transcripts, an improperly closed courtroom, trial court error, and prosecutorial misconduct. *Doran II*, WL 997923, at *1.

Then in February 2007, Doran filed a second petition for postconviction relief, but the district court denied the petition because Doran's claims were or could have been raised in his previous petition for postconviction relief. This appeal followed.

**D E C I S I O N**

"Under Minn. Stat. § 590.01, subd. 1 (2006), a person convicted of a crime may petition for postconviction relief on the grounds that the conviction violated his rights under state or federal law." *Hathaway v. State*, 741 N.W.2d 875, 877 (Minn. 2007). Upon such a petition, "the postconviction court must hold an evidentiary hearing unless the 'files and records of the proceeding conclusively show that the petitioner is entitled to no relief.'" *Blom v. State*, 744 N.W.2d 16, 17 (Minn. 2007) (quoting Minn. Stat. § 590.04, subd. 1 (2006)). "The petitioner bears the burden of establishing by a fair preponderance of the evidence facts that warrant reopening the case." *Id.* (citing Minn. Stat. § 590.04, subd. 3 (2006)).

If a petitioner has directly appealed a conviction, "all matters raised therein, and all claims known but not raised, will not be considered upon a subsequent petition for postconviction relief." *State v. Knaffla*, 309 Minn. 246, 252, 243 N.W.2d 737, 741 (1976). This rule—known as the *Knaffla* rule—includes claims the petitioner should have known about at the time of his direct appeal. *McKenzie v. State*, 687 N.W.2d 902, 905 (Minn. 2004). *Knaffla* similarly bars postconviction review of claims that could have been raised in a previous postconviction petition. *Wayne v. State*, 601 N.W.2d 440, 441

(Minn. 1999). There are two exceptions to the *Knaffla* rule, 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." *McKenzie*, 687 N.W.2d at 905-06 (quotations omitted).

When reviewing a postconviction appeal, appellate courts examine whether the district court's findings are supported by sufficient evidence. *Leake v. State*, 737 N.W.2d 531, 535 (Minn. 2007). We will reverse a district court's decision granting or denying a petition for postconviction relief only if the district court abused its discretion. *Id.* But we review issues of law relevant to such matters de novo. *Id.*

Doran filed a direct appeal, and we affirmed his convictions and sentence in 2003. Then in 2005, Doran filed a petition for postconviction relief, which was denied. He appealed, but we affirmed again.

Now Doran appeals from the order denying his second petition for postconviction relief. He argues that his conviction violates Minn. Stat. § 609.035 (2000), which relates to serial prosecutions and multiple sentences, and Minn. Stat. § 609.04 (2000), which addresses convictions of lesser-included offenses.[2] In addition, Doran also raises, in his reply brief a claim that the evidence is insufficient to support his conviction for first-degree burglary.

[2] The facts giving rise to Doran's convictions occurred in June 2002, and thus the 2000 statutes were in effect at the time of his offenses. In addition, in his prior appeal, this court applied the 2000 statutes. *Doran I*, 2003 WL 22480310, at *2-*5.

Doran's claims *could* have been raised either on direct appeal or in an initial petition for postconviction relief. Both Minn. Stat. § 609.035 and Minn. Stat. § 609.04 were enacted into law more than four decades ago, and there is no apparent reason that Doran could not have made arguments based on these statutes in his direct appeal.

In his pro se brief, Doran appears to argue that the district court violated Minn. Stat. § 609.04 by allowing jurors to find him guilty of two counts of burglary. According to that provision, a defendant may not be convicted of both the charged crime and the included offense. Minn. Stat. § 609.04, subd. 1. The supreme court has held that, under Minn. Stat. § 609.04, "the burglarious entry of one dwelling justifies only one burglary conviction." *State v. Hodges*, 386 N.W.2d 709, 710 (Minn. 1986). The state does not address the merits of Doran's argument, but instead contends that the claim is barred by *Knaffla* because Doran did not raise the issue at sentencing or on direct appeal. *See Pierson v. State*, 715 N.W.2d 923, 925 (Minn. 2006) (suggesting that appellant's claim of multiple convictions in violation of Minn. Stat. § 609.04, subd. 1, would be barred by *Knaffla* because the appellant knew or should have known about the issue at the time of direct appeal). But we note the supreme court's recent decision in *Spann v. State*, indicating that appellant's argument under Minn. Stat. § 609.04, subd. 1, was not waived by his failure to raise it at the time of sentencing or on direct appeal. 740 N.W.2d 570, 573 (Minn. 2007).

Irrespective of *Knaffla*, Doran's argument lacks merit. Appellate courts "have long recognized that the 'conviction' prohibited by [Minn. Stat. § 609.04, subd. 1,] is not a guilty verdict, but is rather a formal adjudication of guilt." *Pierson*, 715 N.W.2d at 925

(quotation omitted); *see also Spann*, 740 N.W.2d at 573 ("A guilty verdict alone is not a conviction."). Minnesota law defines "conviction" as either "[a] plea of guilty" or a verdict or finding of guilty that is "accepted and recorded by the court." Minn. Stat. § 609.02, subd. 5 (2006). "In other words, a conviction occurs only after the district court judge accepts, records, and adjudicates the jury's guilty verdict." *Pierson*, 715 N.W.2d at 925. Although Doran was charged with two counts of first-degree burglary and found guilty of both counts, the record reveals that he was only adjudicated on one count, namely Minn. Stat. § 609.582, subd. 1(c).

Doran next appears to argue that his convictions for second-degree assault and terroristic threats violated the prohibitions against serial prosecutions under Minn. Stat. § 609.035, which "is intended to prevent serial prosecutions and double punishments that might create double jeopardy problems." *State v. Ross*, 732 N.W.2d 274, 278 (Minn. 2007). We have held that challenges to multiple sentencing under Minn. Stat. § 609.035 cannot be waived. *State v. Johnson*, 653 N.W.2d 646, 651 (Minn. App. 2002) (citing *State v. White*, 300 Minn. 99, 105-106, 219 N.W.2d 89, 93 (1974)); *see also State v. Osborne*, 715 N.W.2d 436, 441 n.3 (Minn. 2006) (recognizing "that the statutory protection against multiple sentencing . . . is *not* forfeited by failing to raise the issue in the district court"). But the supreme court has explained that an appellant can waive claims of serial prosecution under Minn. Stat. § 609.035 if he fails to raise them in the district court. *Osborne*, 715 N.W.2d at 441 n.3. By failing to raise his claims of serial prosecution on direct appeal, Doran waived them, and those claims are barred by *Knaffla*.

Although Doran alludes to the prohibition on multiple sentencing, he does not provide an argument explaining how his sentences for second-degree assault and terroristic threats violate that prohibition. Issues not briefed on appeal are waived. *State v. Butcher*, 563 N.W.2d 776, 780 (Minn. App. 1997), *review denied* (Minn. Aug. 5, 1997). We note, however, that the record demonstrates that Doran was sentenced to 88 months for one count of first-degree burglary, 21 months for one count of second-degree assault for the assault against his *wife*, and to 12 months and one day for one count of terroristic threats for the threats against his *neighbor*. Section 609.035 does not apply when there are multiple victims. *State v. Bookwalter*, 541 N.W.2d 290, 294 (Minn. 1995) (stating that Minn. Stat. § 609.035 "generally allows multiple sentencing if there were multiple victims, as long as the imposition of multiple sentences does not unfairly exaggerate the criminality of the defendant's conduct"); *Johnson*, 653 N.W.2d at 653 ("Although Minn. Stat. § 609.035 generally prevents imposition of more than one sentence for a single behavioral incident, a judicially created exception precludes its application when there are multiple victims."). Finally, we note that in his first appeal, Doran argued that the district court abused its discretion by imposing a sentence of consecutive terms and that we affirmed Doran's sentence. *Doran I*, 2003 WL 22480310, at *5.

Doran's insufficiency-of-the-evidence claim likewise could have been known at the time of his direct appeal. Moreover, this claim was improperly raised in his reply brief. *McIntire v. State*, 458 N.W.2d 714, 717 n.2 (Minn. App. 1990) (stating that issues

not raised or argued in an appellant's initial brief cannot be revived in a reply brief), *review denied* (Minn. Sept. 28, 1990).

Because Doran's claims are procedurally barred by *Knaffla* or otherwise lack merit, the district court did not abuse its discretion by denying Doran's second petition for postconviction relief.

**Affirmed.**