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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A07-2209**

DeAndre Jerome Barnes, petitioner,  
Appellant,

vs.

State of Minnesota,  
Respondent.

**Filed November 18, 2008  
Affirmed  
Larkin, Judge**

Hennepin County District Court  
File No. 27CR44943

DeAndre Jerome Barnes, ID #205967, Minnesota Correctional Facility, Rush City, 7600  
– 525th Street, Rush City, MN 55069 (pro se appellant)

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

Michael O. Freeman, Hennepin County Attorney, Michael K. Walz, Assistant County  
Attorney, C-2000 Government Center, 300 South 6th Street, Minneapolis, MN 55487  
(for respondent)

Considered and decided by Johnson, Presiding Judge; Ross, Judge; and Larkin,  
Judge.

## UNPUBLISHED OPINION

**LARKIN**, Judge

In this appeal from an order denying his second petition for postconviction relief, appellant argues pro se that the district court erred by summarily denying his petition. The district court denied the petition based on its conclusions that (1) appellant's claims are procedurally barred under the *Knaffla* rule, (2) neither exception to the *Knaffla* rule applies, and (3) appellant's claims are without merit. We affirm.

### FACTS

In 2000, appellant DeAndre Barnes was indicted on charges of first- and second-degree murder. *State v. Barnes*, No. A05-1454, 2006 WL 1605003, at \*1 (Minn. App. June 13, 2006), *review denied* (Oct. 25, 2006). Pursuant to a plea bargain, the state dismissed the charge of first-degree murder in exchange for appellant's plea of guilty to the charge of second-degree murder. *Id.* At sentencing, appellant requested substitution of counsel and withdrawal of his plea. *Id.* The district court granted his request for substitution of counsel but denied his request to withdraw his plea. *Id.* The district court sentenced appellant to 450 months in prison. *Id.* Appellant appealed his conviction on the ground that he did not understand the plea agreement, claiming that he was delusional when he entered his plea. *Id.* (citing *State v. Barnes*, No. C4-00-2094, 2001 WL 826883, at \*1 (Minn. App. July 24, 2001)). This court affirmed. *Barnes*, 2001 WL 826883, at \*1.

Appellant then filed his first petition for postconviction relief, alleging (1) ineffective assistance of counsel, both at the time of his plea and on appeal; (2) retroactive application of *Blakely* and *Apprendi*, which required resentencing; (3) a

*Miranda* violation during the police investigation; (4) a *Brady* violation stemming from the prosecutor's failure to disclose exculpatory evidence to the grand jury; (5) that appellant's plea was not knowing, voluntary or intelligent; (6) that appellant was deprived of his right to allocution; and (7) that appellant's prosecution was constitutionally infirm because the statutes underlying appellant's conviction required an enacting clause. *Id.* at \*1-3. The postconviction court denied his petition without a hearing, and appellant appealed the postconviction court's decision. *Barnes*, 2006 WL 1605003, at \*1. We affirmed. *Id.*

Appellant next filed papers with the district court titled, "MOTION FOR SENTENCING PRUSANT [sic] TO \*110261 49 M.S.A. RULES CRIM. PROC., RULE 27.03 SUBD. 9 CORRECTION OF SENTENCE 2254 Fed. R. CRIM. P. 52(b) and Motion for evidentiary hearing," alleging that (1) the sentencing court denied appellant due process of law by relying on false or unreliable information when calculating appellant's sentence; (2) the "DSL" [sic] violated appellant's right to a trial by jury under the Sixth and Fourteenth Amendments by placing sentence-elevating fact-finding within the judge's province; (3) appellant's plea arrangement was impermissible because the court was a party to it; (4) appellant's sentence was selected from the wrong guideline range; and (5) documents filed by appellate counsel on appellant's behalf were not binding on appellant because counsel failed to sign the documents. Appellant requested an evidentiary hearing. The district court treated this motion as appellant's

second petition for postconviction relief.<sup>1</sup> The district court summarily denied appellant's request for postconviction relief, concluding that the claims are *Knaffla* barred. The district court further concluded that even if the claims are not *Knaffla* barred, the claims are without merit, and appellant is not entitled to relief.<sup>2</sup> Appellant challenges the district court's summary denial of his second petition for postconviction relief.

## DECISION

A person convicted of a crime may petition for postconviction relief. Minn. Stat. § 590.01, subd. 1 (2006). A postconviction court must grant a hearing on a petition for postconviction relief “[u]nless the petition and the files and records of the proceeding conclusively show that the petitioner is entitled to no relief.” Minn. Stat. § 590.04, subd. 1 (2006). The right to an evidentiary hearing on a postconviction petition depends upon the petitioner “first making an adequate offer of proof.” *Erickson v. State*, 725 N.W.2d 532, 537 (Minn. 2007).

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<sup>1</sup> While appellant's motion was pending, he filed the following motions: (1) “Motion for Inventory List,” filed Sept. 26, 2007; (2) “Motion to Stay Proceeding Pursuant Minn. R. Crim. P. 28.02, subd. 6” and “Motion to Serve Process Upon Respondent Pursuant to Minn. R. Crim. P. 28.02,” filed Oct. 1, 2007; (3) “Motion for Writ of Mandamus Pursuant to Minn. R. Crim. P. 586.01, Chapter 586” and “Motion to Serve Process Upon Respondent Pursuant to Minn. R. Crim. P. 28.02,” filed Oct. 1, 2007; and (4) “Amended Motion Pursuant to Fed. R. Crim. P. 15.1 and Minn. R. Crim. P. 11.05” and “Motion for Writ of Mandamus Pursuant to Minn. R. Crim. P. 120 and Minn. Stat. 586.01 Chapter 586,” filed Oct. 12, 2007.

<sup>2</sup> Because the issues raised on appeal all stem from appellant's first motion for sentence correction, which the district court treated as a second petition for postconviction relief, this court limits its review to the portion of the district court's order that addresses appellant's motion for sentence correction.

Once a direct appeal has been taken, all claims raised in that appeal, all claims known at the time of that appeal, and all claims that should have been known at the time of that appeal “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); *see* Minn. Stat. § 590.01, subd. 1 (barring postconviction relief for claims that petitioner “could have . . . raised on direct appeal”); *Koskela v. State*, 690 N.W.2d 133, 134 (Minn. 2004). “There are two exceptions to the *Knaffla* rule: (1) if a novel legal issue is presented, or (2) if the interests of justice require review.” *Powers v. State*, 731 N.W.2d 499, 502 (Minn. 2007); *see also Fox v. State*, 474 N.W.2d 821, 824-25 (Minn. 1991). A district court may apply the second exception if fairness requires it and if the petitioner did not “deliberately and inexcusably” fail to raise the claim on direct appeal. *Fox*, 474 N.W.2d at 825.

Appellate courts “review a postconviction court’s findings to determine whether there is sufficient evidentiary support in the record.” *Dukes v. State*, 621 N.W.2d 246, 251 (Minn. 2001); *Pippitt v. State*, 737 N.W.2d 221, 226 (Minn. 2007). Summary denial of a postconviction petition is reviewed for an abuse of discretion. *Powers v. State*, 695 N.W.2d 371, 374 (Minn. 2005). A denial of postconviction relief based on the *Knaffla* procedural bar is also reviewed for an abuse of discretion. *Quick v. State*, 692 N.W.2d 438, 439 (Minn. 2005).

Appellant claims that the district court abused its discretion by summarily denying his petition for postconviction relief. Appellant claims that he is entitled to postconviction relief on the following claims: (1) the “DSL” [sic] violated appellant’s

right to a trial by jury under the Sixth and Fourteenth Amendments by placing sentence-elevating fact-finding within the judge's province; (2) the plea arrangement was impermissible because the court was a party to it; (3) appellant's sentence was selected from the wrong guideline range; and (4) the sentencing court denied appellant due process of law by relying on false or unreliable information when calculating appellant's sentence.<sup>3</sup>

Appellant's arguments center on his assertion that the court relied on an erroneous presentence-investigation report (PSI) for sentencing. Specifically, appellant claims that the PSI erroneously assigned appellant a criminal-history point for juvenile-delinquency offenses. With the exception of appellant's impermissible plea-agreement claim, all issues on appeal concern the alleged miscalculation of appellant's criminal-history score.<sup>4</sup>

The district court correctly concluded that appellant's claims are *Knaffla*-barred. Information related to appellant's PSI and the district court's role in appellant's plea negotiation was available to appellant at the time of his first appeal, either directly or through trial or appellate counsel. Thus, appellant's claims were known to him at the time of his direct appeal, or at the very least, should have been known to appellant.

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<sup>3</sup> Appellant does not challenge the district court's denial of his postconviction claim concerning appellate counsel's failure to sign appellate documents.

<sup>4</sup> Although appellant appears to raise a right to jury trial claim related to his sentence, he argued this claim solely in the context of his allegedly inaccurate criminal-history score and PSI. Appellant argued, "By establishing this factor [(i.e., incorrect criminal-history score)] it is clear the court violated Petitioner's Sixth and Fourteenth Amendments [sic] rights to trial by jury."

Appellant's claims are therefore procedurally barred unless an exception to the *Knaffla* rule applies.<sup>5</sup>

In his pro se brief, appellant acknowledges the *Knaffla* rule. Appellant concedes that his claims do not present a novel legal issue and that the first exception to the *Knaffla* rule does not apply. Instead, appellant argues that the second exception, requiring review in the interests of justice, applies because there was a "lack of documents to make [the] claim" and because "there is no indication that [appellant] deliberately and inexcusably failed to raise the same issues on his previous petition." Appellant also points out that he was pro se when he submitted his first petition for postconviction relief and therefore had difficulty properly raising the claims.

The burden is on the petitioner to show why fairness requires the district court to consider claims that are otherwise barred by *Knaffla*. *Sanders v. State*, 628 N.W.2d 597, 601 (Minn. 2001) (holding that the postconviction court did not abuse its discretion when it denied relief because the claim was procedurally barred unless appellant could show why fairness requires its consideration and concluding that he made no such showing). Appellant clearly fails to meet this burden. To begin, appellant's argument that fairness requires review because he was pro se at the time of his first postconviction proceeding is not persuasive. Appellant was represented by an attorney on the direct appeal that

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<sup>5</sup> Even if appellant's right-to-jury-trial claim is considered independently from appellant's argument that appellant's PSI was inaccurate, the claim is *Knaffla* barred. Appellant has already raised a *Blakely/Apprendi* claim in his first postconviction proceeding. Courts do not reconsider facts and issues raised on direct appeal or on a previous collateral appeal. *Knaffla*, 309 Minn. at 252, 243 N.W.2d at 741.

preceded his first postconviction proceeding. Yet, appellant failed to raise his claims in that appeal.

As for appellant's claim that fairness requires review because he lacked the documents necessary to make the claims, this argument is likewise without merit. As discussed above, appellant had access to the PSI at the time of his direct appeal and at the time of his first postconviction proceeding. Finally, appellant's general statement that there is no indication that he deliberately and inexcusably failed to raise his claims in his previous petition is insufficient to demonstrate that fairness requires review of appellant's claims.

With regard to the impermissible plea claim, appellant cryptically alleges that the plea arrangement is impermissible because the court was a party to the arrangement but fails to include any factual support for this claim. This court cannot conclude that the interests of justice require review when appellant presents no facts in support of his claim and no evidence that the claim has merit. The district court did not abuse its discretion in determining that neither exception to the *Knaffla* rule applies.

Even if appellant's claims were not procedurally barred, appellant still would not be entitled to postconviction relief because his claims lack merit. *See* Minn. Stat. § 590.04, subd. 1; *Powers v. State*, 688 N.W.2d 559, 561 (Minn. 2004). Despite the fact that appellant's sentencing claims are procedurally barred by *Knaffla*, the district court nevertheless evaluated the merits of the claims to determine whether the sentencing court had relied on an erroneous PSI. The district court based its evaluation of these claims on

appellant's petition together with the files, records and proceedings and concluded that those claims were entirely without merit.

Applying the sentencing guidelines, the district court confirmed that appellant was assigned one juvenile criminal-history point based on two juvenile offenses that appellant committed at the ages of 14 and 17. Appellant was 24 when he committed the offense for which he is incarcerated. Thus, the district court concluded that the sentencing court had not relied on erroneous information regarding appellant's criminal-history score.

Appellant's argument that he was inappropriately assigned a juvenile criminal-history point is based on appellant's assertion that "[appellant] turned fourteen on November 13, 1989, which is two months and something odd days after August 23, 1989"—the date of the relevant juvenile offense. Appellant concedes that he was born on November 13, 1974. Thus, appellant turned 14 on November 13, 1988, not on November 13, 1989. The district court correctly concluded that appellant was 14 years old at the time appellant committed the August 23, 1989 juvenile offense and that this offense was properly included in appellant's juvenile criminal-history point. Minn. Sent. Guidelines II.B.4(c)-(d) (stating an "offender is assigned one point for every two offenses committed and prosecuted as a juvenile that are felonies under Minnesota law, provided that: . . . the offenses occurred after the offender's fourteenth birthday . . . [and t]he offender had not attained the age of twenty-five at the time the felony was committed for which he . . . is . . . sentenced").

Appellant also argues that because he was given a misdemeanor or gross-misdemeanor sentence for his juvenile offenses, they cannot be counted as felony

offenses in computing appellant's juvenile criminal-history point. Minn. Sent. Guidelines II.B.4 (only felony level offenses are used in the computation of juvenile criminal-history points). Appellant's reliance on Minn. Sent. Guidelines cmt. II.B.104 to support his argument is misplaced. On its face, comment IIB.104 applies only to convictions. While appellant correctly notes that the comment does not state an exception to its application for juvenile offenses, juvenile offenses do not result in convictions except as otherwise provided in Minn. Stat. § 260B.245 (2006). Minn. Stat. § 260B.245, subd. 1(a) states:

No adjudication upon the status of any child in the jurisdiction of the juvenile court shall operate to impose any of the civil disabilities imposed by conviction, nor shall any child be deemed a criminal by reason of this adjudication, nor shall this adjudication be deemed a conviction of crime, except as otherwise provided in this section or section 260B.255.<sup>6</sup>

Appellant's juvenile offenses did not result in convictions under section 260B.245. The district court correctly concluded that comment IIB.104 does not apply to these offenses.

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<sup>6</sup> Minn. Stat. § 260B.255, subd. 1 (2006) states that:

[a] violation of a state or local law or ordinance by a child before becoming 18 years of age is not a crime unless the juvenile court:

(1) certifies the matter in accordance with the provisions of section 260B.125;

(2) transfers the matter to a court in accordance with the provisions of section 260B.225; or

(3) convicts the child as an extended jurisdiction juvenile and subsequently executes the adult sentence under section 260B.130, subdivision 5.

Finally, we again note that appellant provided no factual support for his claim that the district court improperly interjected itself in appellant's plea negotiations. The petition and the files and the records of the proceedings conclusively show that appellant is entitled to no relief on his claims. The district court did not abuse its discretion by summarily denying appellant's second petition for postconviction relief because (1) appellant's claims are procedurally barred by the *Knaffla* rule, (2) neither exception to the *Knaffla* rule applies, and (3) the record conclusively demonstrates appellant is not entitled to relief.

**Affirmed.**

Dated: \_\_\_\_\_

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The Honorable Michelle A. Larkin