STATE OF MINNESOTA
IN COURT OF APPEALS
A10-669

Calvin Gill, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed January 4, 2011
Affirmed
Toussaint, Judge
Stevens County District Court
File No. 75-K7-04-000256

Calvin Gill, Minneapolis, Minnesota (pro se appellant)

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

Charles C. Glasrud, Stevens County Attorney, Morris, Minnesota (for respondent)

Considered and decided by Toussaint, Presiding Judge; Johnson, Chief Judge; and Crippen, Judge.*

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

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

TOUSSAINT, Judge

Appellant Calvin Gill challenges the district court's denial of his petition for postconviction relief, arguing that the district court erred by ruling that his registration requirement under Minnesota's predatory offender registration act did not violate his constitutional protections against ex post facto law and double jeopardy. Appellant was ordered to register after he was convicted of committing a home-invasion robbery and assault. He argues that because the predatory offender registration act has been classified as criminal, the act therefore constitutes a criminal punishment that was improperly applied after his conviction and in addition to his initial sentence. Because we reject appellant's argument that the predatory offender registration act is criminal, as applied to the instant circumstances, we affirm.

D E C I S I O N

Appellate courts review a trial court's decision to deny postconviction relief for an abuse of discretion. *State v. Rhodes*, 675 N.W.2d 323, 326 (Minn. 2004). In doing so, appellate courts review questions of law de novo and findings of fact for an abuse of discretion. *Arredondo v. State*, 754 N.W.2d 566, 570 (Minn. 2008). The scope of review is limited to determining whether there is sufficient evidence to support the findings of the postconviction court. *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994).

Appellant argues that his obligation to register under the predatory offender registration act, Minn. Stat. § 243.166 (2008 & Supp. 2009), (Act), is an ex post facto law. Respondent State of Minnesota argues that this appeal is barred because appellant

has already received a direct appeal of his conviction and may not raise issues that were not raised in his first appeal. *See State v. Knaffla*, 309 Minn. 246, 252, 243 N.W.2d 737, 741 (1976) (noting that claims already raised or that were known but not raised on direct appeal, will not be considered in a subsequent petition for postconviction relief). But, notwithstanding *Knaffla*, an appeal may be heard if it is so novel that its legal basis was not reasonably available when the direct appeal was taken. *Doppler v. State*, 771 N.W.2d 867, 873 (Minn. 2009). The basis of appellant's appeal is that *State v. Jones*, 729 N.W.2d 1, 11 (Minn. 2007), provides a new legal basis for challenging his sentence under the Ex Post Facto Clause. Appellant's argument is reviewed insofar as it presents a newly available legal basis under *Jones*.

The United States and Minnesota Constitutions preclude the government from designating as a crime an act that was not punishable when it was committed, authorizing a punishment greater than that available when the crime was committed, or significantly decreasing the protections afforded to the accused after the act. U.S. Const. art. I, § 10; Minn. Const. art. I, § 11; *Collins v. Youngblood*, 497 U.S. 37, 52, 110 S. Ct. 2715, 2724 (1990).

First, appellant argues that the Act was created carrying only a misdemeanor penalty for its violation but now carries felony consequences and therefore is an ex post facto increase in punishment. *See* 2000 Minn. Laws 2000, ch. 311, art. 2, §§ 1–10, at 189-96 (amending Minn. Stat. § 243.166 (1998 & Supp. 1999)). But because this amendment occurred nearly five years prior to appellant's arrest, the amendment does not implicate the Ex Post Facto Clause as applied to appellant.

Appellant also argues that the Act's registration provision is barred as an ex post facto law because *Jones* changed the nature of the Act. 729 N.W.2d at 11. Appellant argues that the *Jones* court ruled that the Act was criminal in nature and registration is therefore an unlawful imposition of a second criminal punishment arising from appellant's conviction. Appellant's reading of *Jones* is overbroad. In *Jones*, the court held that a convicted offender's failure to report any change in address—under the terms of the Act—was "criminal/prohibitory" for the purposes of finding personal jurisdiction under Public Law 280, a federal law conferring state jurisdiction over Indian reservations. 729 N.W.2d at 11–12. The court in *Jones* did not intend to characterize the Act as a criminal punishment and was careful to distinguish *Jones* from previous Minnesota cases finding that the Act was civil/regulatory in nature. *Id.* (discussing *Kaiser v. State*, 641 N.W.2d 900 (Minn. 2002), and *Boutin v. LaFleur*, 591 N.W.2d 711 (Minn. 1999), as having found the Act to be civil in nature). *Jones* was the product of a "federally mandated" common-law test applied to a federal statute regarding jurisdiction. 729 N.W.2d at 11 n.9. There is nothing in *Jones* to indicate that registration under the Act has been classified as a criminal punishment. For that reason, we find that the district court did not abuse its discretion when it ruled that *Jones* provides no foundation for an ex-post-facto challenge.

Next, appellant argues that the Double Jeopardy Clause of the Fifth Amendment precludes the state from requiring him to register under the Act. The United States and Minnesota Constitutions state that no person should be twice put in jeopardy of punishment for the same offense. U.S. Const. amend. V; Minn. Const. Art. 1 § 7.

Appellant cites *Hudson v. United States*, 522 U.S. 93, 118 S. Ct. 488 (1997), for the principle that a second prosecution cannot be maintained when both actions carry the possibility of criminal punishment.

Appellant also argues that any punishment for failure to register would be a second punishment for the same crime. But the instant facts do not support this assertion. Any failure to perform what is required of him under the Act would be a new violation, unrelated to the robbery and assault for which he has already been sentenced. Lastly, appellant relies on his assertion that *Jones* categorizes the Act as a criminal punishment, which, as discussed above, it does not. For these reasons, the district court did not abuse its discretion by denying Gill's motion for postconviction relief.

Finally, appellant also requested an evidentiary hearing in connection with his motion for postconviction relief, but a "postconviction court is not required to hold an evidentiary hearing unless there are material facts in dispute." *King v. State*, 562 N.W.2d 791, 794 (Minn. 1997). Because there are no facts in dispute, the district court did not err when it declined to hold a hearing on the motion.

Affirmed.