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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A10-1408**

Travis Gregory Kadel, petitioner,  
Appellant,

vs.

State of Minnesota,  
Respondent.

**Filed April 5, 2011  
Affirmed  
Stoneburner, Judge**

Otter Tail County District Court  
File No. 56K807340

Travis Gregory Kadel, Faribault, Minnesota (pro se appellant)

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

David J. Hauser, Otter Tail County Attorney, Michelle M. Eldien, Assistant County  
Attorney, Fergus Falls, Minnesota (for respondent)

Considered and decided by Minge, Presiding Judge; Stoneburner, Judge; and  
Randall, Judge.\*

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

## UNPUBLISHED OPINION

STONEBURNER, Judge

In this pro se appeal from an order denying his petition for postconviction relief, appellant argues that the postconviction court erred by concluding that his claim of ineffective assistance of trial counsel is procedurally barred and that his claim of ineffective assistance of appellate counsel is without merit. Because appellant asserted ineffective assistance of trial counsel on direct appeal, we affirm the determination that the current claim is procedurally barred. We also affirm the decision that appellant's claim of ineffective appellate counsel is without merit.

### FACTS

Appellant Travis Gregory Kadel was convicted in 2007 of first-degree assault and sentenced to 189 months in prison for punching his girlfriend and causing injuries that required facial-reconstructive surgery in which metal plates were permanently placed in her cheekbone and eyebrow.

On direct appeal, Kadel's appellate counsel raised several evidentiary issues, and appellant, by pro se supplemental brief, challenged the effectiveness of trial counsel. This court affirmed appellant's conviction. *State v. Kadel*, A07-1468 (Minn. App. Dec. 9, 2008), *review denied* (Minn. Feb. 17, 2009).

Appellant then filed a pro se petition for postconviction relief, alleging different grounds than he alleged on direct appeal to support his claim of ineffective assistance of trial counsel, and alleging that appellate counsel was ineffective for failing to challenge

the effectiveness of trial counsel and failing to challenge sufficiency of the evidence to support a finding of “great bodily harm.”

The district court denied the petition without an evidentiary hearing, concluding that appellant’s claim of ineffective assistance of trial counsel is procedurally barred and that his claim of ineffective appellate counsel is without merit. This appeal followed.

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

When reviewing a postconviction decision, this court will determine whether there is sufficient evidence to support the findings. *Pippitt v. State*, 737 N.W.2d 221, 226 (Minn. 2007). The postconviction court’s factual findings will not be set aside unless clearly erroneous, but its legal determinations are reviewed de novo. *Id.* The postconviction court’s decision will not be overturned unless the postconviction court abused its discretion. *Id.*

“It is well settled that when . . . ‘direct appeal has once been taken, all matters raised therein, and all claims known but not raised, will not be considered upon a subsequent petition for postconviction relief.’” *Powers v. State*, 731 N.W.2d 499, 501 (Minn. 2007) (quoting *State v. Knaffla*, 309 Minn. 246, 252, 243 N.W.2d 737, 741 (1976)). “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.” *Id.* at 502. When postconviction relief is denied as procedurally barred under *Knaffla*, this court reviews the denial for an abuse of discretion. *Powers v. State*, 695 N.W.2d 371, 373–74 (Minn. 2005). Because Kadel raised a claim of ineffective assistance of counsel in his direct appeal, and because all of the bases underlying the current claim of ineffectiveness of

trial counsel were known at the time of Kadel's direct appeal, and neither of the exceptions to the *Knaffla* rule apply, the district court did not abuse its discretion by holding that the current claim is procedurally barred.

Kadel's claims of ineffective assistance of appellate counsel are based on his assertion that appellate counsel failed to raise issues on appeal that Kadel now asserts should have been raised. Kadel did not raise any of these issues in his supplemental pro se brief on direct appeal, and a claim of ineffective assistance of appellate counsel generally cannot be raised on direct appeal.

A strong presumption exists that counsel's performance "falls within the wide range of reasonable professional assistance." *Pierson v. State*, 637 N.W.2d 571, 579 (Minn. 2002) (quoting *Dukes v. State*, 621 N.W.2d 246, 252 (Minn. 2001)). In evaluating a claim of ineffective assistance of counsel, appellate courts do not review matters of trial strategy. *State v. Doppler*, 590 N.W.2d 627, 633 (Minn. 1999). "To demonstrate ineffective assistance of counsel, [petitioner] must show that his counsel's performance fell below an objective standard of reasonableness and that a reasonable probability exists that, but for his counsel's unprofessional errors, the result of the proceedings would have been different." *Davis v. State*, 784 N.W.2d 387, 391 (Minn. 2010) (citing *Strickland v. Washington*, 466 U.S. 668, 688, 694, 104 S. Ct. 2052, 2064, 2068 (1984)).

Kadel has presented his claims of ineffective assistance of appellate counsel only in the form of argumentative assertions without factual support. And Kadel's counsel in direct appeal "ha[d] no duty to include claims which would detract from other more meritorious issues." *Id.* (quoting *Case v. State*, 364 N.W.2d 797, 800 (Minn. 1985)). The

postconviction court correctly concluded that Kadel failed to demonstrate that his appellate counsel's performance fell below an objective standard of reasonableness or that the outcome would have been different had counsel raised the additional issues asserted by Kadel.

**Affirmed.**