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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1763**

Edward Joseph Loscheider, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed May 23, 2011
Affirmed
Harten, Judge***

Hennepin County District Court
File Nos. 27-CR-04-41072; 27-CR-05-2322

Edward J. Loscheider, Faribault, Minnesota (pro se appellant)

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

Michael O. Freeman, Hennepin County Attorney, Lee W. Barry III, Assistant County
Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Toussaint, Presiding Judge; Connolly, Judge; and
Harten, Judge.

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

UNPUBLISHED OPINION

HARTEN, Judge

Appellant challenges the denial of his petition for postconviction relief, arguing that the district court erred in concluding that it was untimely and was barred procedurally. Because we see no error of law in the denial, we affirm.

FACTS

In 2004, appellant Edward Loscheider was arrested and charged with 12 separate crimes, including attempted first-degree murder. He pled guilty to three of the charges and was sentenced to 180 months in prison; he was also ordered to undergo a mental health assessment. In July 2007, he filed an unsuccessful petition for postconviction relief, arguing that he should be allowed to withdraw his guilty plea. This court affirmed the denial of postconviction relief. *Loscheider v. State*, No. A08-0421, 2009 WL 67201, at *1 (Minn. App. 13 Jan. 2009), *review denied* (Minn. 31 Mar. 2009).

In 2010, appellant filed a second petition for postconviction relief. The district court summarily denied the petition. Appellant, acting pro se, challenges the denial, arguing that his petition is neither untimely nor barred procedurally.

DECISION

In reviewing a postconviction court's denial of relief, we review issues of law de novo and issues of fact for sufficiency of the evidence. *Leake v. State*, 737 N.W.2d 531, 535 (Minn. 2007).

1. Untimeliness of Petition

The district court concluded that appellant's petition was untimely under *Nestell v. State*, 758 N.W.2d 610, 613 (Minn. App. 2008) (quoting 2005 Minn. Laws ch. 136, art. 14 § 13 at 1098 (if a conviction became final before 1 August 2005, a petition for postconviction relief had to be filed by 1 August 2007)) (abrogated on other grounds by *Roby v. State*, 787 N.W.2d 186 (Minn. 2010)).¹ Appellant's conviction became final before 1 August 2005; his petition was filed on 4 June 2010. The district court observed that appellant had not advanced any exception to the two-years-from-conviction deadline for postconviction petitions provided in Minn. Stat. § 590.01, subd. 4(a) (2008), and that none of the exceptions in Minn. Stat. § 590.01, subd. 4(b) (2008) applied. A postconviction court may properly dismiss an untimely petition. *Moua v. State*, 778 N.W.2d 286, 289 (Minn. 2010). There is no error of law in the district court's dismissal of appellant's petition as untimely.

2. Procedural Bars

Claims for postconviction relief that have been fully and fairly litigated are not subject to relitigation. *State v. Knaffla*, 309 Minn. 246, 252, 243 N.W.2d 737, 741 (1976). The district court found that the issues appellant raised in his 2010 petition were identical to the issues raised in his 2007 petition and addressed in this court's 2009 opinion. The record supports this finding.

¹ We note that *Roby* was not filed until 19 August 2010, after the district court's 29 July 2010 decision.

In his 2007 petition, appellant argued that he should be allowed to withdraw his plea because he did not have the mental health assessment that was part of the plea agreement. This court held that:

There is no merit to appellant's claim that he should be allowed to withdraw his guilty plea because he did not receive the independent mental health assessment that was part of his plea agreement.

. . . [Appellant] offers no legal authority to establish that he is entitled to withdraw his plea because the ordered assessment did not subsequently occur. Because appellant was sentenced according to his plea agreement, the district court did not err in summarily dismissing appellant's petition for postconviction relief.

Loscheider, 2009 WL 67201, at *1 (citations omitted).

Appellant also asserts that he has “newly discovered evidence” in the form of a letter to him dated 9 September 2010 from the public defender's office stating, “This office does not have, nor has it ever had, a court-ordered mental health assessment of you performed on or after January 2005—because, as Dr. . . . confirms, one was never conducted.” This evidence could not have been presented to the district court because it did not exist when appellant filed his petition or when the district court dismissed it. We will not consider evidence not presented to the district court. *See Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996) (stating appellate courts generally decline to decide issues not raised to district court).

Moreover, we have already held that appellant may not withdraw his guilty plea because he did not receive a mental health assessment. *See Loscheider*, 2009 WL 67201, at *1. Thus, the new evidence cannot be a valid basis for permitting an untimely

withdrawal of a guilty plea made five years before it existed. *See Dale v. State*, 535 N.W.2d 619, 622 (Minn. 1995) (affirming denial of motion for a new trial based on newly discovered evidence because, while the evidence was newly discovered and could not have been known to the defendant or his counsel at the time of trial, it was not material).

In our prior decision, we observed that

appellant presents numerous arguments that the district court and the prosecutor acted in a manner constituting misconduct. But appellant offers no proof to support these allegations, and based on the record, there is no evidence of misconduct. The district court thus did not err in denying appellant's postconviction relief petition.

Loscheider, 2009 WL 67201, at *3. Appellant again accuses the district court of misconduct on this appeal, but these accusations all pertain to events that occurred before his first petition and are insufficiently supported.

Sufficient evidence supports the district court's findings, and we see no error of law in its conclusion that appellant's petition for postconviction relief was untimely and was procedurally barred by our prior opinion.

Affirmed.