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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0248**

Maurece Laverne Graham, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed August 13, 2012
Affirmed
Stoneburner, Judge**

Hennepin County District Court
File No. 27-CR-98-074631

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

Michael O. Freeman, Hennepin County Attorney, Thomas A. Weist, Assistant Hennepin County Attorney, Minneapolis, Minnesota (for respondent)

Maurece L. Graham, Rush City, Minnesota (pro se appellant)

Considered and decided by Stoneburner, Presiding Judge; Ross, Judge; and Connolly, Judge.

UNPUBLISHED OPINION

STONEBURNER, Judge

Appellant challenges summary denial of his motion for an amended sentence, arguing that the district court erred by treating the motion as an untimely petition for postconviction relief. We affirm.

FACTS

In 1999, appellant Maurece Laverne Graham was convicted of attempted first-degree murder in violation of Minn. Stat. § 609.185, subd. 1 (1998), second-degree assault in violation of Minn. Stat. § 609.222, subd. 1 (1998), two counts of first-degree criminal sexual conduct in violation of Minn. Stat. § 609.342, subd. 1(c), subd. 1(f)(i) (1998), terroristic threats in violation of Minn. Stat. § 609.713, subd. 1 (1998), and kidnapping in violation of Minn. Stat. § 609.25, subd. 1(1) (1998). The district court sentenced Graham to consecutive sentences of 184 months for attempted first-degree murder and 392 months for kidnapping. Graham initiated, but then withdrew, a direct appeal.

In 2007, Graham petitioned for postconviction relief, arguing that the aggregate sentence was excessive, was based on an erroneous criminal history score and sentencing worksheet, and was disproportionate to the severity of his offenses and the sentences of his codefendants. The postconviction court reduced the kidnapping sentence to 232 months to correct an error in the offense severity level but upheld consecutive sentencing, concluding that “the combination of 1) quadrupling of the guideline sentence for kidnapping, 2) imposition of consecutive sentences for kidnapping and attempted first-degree murder, and 3) an aggregate sentence of 416 months does not result in an exaggeration of the criminality of [Graham’s] conduct.” Graham appealed, and we affirmed. *Graham v. State*, 2009 WL 2366071 (Minn. App. Aug. 4, 2009), *review denied* (Minn. Oct. 20, 2009).

In 2011, Graham moved for correction of an unauthorized sentence under Minn. R. Crim. P. 27.03, subd. 9, asserting that consecutive sentencing was “illegal.” The motion was treated as a petition for postconviction relief and was denied as untimely and procedurally barred under the *Knaffla* rule. This appeal followed.

D E C I S I O N

Graham argues that the district court erred by treating his motion to correct a sentence as a petition for postconviction relief. We disagree. In *Powers v. State*, the district court similarly treated a motion for correction of sentence under Minn. R. Crim. P. 27.03 as a petition for postconviction relief. 731 N.W.2d 499, 501 (Minn. 2007). Although Powers did not challenge the decision to treat his motion as a postconviction petition, the supreme court specifically noted that the postconviction statute, Minn. Stat. § 590.01 (2006), “is broad enough to encompass a motion pursuant to Minn. R. Crim. P. 27.03” and referenced a prior case characterizing a motion for correction of sentence as a motion for postconviction relief. *Id.* at n.2. We conclude that the district court did not err in treating Graham’s motion as a petition for postconviction relief.

Graham also asserts that the district court erred in concluding that his claims are procedurally barred under the *Knaffla* rule. We disagree. In *State v. Knaffla*, the supreme court held that once a direct appeal has been taken, “all matters raised therein, and all claims known but not raised, will not be considered upon a subsequent petition for postconviction relief.” 309 Minn. 246, 252, 243 N.W.2d 737, 741 (1976). The rule has been interpreted to bar from postconviction consideration matters raised or known but not

raised in an earlier petition for postconviction relief.¹ *Powers*, 731 N.W.2d at 501. Graham’s current petition challenges consecutive sentencing, which he unsuccessfully challenged in his first petition for postconviction relief. The district court did not err by denying his second challenge to consecutive sentencing because it is procedurally barred. *See* Minn. Stat. § 590.04, subd. 3 (2010) (“The court may summarily deny a second or successive petition for similar relief on behalf of the same petitioner and may summarily deny a petition when the issues raised in it have previously been decided by the Court of Appeals or the Supreme Court in the same case.”). Because Graham’s claims are procedurally barred under *Knaffla*, we do not reach the argument that the claims are untimely.

Affirmed.

¹ Graham does not argue that any exceptions to the *Knaffla* rule apply to his motion.