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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1386**

Terry Ray Jackson, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed April 15, 2013
Affirmed
Peterson, Judge**

Hennepin County District Court
File No. 27-CR-92-047776

Terry Ray Jackson, Moose Lake, Minnesota (pro se appellant)

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

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

Considered and decided by Peterson, Presiding Judge; Chutich, Judge; and Smith,
Judge.

UNPUBLISHED OPINION

PETERSON, Judge

In this pro se appeal from an order summarily denying appellant's third petition for postconviction relief, appellant argues that (1) he was denied effective assistance of counsel, (2) the district court erroneously admitted *Spreigl* evidence at trial, (3) the

district court erred in imposing sentence, and (4) the victim's recantation entitles appellant to a new trial. We affirm.

FACTS

In 1992, appellant Terry Ray (a/k/a "Rae") Jackson was convicted of attempted first-degree criminal sexual conduct. He unsuccessfully sought postconviction relief on two occasions, with petitions for further review of this court's decisions denied in both postconviction appeals. See *Jackson v. State*, No. C0-94-1353, 1995 WL 311745 (Minn. App. May 23, 1995), review denied (Minn. Aug. 30, 1995) (*Jackson I*); *Jackson v. State*, No. A05-2364, 2006 WL 3772212 (Minn. App. Dec. 26, 2006), review denied (Minn. Mar. 20, 2007) (*Jackson II*). In the first postconviction appeal, filed in 1994, appellant raised issues of ineffective assistance of counsel and erroneous admission of *Spreigl* evidence and challenged the district court's decision to impose a sentence that was an upward durational departure from the presumptive sentence. *Jackson I*, 1995 WL 311745, at *1. In the second postconviction appeal, filed in 2005, appellant asked for a new trial because of the victim's purported recantation. *Jackson II*, 2006 WL 3772212, at *1.

Between the two postconviction appeals, appellant was released from prison and was civilly committed as a sexually dangerous person. See *In re Civil Commitment of Jackson*, 658 N.W.2d 219, 224 (Minn. App. 2003), review denied (Minn. May 20, 2003). During appellant's commitment proceedings, the district court rejected appellant's claim that the victim of his criminal-sexual-conduct offense, who is mentally impaired, recanted. *Id.* at 223, 225. The recantation was initiated by appellant and solicited by his

mother; in affirming appellant's civil commitment, this court noted that the district court found that the victim's recantation testimony "'contained inconsistent and incredible facts that varied remarkably from what she told the police in 1992,'" and "'was not credible and was obviously influenced by her contact with [appellant's] mother.'" *Id.* at 225. This court also noted that the district court found the victim's written statement "'devoid of any persuasive value.'" *Id.* In *Jackson II*, this court affirmed the district court's denial of the postconviction petition without an evidentiary hearing. 2006 WL 3772212, at *3.

In his third postconviction petition, filed on March 12, 2012, appellant again raised issues of ineffective assistance of counsel, erroneous admission of *Spreigl* evidence, error in sentencing, and the exculpatory value of the victim's recantation. The petition also includes a bald claim of ineffective assistance of appellate counsel and other evidentiary claims. The postconviction court denied the petition without a hearing, relying on the procedural bar set forth in *State v. Knaffla*, 309 Minn. 246, 243 N.W.2d 737 (1976), and the two-year time bar included in Minn. Stat. § 590.01, subd. 4 (2010).

D E C I S I O N

If a postconviction petitioner's petition, files, and record demonstrate conclusively that no relief is warranted, a postconviction court may deny a postconviction petition without an evidentiary hearing. Minn. Stat. § 590.04, subd. 1 (2010). We review a district court's summary denial of a postconviction petition for abuse of discretion. *Lee v. State*, 717 N.W.2d 896, 897 (Minn. 2006).

We conclude that the issues raised by appellant are procedurally barred under *Knaffla* and its exceptions, 309 Minn. at 252, 243 N.W.2d at 741; *see Anderson v. State*, 811 N.W.2d 632, 634 (Minn. 2012) (listing exceptions to *Knaffla*, including novel claims or claims that should be addressed in the interests of justice). Each claim that appellant asserted in his third postconviction petition was raised and addressed, or could have been raised and addressed, in appellant's earlier postconviction proceedings. To the extent that appellant's postconviction petition can be read to assert a new claim for ineffective assistance of appellate counsel, the claim was not supported by any facts or proper legal argument, and, therefore, we decline to consider it. *See State v. Turnage*, 729 N.W.2d 593, 599 (Minn. 2007) (stating that "conclusory, argumentative assertions, without factual support" are insufficient to support a conviction for postconviction relief); *see also Fields v. State*, 733 N.W.2d 465, 468 (Minn. 2007) ("When an ineffective assistance of appellate counsel claim is based on appellate counsel's failure to raise an ineffective assistance of trial counsel claim, the appellant must first show that trial counsel was ineffective.").

We also conclude that appellant's postconviction petition is time-barred under Minn. Stat. § 590.01, subd. 4. This statute prohibits postconviction relief when the petitioner files the petition more than two years after "entry of judgment of conviction or sentence if no direct appeal is filed." Minn. Stat. § 590.01, subd. 4(a) (1). Appellant offered no excuse for the untimely assertion of his third postconviction petition, and the record does not demonstrate the existence of an excuse. *Id.*, subd. 4(b) (enumerating exceptions to section 590.01, subdivision 4); *see Wallace v. State*, 820 N.W.2d 843, 848-

49 (Minn. 2012) (identifying exceptions and stating court must determine from petition whether petitioner has invoked an exception).

Affirmed.