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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1897**

Eric Dean Krieger, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed May 20, 2013
Affirmed
Hudson, Judge**

Mille Lacs County District Court
File No. 48-CR-09-1004

Eric Dean Krieger, Bayport, Minnesota (pro se appellant)

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

Janice S. Jude, Mille Lacs County Attorney, Melissa M. Saterbak, Assistant County
Attorney, Milaca, Minnesota (for respondent)

Considered and decided by Kirk, Presiding Judge; Stoneburner, Judge; and
Hudson, Judge.

UNPUBLISHED OPINION

HUDSON, Judge

Appellant challenges the district court's summary denial of his petition for postconviction relief as procedurally barred. Because appellant's claims are either barred by the *Knaffla* rule or not properly before this court, we affirm.

FACTS

In 2009, a jury convicted appellant Eric Krieger of two counts of first-degree criminal sexual conduct and one count of second-degree criminal sexual conduct. In his direct appeal, appellant argued that evidence of prior sexual abuse of the victim was improperly excluded; the state committed prosecutorial misconduct; the upward sentencing departure was improper; the sentence exceeded the statutory maximum; his confession was coerced; notice of the intent to seek an aggravated sentence was inadequate; prejudicial hearsay and testimonial evidence was improperly admitted; his trial counsel was inadequate; the evidence was insufficient to support his conviction; he was prejudiced by judicial misconduct; newly discovered evidence required reversal of his conviction; and the cumulative effect of trial errors warranted a new trial. *State v. Krieger*, No. A10-1271, 2011 WL 1642525, at *1–*8 (Minn. App. May 3, 2011).

The court of appeals concluded that evidence was improperly excluded, but the error was harmless given the strength of the evidence in the case. *Id.* at *2. The court of appeals also concluded that, while the district court's grounds for an upward sentencing departure may have been improper, the upward departure was warranted given the emotional and psychological harm suffered by the victim. *Id.* at *4. The court of appeals concluded that the initial sentence exceeded the statutory maximum, and modified the sentence to comply with the statute. *Id.* at *5. The remaining issues raised by petitioner were found to be without merit. *Id.* at *2–*8.

Appellant filed his petition for postconviction relief on August 6, 2012, again arguing that evidence of prior sexual abuse was improperly excluded; the upward

durational departure was improper; his confession was coerced; the evidence was insufficient to support his conviction; his trial counsel was ineffective; and the cumulative effect of trial errors warranted a new trial. Appellant raised an additional issue not found in his direct appeal, arguing that a cautionary instruction encouraged the jury to punish him based on evidence of prior bad acts. The district court summarily denied the petition, relying on the procedural bar set forth in *State v. Knaffla*, 309 Minn. 246, 243 N.W.2d 737 (1976) and Minn. Stat. § 590.01, subd. 1 (2012). This appeal follows.

D E C I S I O N

A postconviction court may summarily deny a postconviction petition if the petition, files, and record conclusively demonstrate that no relief is warranted. Minn. Stat. § 590.04, subd. 1 (2012). This court reviews 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).

Issues raised for the first time on appeal

Appellant raises seven issues on appeal, three of which were not raised in his petition for postconviction relief: whether the district court improperly commented on his failure to take the stand; whether the closing argument improperly injected the prosecutor’s opinion of appellant; and whether the district court erred in allowing the state to introduce evidence of a prior criminal offense without providing proper pretrial notice. An appellate court “generally will not decide issues which were not raised before the district court[.]” *Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996). Because

appellant did not raise these three issues in his petition for postconviction relief, they have been waived. *See id.* Furthermore, appellant provides no explanation or factual basis for any of these three claims, and the allegations within an appeal must contain more than “conclusory, argumentative assertions, without factual support.” *State v. Turnage*, 729 N.W.2d 593, 599 (Minn. 2007).

Issues raised in the petition for postconviction relief

In the remaining four issues, appellant argues that (1) he was denied effective assistance of trial counsel; (2) the district court improperly excluded evidence of prior sexual abuse of the victim; (3) the district court and court of appeals erred in permitting an upward sentencing departure due to psychological and emotional harm to the victim; and (4) the district court improperly instructed the jury concerning evidence of prior bad acts for which appellant was not being charged.

In a petition for postconviction relief, under the *Knaffla* rule, we decline to review claims that were not raised, or could have been raised, on direct appeal. *Berkovitz v. State*, 826 N.W.2d 203, 209 (Minn. 2013) (citing *Knaffla*, 309 Minn. at 252, 243 N.W.2d at 741). Appellant’s first three issues were raised on direct appeal, and his jury-instruction challenge could have been raised on direct appeal because the facts underlying the challenge were known to him when he submitted his direct appeal. *See id.* We therefore conclude that these four issues are barred under *Knaffla*.

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.” *Schleicher v. State*, 718 N.W.2d 440, 447 (Minn. 2006) (quotation omitted). To qualify under the second

exception, a claim must have substantive merit and be asserted without deliberate or inexcusable delay. *Wright v. State*, 765 N.W.2d 85, 90 (Minn. 2009). No novel issues are presented by the appeal, and appellant has failed to make a credible argument that the interests of justice require consideration of his claims. This court has already considered appellant's first three issues and properly determined that they do not warrant a new trial or a sentence modification. And appellant's fourth claim is entirely without merit. The jury was read a standard instruction directing them to consider only whether defendant committed the acts detailed in the complaint, explaining that though they were presented with evidence of other bad acts to assist in determining whether defendant engaged in the charged conduct, they should not punish appellant for those other bad acts. We assume that the jury followed the district court's instructions and did not improperly rely on evidence of prior bad acts in convicting appellant. *State v. Vang*, 774 N.W.2d 566, 578 (Minn. 2009). Because appellant's claims are *Knaffla*-barred and no exception to the *Knaffla* rule applies, the district court did not abuse its discretion by summarily denying appellant's petition for postconviction relief.

Affirmed.