STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0413

Charles Todd Bragg, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed December 2, 2013
Affirmed
Larkin, Judge

Mille Lacs County District Court
File No. 48-CR-08-1964

Charles Todd Bragg, 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 Rodenberg, Presiding Judge; Larkin, Judge; and Chutich, Judge.

U N P U B L I S H E D O P I N I O N

LARKIN, Judge

Appellant challenges the district court's denial of his petition for postconviction relief and his motion to correct sentencing. We affirm.

FACTS

In February 2009, a jury found appellant Charles Todd Bragg guilty of eight counts of first- and second-degree criminal sexual conduct involving his then 15- and 16-year-old daughters. The district court sentenced Bragg to 360 months in prison. On December 21, 2010, this court affirmed Bragg's convictions. *State v. Bragg*, No. A09-2319, 2010 WL 5154137 (Minn. App. Dec. 21, 2010), *review denied* (Minn. Mar. 15, 2011).

On October 15, 2012, Bragg filed several motions in the district court, including a "Motion to Amend or Reconsider Due to False Documents and/or Statements," "Motion to Dismiss for Plain Error," "Motion to Suppress," "Motion to Correct Sentencing," "Motion for an Evidentiary Hearing," as well as a "Petition for Post-Conviction Relief."

The district court concluded that most of Bragg's postconviction claims were *Knaffla*-barred and denied his petition for postconviction relief and an evidentiary hearing in a written order dated January 14, 2013. The district court denied Bragg's motion to correct his sentence in a separate order dated January 15, after addressing the merits of his sentencing arguments including double-jeopardy, sentencing-guidelines, and cruel-and-unusual-punishment claims, as well as arguments under Minn. Stat. §§ 609.035, .04 (2012).[1] The district court denied Bragg's other motions in a third order. Bragg appeals from all three orders, but provides arguments related only to the January 14 order denying his petition for postconviction relief and the January 15 order denying his motion to correct his sentence.

[1] The district court declined to address those issues that were not related to sentencing.

D E C I S I O N

I.

We review the postconviction court's findings for clear error and its conclusions of law de novo. *State v. Finnegan*, 784 N.W.2d 243, 247 (Minn. 2010). We will not disturb the district court's denial of postconviction relief absent an abuse of discretion. *Doppler v. State*, 660 N.W.2d 797, 801 (Minn. 2003).

Bragg argues that "the trial court erred when it abused its authority denying [his] post-conviction [petition], knowing the prosecution falsified the evidence used at trial to obtain a conviction." Specifically, Bragg contends that DNA evidence used at trial "does not exist." Because Bragg offers no discernible legal argument or relevant legal authority to show that the district court abused its discretion in denying his petition for postconviction relief, this argument is waived. *See State v. Wembley*, 712 N.W.2d 783, 795 (Minn. App. 2006) ("An assignment of error in a brief based on mere assertion and not supported by argument or authority is waived unless prejudicial error is obvious on mere inspection." (quotation omitted)), *aff'd*, 728 N.W.2d 243 (Minn. 2007).

II.

Bragg assigns error to the district court's denial of his motion to correct his sentence. Bragg argues that the district court "failed to correct the sentence that is not authorized by law in the areas of double jeopardy, jurisdiction, incorrectly using the guideline, incorrect departure, that the prosecutor did not prove all the elements required by law for a conviction . . . [and] single behavioral incident."

Double Jeopardy

We review constitutional double-jeopardy claims de novo. *State v. Watley*, 541 N.W.2d 345, 347 (Minn. App. 1995), *review denied* (Minn. Feb. 27, 1996). Both the United States and Minnesota Constitutions guarantee that a criminal defendant may not be tried more than once for the same crime. U.S. Const. amend. V; Minn. Const. art. 1, § 7. The double-jeopardy prohibition protects criminal defendants from "three distinct abuses: a second prosecution for the same offense after acquittal; a second prosecution for the same offense after conviction; and multiple punishments for the same offense." *State v. Humes*, 581 N.W.2d 317, 320 (Minn. 1998).

Bragg appears to argue that the double-jeopardy prohibition applies because "the charged offenses of the cou[n]ts that included K.M.H. . . . all have the same required elements," and that there should have been "only one charge per alleged victim." But "[t]he prohibition of double jeopardy is not against all multiple punishments. It only applies to multiple punishments for the same offense." *State v. Alexander*, 290 N.W.2d 745, 748 (Minn. 1980). The five counts involving K.M.H. alleged different acts. The district court instructed the jury that count one involved sexual intercourse on a couch, count three involved touching intimate body parts, count four involved digital penetration, count seven involved sexual intercourse on a bed, and count eight involved cunnilingus. Bragg provides no further argument or authority to show that these counts constitute the same offense or otherwise violate the double-jeopardy prohibition. Instead, he provides a number of other unrelated assertions unsupported by authority, which we deem waived. *See Wembley*, 712 N.W.2d at 795.

Single Behavioral Incident

Bragg cites *Blockburger v. United States*, 284 U.S. 299, 52 S. Ct. 180 (1932), to argue that

> the trial court under order dated on January 15, 2013 motion to correct sentencing under post-conviction . . . conclusion of law no. 15, 16, 17, the trial court denies the appellant a new trial, so for the court to deny the part of the motion before receiving it is clearly an abuse of authority and shows the trial court is prejudicial to the appellant and this is a violation of the right of due process of both state and U.S. constitutional rights that are guaranteed to us.

But Bragg does not explain how *Blockburger* supports this argument, nor does he offer any other discernible legal argument or legal authority to persuade this court that the district court erred. We therefore deem this issue waived. *See Wembley*, 712 N.W.2d at 795.

Other Assignments of Error

Bragg assigns several other errors to the district court's ruling on his motion to correct sentencing. Bragg asserts that "the state did not follow all elements of the law and did not prove all elements of the offense charged." Bragg asserts that the district court "abused its authority by not dismissing or reversing a charge knowingly to be stated to allegedly happened in another county and district" and "by denying addressing the issue as it is not related to sentencing." Bragg asserts that there was an "incorrect use of [sentencing] guidelines." Lastly, Bragg asserts that "the trial court erred when departing from the guidelines without stating any aggravating factors on [the] record" and "by departing from the guidelines without the jury present."

"An assignment of error in a brief based on mere assertion and not supported by argument or authority is waived unless prejudicial error is obvious on mere inspection." *Id*. (quotation omitted). None of the assignments of error in the preceding paragraph is supported by relevant legal authority or discernible legal argument. Because prejudicial error is not obvious on mere inspection, we deem all of the assertions waived. *See id.*

III.

Bragg asserts that "the prosecution withheld names of other people with information of the case under Rules of Criminal P. 9.01 subd. 1(1)(b) other persons." Bragg provides a list of names and asserts that "the State . . . knew about the following witnesses from the Cornerhouse video, and referred to them in trial, but failed to disclose any information prior to trial to assist the defense in a fair trial." However, Bragg acknowledges that the nondisclosure issue was known at the time of trial. The issue therefore is procedurally barred. *See State v. Knaffla*, 309 Minn. 246, 252, 243 N.W.2d 737, 741 (1976) ("[W]here 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.").

Bragg further asserts that "the prosecutor abused her authority and committed prosecutorial misconduct when she mentioned evidence that she could no[t] produce." Bragg contends that "[t]his resulted in a clear *Brady* violation," and "violates [his] [c]onstitutional [r]ights to due process clause of a fair trial." But Bragg provides no legal argument or relevant legal authority to support his position. The issue therefore is waived. *See Wembley*, 712 N.W.2d at 795.

IV.

> 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. The *Knaffla* rule bars all claims that the appellant should have known of at the time of direct appeal. 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. The second exception may be applied if fairness requires it and the petitioner did not deliberately and inexcusably fail to raise the issue on direct appeal.

Schleicher v. State, 718 N.W.2d 440, 446-47 (Minn. 2006) (quotations omitted).

In his reply brief, Bragg argues that his postconviction claims are not *Knaffla*-barred because his "claims . . . are in the interest of fairness and justice which warrants relief." Bragg makes numerous assertions to support his argument. But Bragg provides no legal basis to conclude that fairness requires an exception to the *Knaffla* rule in this case.

Bragg further contends that *Knaffla* "violates [his] right of the constitution" and "must not and cannot be a valid law." But this court is bound to follow supreme court decisions. *See State v. M.L.A.*, 785 N.W.2d 763, 767 (Minn. App. 2010) (stating that court of appeals "is bound by supreme court precedent"), *review denied* (Minn. Sept. 21, 2010).

Bragg raises a number of other issues for the first time in his reply brief, which this court deems waived. *See State v. Yang*, 774 N.W.2d 539, 558 (Minn. 2009) (stating that issues raised "for the first time in [an] appellant's reply brief [in a criminal case],"

having not been raised in respondent's brief, are "not proper subject matter for [the] appellant's reply brief," and they may be deemed waived.).

Conclusion

In sum, Bragg has presented an extensive list of purported constitutional violations, legal errors, and ethical errors. He contends that "the trial court violated [his] rights in every way that [it] could and the judgment needs to be reversed with prejudice and expunged from [his] record and criminal charges filed on all that are involved in this injustice." He further contends that "the presiding judge should be disbarred and incarcerated." His assignments of error are unsupported by comprehensible legal argument.

We appreciate that Bragg does not have the legal training, analytical abilities, or communication skills necessary to construct sound legal arguments. And we recognize that courts have a duty to reasonably accommodate pro se litigants, so long as no prejudice results. *Kasson State Bank v. Haugen*, 410 N.W.2d 392, 395 (Minn. App. 1987). But "[a]lthough some accommodations may be made for pro se litigants, this court has repeatedly emphasized that pro se litigants are generally held to the same standards as attorneys and must comply with court rules." *Fitzgerald v. Fitzgerald*, 629 N.W.2d 115, 119 (Minn. App. 2001). And once again, "[a]n assignment of error in a brief based on mere assertion and not supported by argument or authority is waived unless prejudicial error is obvious on mere inspection." *Wembley*, 712 N.W.2d at 795 (quotation omitted).

Bragg's brief does not present any obvious reversible error. Moreover, we observe that Bragg has had the benefit of a direct appeal, with legal counsel, and that this court thoroughly addressed all of the legal issues presented.[2] *See State v. Burrell*, __ N.W.2d __, __, 2013 WL 5460887, at *8 (Minn. Oct. 2, 2013) (explaining that although the supreme court has never held that a defendant has a constitutional right to appellate review, "Minnesota law plainly recognizes the important role that the defendant's right to appeal from a judgment of conviction plays in our criminal justice system"). And in this case, similar to his direct appeal, none of Bragg's assignments of error leads to the conclusion that the district court abused its discretion, or otherwise erred, in denying his multiple requests for relief.

Affirmed.

[2] Those issues included ineffective assistance of counsel, prohibition of defense testimony, entitlement to a *Schwartz* hearing, exclusion of prior false allegations, admission of photographic evidence, and cumulative error. *Bragg*, 2010 WL 5154137, at *1-9.