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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A11-464**

Marlowe Nathaniel Brooks, petitioner,  
Appellant,

vs.

State of Minnesota,  
Respondent.

**Filed December 5, 2011  
Affirmed  
Minge, Judge**

Hennepin County District Court  
File No. 27-CR-00-087189

Marlowe Brooks, Faribault, Minnesota (pro se appellant)

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

Michael O. Freeman, Hennepin County Attorney, David C. Brown, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Connolly, Presiding Judge; Halbrooks, Judge; and Minge, Judge.

**UNPUBLISHED OPINION**

**MINGE**, Judge

Appellant challenges the district court's denial of his postconviction petition seeking relief from his sentence for first-degree attempted murder and second-degree murder. Appellant asserts that the proper parties did not request restitution and that the

record does not support the amount of restitution. Because sentencing and restitution issues were raised in earlier appeals and because appellant's statutory claim is based on an erroneous construction of the law, we affirm.

## DECISION

The factual basis for appellant Marlowe Brooks's conviction and sentencing are set forth in an earlier opinion of this court. *See Brooks v. State*, No. A07-1672, 2008 WL 2344814, at \*1 (Minn. App. June 10, 2008) (*Brooks 2008*), *review denied* (Minn. Aug. 19, 2008). After that opinion, Brooks filed a petition for habeas corpus in federal district court, alleging that his constitutional rights were violated by the restitution order. The petition was dismissed with prejudice as untimely filed. *Brooks v. King*, Civ. No. 09-1388 (ADM/AJB), 2009 WL 3711542, at \*2, \*6 (D. Minn. Nov. 3, 2009). Brooks also filed another petition for postconviction relief challenging his restitution order, which was denied by the district court. Brooks then filed yet another petition for postconviction relief, the summary denial of which he now appeals.

### I.

The first issue raised by Brooks in this most recent postconviction petition is whether a formal request by the victim's family, the crime victims reparations board (CVRB), the presentence investigator, or the prosecution is a necessary predicate for a district court to order restitution.<sup>1</sup> In his motion to correct his sentence, Brooks argues

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<sup>1</sup> The *Knaffla* rule appears to bar the appeal of this issue. *See State v. Knaffla*, 309 Minn. 246, 252, 243 N.W.2d 737, 741 (1976) (matters known but not raised in prior postconviction appeals will generally not be considered in subsequent petitions for postconviction relief). But in a previous appeal, we held that Brooks's motion to correct

that because no party requested restitution, the sentencing court was not legally authorized to award restitution as part of his sentence.

Minnesota law provides that “[u]pon conviction of a felony,” sentencing courts may order “payment of court-ordered restitution in addition to either imprisonment or payment of a fine, or both.” Minn. Stat. § 609.10, subd. 1(a)(5) (1998). Victims of crimes also have a “right to receive restitution as part of the disposition of a criminal charge” by submitting a request to the sentencing court. Minn. Stat. § 611A.04, subd. 1 (1998). Nothing in this victims’ rights statute or other legislation dealing with the CVRB, the prerogative of the prosecutor, or the role of the presentence investigator addresses or limits the power of the courts to sua sponte order restitution. *See* Minn. Stat. § 388.051 (1998) (authorizing county attorneys to prosecute crimes, charge offenses, and conduct plea negotiations); Minn. Stat. § 609.115 (1998 & Supp. 1999) (authorizing presentence investigations); Minn. Stat. §§ 611A.51–.68 (1998 & Supp. 1999) (authorizing the CVRB).

The Minnesota Supreme Court has held that district courts are authorized to impose restitution independent of whether any crime victim requests restitution. *State v. Gaiovnik*, 794 N.W.2d 643, 649–50 (Minn. 2011); *see also* Minn. Stat. § 609.10, subd. 1(a)(5). Courts were authorized to impose restitution prior to the enactment of Minnesota’s victims’ rights statutes, and they continue to be so authorized. *Id.* at 651 n.4.

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his sentence was not barred by *Knaffla*. *Brooks v. State*, No. A09-169, 2006 WL 3593046, at \*2 (Minn. App. Dec. 12, 2006), *review denied* (Minn. Feb. 28, 2007). Because addressing Brooks’s argument will bring closure to consideration of the issue, we address it despite *Knaffla*.

In sum, neither the addition of a right for victims of crime to claim restitution, nor the establishment of the CVRB, nor the right of the prosecuting attorney to seek restitution, nor the authority of a presentence investigator to recommend restitution, eliminates the separate power of a district court to impose restitution as part of a sentence. We conclude that the sentencing court did have legal authority to impose restitution as part of Brooks's sentence.

## II.

The second issue raised by Brooks in this appeal is whether the record provides a sufficient factual basis for the \$6,000 in restitution that was ordered.

This argument is one that Brooks asserted in a previous appeal. In our most recent opinion in this series of *Brooks* appeals, we held that he could not challenge the restitution order because he failed to challenge the award within the time required in Minn. Stat. § 611A.045, subd. 3(b) (1998 & Supp. 1999). *State v. Brooks* 2008, 2008 WL 2344814, at \*3. Our dismissal of the issue in that appeal is the law of this case. *See Mattson v. Underwriters at Lloyds of London*, 414 N.W.2d 717, 719–20 (Minn. 1987) (discussing the finality of an appellate decision).

The statute provides that “[a]n offender may challenge restitution, but must do so by requesting a hearing within 30 days of receiving written notification of the amount of restitution requested, or within 30 days of sentencing, whichever is later. . . . A defendant may not challenge restitution after the 30-day time period has passed.” Minn. Stat. § 611A.045, subd. 3(b). Brooks is right that a court may correct a sentence not authorized by law at any time. Minn. R. Crim. P. 27.03, subd. 9. However, that rule does

not supersede the statute when the dispute is simply over the dollar amount of restitution or the adequacy of support in the record. *Gaiovnik*, 794 N.W.2d at 647. Thus, while challenges to the legal authority of the sentencing court to impose restitution are not barred by this 30-day statutory time limit, challenges to the amount of the restitution must be brought in accordance with this section of the statutes. We conclude that because Brooks did not bring this challenge to the amount of his restitution within the statutorily required time, he cannot now challenge the amount over ten years after the restitution was imposed.

**Affirmed.**

Dated: