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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-2161**

Alphanso Michael Lunan, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed July 22, 2013
Affirmed
Worke, Judge**

Hennepin County District Court
File No. 27-CR-03-013225

Herbert A. Igbanugo, Igbanugo Partners Int'l Law Firm, Minneapolis, Minnesota (for appellant)

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

Michael O. Freeman, Hennepin County Attorney, Michael Richardson, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Connolly, Presiding Judge; Worke, Judge; and Kirk, Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant challenges a postconviction order denying his petition to withdraw his guilty plea to fifth-degree controlled substance crime and his request for an evidentiary

hearing on the petition. Because the appeal is both time barred and procedurally barred, and because the district court did not abuse its discretion by denying appellant an evidentiary hearing, we affirm.

FACTS

On April 24, 2003, appellant Alphanso Michael Lunan pleaded guilty to felony fifth-degree controlled substance offense (possession), under Minn. Stat. § 152.025, subd. 2(1) (2002). Appellant’s plea petition states that the state agreed to a stay of adjudication if he agreed to plead guilty. The district court found appellant guilty and stayed entry of judgment for three years so long as appellant complied with terms of probation, consistent with Minn. Stat. § 152.18, subd. 1 (2002). Although both parties refer to appellant’s “conviction” in their appellate briefs, but the district court’s order denying appellant’s first postconviction appeal states that appellant “satisfied the conditions of the stayed sentence,” and that “[e]ven if the claims did not arise until [appellant] satisfied his terms of the stay of adjudication, the charge was dismissed on April 24, 2006, approximately four years and nine months before [appellant] filed the [postconviction] motion.”¹

Seven years and nine months after pleading guilty, on January 24, 2011, appellant moved the district court to vacate his conviction, claiming that it resulted from “an illegal

¹ Minn. Stat. § 152.18, subd. 1, establishes a prosecution deferral program for first-time drug offenders that permits the district court to sentence a first-time drug offender to probation “without entering a judgment of guilty,” provided that the offender does not violate the conditions of probation. Upon expiration of the probationary term, “the court shall discharge the person and dismiss the proceedings against that person.” *Id.* “The discharge or dismissal shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime or for any other purpose.” *Id.*

seizure and an illegal search of [appellant's] person and his vehicle, and his guilty plea was not knowing, voluntary, or intelligent.” As another ground for the motion, appellant asserted that a proper foundation was not laid for entry of his guilty plea and that he was unaware of the civil consequences of pleading guilty. In his affidavit attached to the motion, appellant stated that his attorney told him that because he was “charged with a 5th degree misdemeanor,” there would be no “civil repercussions” to pleading guilty, such as inability to obtain employment or join the military.

The district court denied appellant's motion to withdraw his plea, construing the motion as a postconviction petition and denying the motion as untimely under Minn. Stat. § 590.01, subd. 4(a) (2010), and under the standard for plea withdrawals, Minn. R. Crim. P. 15.05, subd. 1. The court ruled that appellant failed to demonstrate that his plea was not knowing, intelligent, or voluntary, and that appellant waived any Fourth Amendment search-and-seizure challenge by entering a guilty plea. Appellant did not seek further review of that order.

In a second postconviction petition filed less than a year later, appellant again moved the district court to withdraw his guilty plea and to vacate his “conviction” under Minn. Stat. § 590 (2010), because “he was never informed about the brutal immigration consequences of his guilty plea.” In addition to the arguments he raised in his first postconviction petition, appellant also claimed that his counsel was ineffective under *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052 (1984), and *Padilla v. Kentucky*, 130 S.Ct. 1473, 1482, 1486 (2010) (holding that defense counsel's failure to advise a defendant of deportation consequences of pleading guilty violates the Sixth Amendment).

In the affidavit attached to his second postconviction petition, appellant states that his “conviction”

makes me ineligible for a removal of the conditions on the permanent resident status that was granted to me back in 1998, which expired in 2000. Because my criminal defense counsel did not advise me of the immigration consequences of my guilty plea and I was subjected to an illegal search and seizure, I plead to the Court to vacate my wrongful conviction.

In a second order denying postconviction relief, the district court ruled that appellant failed to offer facts that would demonstrate ineffective assistance of counsel, because appellant conviction became final before *Padilla* was released and appellant received effective counsel at the time of his conviction, and because appellant did not establish a factual basis for plea withdrawal.

This appeal followed.

D E C I S I O N

On review of a postconviction decision, this court “examine[s] only whether the postconviction court’s findings are supported by sufficient evidence.” *Leake v. State*, 737 N.W.2d 531, 535 (Minn. 2007). This court “will reverse a decision of a postconviction court only if that court abused its discretion” and gives de novo review to issues of law.

Id.

Procedural bar

Once a direct appeal has been taken, all claims raised in that appeal, all claims known at the time of that appeal, and all claims that should have been known at the time of that appeal “will not be considered upon a subsequent petition for postconviction

relief.” *State v. Knaffla*, 309 Minn. 246, 252, 243 N.W.2d 737, 741 (1976); see Minn. Stat. § 590.01, subd. 1(2) (barring postconviction relief for claims that petitioner “could have . . . raised on direct appeal”); *Koskela v. State*, 690 N.W.2d 133, 134 (Minn. 2004). “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.” *Powers v. State*, 731 N.W.2d 499, 502 (Minn. 2007). A district court may apply the second exception if fairness requires it and if the petitioner did not “deliberately and inexcusably” fail to raise the claim on direct appeal. *Fox*, 474 N.W.2d at 825.

The issues raised by appellant in his second postconviction petition were either raised in appellant’s first postconviction proceeding or could have been raised in that proceeding. Appellant’s first postconviction petition alleged “an illegal seizure and an illegal search of [appellant’s] person and his vehicle [occurred], and his guilty plea was not knowing, voluntary, or intelligent.” See *James v. State*, 699 N.W.2d 723, 727 (Minn. 2005) (requiring person seeking to withdraw a guilty plea after sentencing to do so in a petition for postconviction relief). Regarding his guilty plea, appellant argued that a proper foundation was not laid for entry of his plea and that he was unaware of the civil consequences of pleading guilty. Those issues were addressed on the merits and rejected in the first postconviction order that denied appellant relief, from which he did not seek further review. In addition, the only other claim he makes in his second postconviction petition is that his attorney provided ineffective assistance. This and the issues repeated in appellant’s second postconviction petition were either raised and considered in a prior

postconviction proceeding or could have been raised in a prior postconviction proceeding; as such, they are *Knaffla*-barred.

Time bar

Minn. Stat. § 590.01, subds. 4(a)(1), (b) (2012) prohibits a criminal defendant from filing a petition for postconviction relief more than two years after “the entry of judgment of conviction or sentence if no direct appeal is filed,” unless an exception applies. To the extent that appellant was “convicted,” that occurred in 2003. In denying appellant’s first postconviction petition, which was filed nearly eight years later after the “conviction,” the district court found that appellant’s petition was untimely under both section 590.01, subd. 4(a)(1), and under Minn. R. Crim. P. 15.05, subd. 1, which requires a “timely” withdrawal of a guilty plea. Appellant’s second postconviction petition was untimely for the same reasons, and appellant has offered no excuse for the untimeliness. The district court therefore properly ruled that appellant’s petition is time-barred.²

Evidentiary hearing

Finally, appellant also claims that the district court erred by denying his request for an evidentiary hearing. A person who is “convicted of a crime” may petition for postconviction relief, and the district court must grant a hearing on the petition unless the

² A postconviction petition seeking relief under the exceptions provided in Minn. Stat. § 590.01, subd. 4(b), “must be filed within two years of the date the claim arises.” Minn. Stat. § 590.01, subd. 4(c) (2012). The Minnesota Supreme Court has applied an objective standard to a claim based on this statutory exception, holding that it arises “when the petitioner knew or should have known that he had a claim.” *Sanchez v. State*, 816 N.W.2d 550, 560 (Minn. 2012). Appellant did not argue that an exception under subdivision 4(b) should apply or offer facts to show when his claim arose. This also supports our conclusion that appellant’s claims are now time-barred.

petition, files, and records “conclusively show that the petitioner is entitled to no relief.” Minn. Stat. § 590.01, subd. 1 (2012). A hearing “is not required unless facts are alleged which, if proved, would entitle a petitioner to the requested relief.” *Fratzke v. State*, 450 N.W.2d 101, 102 (Minn. 1990). Further, under *Knaffla*, a court may deny a petition for postconviction relief without an evidentiary hearing on all claims that were either known or available at the time of a petitioner’s direct appeal or earlier postconviction petition. 309 Minn. at 252, 243 N.W.2d at 741. The district court did not abuse its discretion by denying a hearing on appellant’s claims because the record shows, conclusively, that appellant’s claims are either time-barred or procedurally barred under *Knaffla*. *See Lee v. State*, 717 N.W.2d 896, 897 (Minn. 2006) (reviewing postconviction decisions under abuse-of-discretion standard); *see also Quick v. State*, 757 N.W.2d 278, 281 (Minn. 2008) (holding that it was not an abuse of discretion to deny a postconviction petition without an evidentiary hearing when the petitioner’s claims were “conclusively” *Knaffla* barred).

Affirmed.