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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A07-2227**

Thomas Richard Gray,  
petitioner,  
Appellant,

vs.

State of Minnesota,  
Respondent.

**Filed December 23, 2008  
Affirmed  
Crippen, Judge\***

Clearwater County District Court  
File No. 15-K5-93-114

Thomas R. Gray, #176186, 970 Pickett Street North, Bayport, MN 55003 (pro se appellant)

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101; and

Jeanine R. Brand, Clearwater County Attorney, 213 Main Avenue North, Department 301, Bagley, MN 56621 (for respondent)

Considered and decided by Klaphake, Presiding Judge; Worke, Judge; and Crippen, Judge.

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\* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

## UNPUBLISHED OPINION

**CRIPPEN**, Judge

In this postconviction appeal, appellant Thomas Gray challenges the district court's denial of his second petition for postconviction relief. Because appellant's claims of ineffective assistance of trial counsel and ineffective assistance of postconviction counsel do not establish a basis for relief, we affirm.

### FACTS

Following a 1994 jury trial, appellant was convicted of second-degree murder of his wife. At appellant's request, this court dismissed his timely appeal and remanded the matter for postconviction proceedings. In his first postconviction petition, appellant argued that his trial counsel was ineffective and disputed the district court's upward sentencing departure. The postconviction court denied his petition, and this court affirmed the decision. *Gray v. State*, No. C6-95-1870 (Minn. App. May 14, 1996).

Appellant filed a second petition for postconviction relief in June 2007, which was denied by the postconviction court following an evidentiary hearing. This appeal followed.

### DECISION

Appellant's argument that his trial counsel was ineffective is barred under the rule announced in *State v. Knaffla*, 309 Minn. 246, 252, 243 N.W.2d 737, 741 (1976) (indicating that, when petitioner has filed previous postconviction petition, "all matters raised therein, and all claims known but not raised, will not be considered upon a subsequent petition for postconviction relief"). Appellant raised a claim of ineffective

assistance of trial counsel in his first postconviction petition, and he does not dispute that the issues he raises in his second petition were available to him when he filed his first petition. And appellant's claim does not qualify for review under either of the *Knaffla* exceptions. See *Perry v. State*, 731 N.W.2d 143, 146 (Minn. 2007) (explaining that claim is not *Knaffla* barred if it "is so novel that the legal basis was not available on direct appeal" or if "the interests of justice require review"). Appellant's claim is not novel. See *McKenzie v. State*, 754 N.W.2d 366, 369 (Minn. 2008) (indicating that ineffective-assistance-of-counsel claims brought after 1984 are not novel). Because appellant's claim concerns matters of trial strategy, the interests of justice do not establish a basis for relief. *Ives v. State*, 655 N.W.2d 633, 636 (Minn. 2003).

Appellant asserts that his postconviction counsel was ineffective because, in challenging the effectiveness of his trial counsel, appellate counsel did not sufficiently expose trial counsel's strategic errors. But errors in trial strategy do not provide a basis for claims of ineffective assistance of counsel. *State v. Jones*, 392 N.W.2d 224, 236 (Minn. 1986). And when an ineffective-assistance-of-appellate-counsel claim generally "is predicated on [an] underlying claim against" trial counsel, the "appellate counsel claim automatically fails" when petitioner cannot establish his claim of ineffective assistance of trial counsel. *Sullivan v. State*, 585 N.W.2d 782, 784 (Minn. 1998). Appellant has failed to specify any other deficiency on the part of his postconviction counsel or otherwise enunciate an issue for review.

**Affirmed.**