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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A07-2272**

Robert Q. Jackson, petitioner,  
Appellant,

vs.

State of Minnesota,  
Respondent.

**Filed December 9, 2008  
Affirmed  
Halbrooks, Judge**

Hennepin County District Court  
File No. 98064711

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

James C. Backstrom, Dakota County Attorney, Cheri A. Townsend, Assistant County Attorney, Dakota County Judicial Center, 1560 Highway 55, Hastings, MN 55033 (for respondent)

Considered and decided by Toussaint, Chief Judge; Halbrooks, Judge; and Collins,  
Judge.\*

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

## UNPUBLISHED OPINION

**HALBROOKS**, Judge

Appellant challenges the district court's denial of his second petition for postconviction relief. Because the district court acted within its discretion, we affirm.

### FACTS

On April 17, 1999, a Hennepin County jury found appellant Robert Quarry Jackson guilty of one count of second-degree assault and two counts of second-degree intentional murder. Appellant was sentenced to 33 months for assault with a dangerous weapon (Minn. Stat. § 609.222, subd. 1 (1998)); a concurrent term of 386 months for one count of second-degree intentional murder (Minn. Stat. § 609.19, subd. 1(1) (1998)); and a consecutive term of 306 months for a second count of second-degree murder. Appellant subsequently challenged his conviction in a direct appeal to this court on two grounds: (1) that the district court erred in denying his motion to sever the assault charge from the murder charges and (2) that the district court abused its discretion in denying his motion for a *Schwartz* hearing. We affirmed. *State v. Jackson*, 615 N.W.2d 391 (Minn. App. 2000), *review denied* (Minn. Oct. 17, 2000).

In September 2001, appellant, pro se, filed his first petition for postconviction relief in district court. In the 2001 petition, appellant claimed that (1) the district court erred when it denied his motion to sever the offenses; (2) the district court abused its discretion when it denied his motion for a *Schwartz* hearing; (3) he was deprived of his Sixth Amendment right to a jury of his peers; (4) his trial counsel was ineffective; and (5) his appellate counsel was ineffective. Appellant requested that the judgment of

conviction and his sentence be vacated or, in the alternative, that an evidentiary hearing be held on the issues of ineffective assistance of counsel and jury misconduct.

In an order dated November 13, 2001, the district court denied appellant's petition without a hearing. The district court concluded that because appellant's claims regarding the motions to sever and for a *Schwartz* hearing had already been raised and decided on direct appeal, those claims were procedurally barred. The district court further concluded that appellant's claims regarding ineffective assistance of trial counsel and his right to a trial by a jury of his peers were procedurally barred because both claims were known, but not raised, on direct appeal. In addition, the district court, who was the same judge who presided at appellant's trial, specifically noted that appellant's trial counsel provided him with "an impressively competent defense." Finally, the district court concluded that appellant's claim of ineffective assistance of appellate counsel was properly before it, but the district court denied the claim on the ground that appellant did not offer any specific allegations or any factual support for his assertions. Appellant did not appeal the denial of his 2001 postconviction petition.

Appellant, then represented by counsel, filed a second petition for postconviction relief on August 3, 2007. Appellant claimed in this petition that (1) his trial counsel was ineffective and (2) new and exculpatory evidence that warranted a new trial had been discovered. The "new" evidence consisted of the identification of two additional witnesses, Michael Styles and Clarence Holt, who would allegedly testify regarding appellant's innocence. Appellant requested that his convictions and sentence be vacated or, in the alternative, that a new trial or evidentiary hearing be granted.

The district court denied appellant's 2007 postconviction petition without a hearing.<sup>1</sup> The district court concluded that appellant's ineffective-assistance-of-trial-counsel claim was barred by *State v. Knaffla*, 309 Minn. 246, 243 N.W.2d 737 (1976), and did not fit within either of the exceptions to the *Knaffla* procedural bar. As to appellant's claim of new and exculpatory evidence, the district court concluded that, at the time of trial, all parties knew there was a third individual named "Michael." Further, the district court stated that the "new" evidence was doubtful, inadmissible, and would not change the outcome of the trial given that the source of the evidence was an affidavit of a third person who stated that Holt (no affidavit presented) said that he had talked to Styles (no affidavit presented), who said that he was involved in the murders. This appeal follows.

## DECISION

### I.

A summary denial of a postconviction petition is reviewed for an abuse of discretion. *Powers v. State*, 695 N.W.2d 371, 374 (Minn. 2005). *Knaffla* bars postconviction claims that were raised, or known but not raised, in an earlier postconviction petition. *Spears v. State*, 725 N.W.2d 696, 700 (Minn. 2006), *cert. denied*, 127 S. Ct. 2985 (June 18, 2007). Here, appellant raised the issue of ineffective assistance of trial counsel in his 2001 postconviction petition. The district court

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<sup>1</sup> Again, the same district court judge who presided at appellant's trial and ruled on his first postconviction petition considered his second postconviction petition.

considered the issue and held that it was barred due to appellant's failure to raise it in his direct appeal. There are two exceptions to the *Knaffla* bar.

A postconviction court may, however, hear and consider a claim that was previously known but not raised (1) if the claim presents a novel legal issue or (2) if fairness requires review of the claim and the petitioner did not deliberately and inexcusably fail to raise the issue on direct appeal.

*Quick v. State*, 692 N.W.2d 438, 439 (Minn. 2005). But the supreme court has held that an ineffective-assistance-of-counsel claim is not a novel legal issue for the purposes of the *Knaffla* exception. *Schleicher v. State*, 718 N.W.2d 440, 447–48 (Minn. 2006).

As for the second exception, an ineffective-assistance claim may be reviewed in the interests of justice if the district court determines that additional fact-finding is necessary in order to evaluate the merits of the claim. *Id.* at 447. Additional fact-finding is necessary only if evidence outside the trial record, such as attorney-client communication, is necessary to the assessment of the validity of the claim. *Id.* But the fairness exception to the *Knaffla* bar does not apply if a petitioner offers no reason in his postconviction petition for his failure to raise an ineffective-assistance-of-trial-counsel claim on direct appeal. *Azure v. State*, 700 N.W.2d 443, 449 (Minn. 2005). Here, appellant offered no reason in his first postconviction petition to the district court for his failure to raise this claim on direct appeal. This claim has now been raised and denied twice by the district court. The district court was well within its discretion in determining the ineffective-assistance-of-trial-counsel claim to be barred by *Knaffla*.

## II.

The district court denied appellant's request for a new trial, concluding that it was not warranted by his claims of "new" evidence. Absent an abuse of discretion, we will not disturb a district court's decision to grant or deny a new trial on the basis of newly discovered evidence. *State v. Rhodes*, 657 N.W.2d 823, 845 (Minn. 2003). "Review is limited to whether there is sufficient evidence to sustain the postconviction court's findings." *State v. Hooper*, 620 N.W.2d 31, 40 (Minn. 2000).

A new trial based on newly discovered evidence may be granted if a defendant proves

(1) that the evidence was not known to the defendant or his/her counsel at the time of the trial; (2) that the evidence could not have been discovered through due diligence before trial; (3) that the evidence is not cumulative, impeaching, or doubtful; and (4) that the evidence would probably produce an acquittal or a more favorable result.

*Rainer v. State*, 566 N.W.2d 692, 695 (Minn. 1997). The district court directly addressed the *Rainer* factors, stating

[Appellant] argues the existence of new and exculpatory evidence, presenting an affidavit by someone (Emily A. Babcock) who knows someone (Clarence Allen Holt) (no affidavit presented) who said he talked to a man named Michael Styles, who said he was the third individual involved in the assault and murders of June 26, 1998. However, at the time of trial, all parties knew that there was a third individual named "Michael" involved, the new evidence regarding Michael Styles is doubtful, inadmissible and would not change the outcome of the trial.

Furthermore, the jury heard testimony throughout the trial that an individual known only as "Mike" was involved with the murders. The jury also heard testimony that the police

investigated the possibility that Mike's real name was Michael Styles. There is sufficient evidence in this record to sustain the postconviction court's findings. We therefore conclude that the district court did not abuse its discretion in denying appellant a new trial.

### III.

Appellant's third issue relates to the district court's denial of his request for an evidentiary hearing on his postconviction petition. We review the district court's denial of a request for an evidentiary hearing for an abuse of discretion. *See Powers*, 695 N.W.2d at 374 (stating that a summary denial of a postconviction petition is reviewed for an abuse of discretion).

A postconviction court is not required to conduct an evidentiary hearing "if the petition, files, and record conclusively show that the petitioner is entitled to no relief." *Greer v. State*, 673 N.W.2d 151, 155 (Minn. 2004) (quotation omitted); *see also* Minn. Stat. § 590.04, subd. 1 (2006). Here, the petition, files, and record conclusively show that petitioner is entitled to no relief upon his claim of newly discovered evidence. The district court therefore did not abuse its discretion in denying appellant an evidentiary hearing concerning his new evidence.

In addition, a postconviction court "may summarily deny a second or successive petition for similar relief on behalf of the same petitioner." Minn. Stat. § 590.04, subd. 3 (2006). Because appellant raised his ineffective-assistance claim in a previous postconviction petition, the district court did not abuse its discretion in denying appellant an evidentiary hearing concerning that claim. *See Schleicher*, 718 N.W.2d at 450 (stating

that when *Knaffla* bars a claim and the claim is subject to summary denial under Minn. Stat. § 590.04, subd. 3, an evidentiary hearing is not required).

**Affirmed.**