STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0348

Rodney Allen Mattmiller,
petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed December 30, 2008
Affirmed
Klaphake, Judge

Washington County District Court
File No. K0-02-2092

John Remington Graham, 180 Haut de la Paroisse, St.-Agapit (LOTB), Quebec GOAS 1Z0 Canada (for appellant)

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Douglas H. Johnson, Washington County Courthouse, 14949 62nd Street North, Stillwater, MN 55082; and

Michael O. Freeman, Hennepin County Attorney, Jean E. Burdorf, Assistant County Attorney, C-2000 Government Center, 300 S. 6th Street, Minneapolis, MN 55487 (for respondent)

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

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

KLAPHAKE, Judge

In 2002, appellant Rodney Mattmiller was convicted in Washington County of eight counts of tax evasion, filing false or fraudulent tax returns, and failure to pay motor vehicle taxes. In this appeal from an order denying his second petition for postconviction relief, appellant argues that the district court abused its discretion by concluding that this petition was identical to his first petition and by denying it without an evidentiary hearing. Appellant claims that the Hennepin County assistant attorneys who prosecuted his case under a power-sharing agreement between Washington and Hennepin Counties, lacked authority to do so, and that this defect was jurisdictional. Because any defect in the appointment of the assistant county attorneys was technical and not jurisdictional, and because the claim is procedurally barred under *State v. Knaffla*, 309 Minn. 246, 252, 243 N.W.2d 737, 741 (1976), we observe no abuse of discretion in the postconviction court's summary denial of appellant's petition.

D E C I S I O N

"This court will reverse a postconviction decision only for an abuse of discretion, and while we give de novo review to its legal determinations, we will reverse its factual findings only if clearly erroneous. The district court abuses its discretion if it misinterprets or misapplies the law." *State v. Jedlicka*, 747 N.W.2d 580, 582 (Minn. App. 2008) (citations and quotation omitted).

First, appellant's petition fails on the merits. In *State v. Abbott*, 356 N.W.2d 677, 679 (Minn. 1984), the supreme court rejected a defendant's claim that he was denied due

process when the attorney who prosecuted his case "was not properly appointed an assistant county attorney." There, the court held that "even if the prosecutor's appointment was technically defective, the defect did not prejudice defendant or deprive him of a fair trial." *Id.*

Appellant relies on *State v. Persons*, 528 N.W.2d 278, 280 (Minn. App. 1995), where this court vacated a criminal conviction on direct appeal, ruling that the district court erred by refusing to dismiss a criminal complaint that was initiated by a prosecuting attorney who lacked statutory authority to prosecute the case. But in *Persons*, the prosecutor lacked authority because he charged the defendant with a violation that occurred in another venue, one where the prosecutor had no authority. *Id*. at 279. Here, appellant was charged in the proper venue and the prosecutor acted under the authority of an apparent 1970 power-sharing agreement between Washington and Hennepin Counties, which granted Hennepin County prosecutors authority to prosecute cases in Washington County in the case of conflicts. *See Mattmiller v. State*, No. A04-2157, 2005 WL 1389902, at *1 (Minn. App. June 14, 2005), *review denied* (Minn. Aug. 17, 2005). This court addressed and relied on *Abbott* and *Persons* in its opinion affirming the first postconviction court's rejection of appellant's claim that the assistant county attorney lacked legal authority to act on behalf of Washington County. *See id.* at *2.

We again conclude that at most, appellant raised a technical defect to prosecution of his case by the assistant county attorneys and that this technical defect did not prejudice appellant or deprive him of a fair trial. Because we conclude that this is a technical, rather than jurisdictional, defect, appellant's reliance on *State v. Johnson*, 653

N.W.2d 646 (Minn. App. 2002), is misplaced. In *Johnson*, we stated that certain defects cannot be waived, such as the prohibition against double sentencing. *Id.* at 650-51. No such prohibition exists against waiver of a non-prejudicial, technical defect.

Second, appellant's petition is procedurally barred. Once a petitioner has directly appealed a conviction, "all matters raised therein, and all claims known but not raised, will not be considered upon a subsequent petition for postconviction relief." *Knaffla*, 309 Minn. at 252, 243 N.W.2d at 741; *see Quick v. State*, 757 N.W.2d 278, 280 (Minn. 2008) (recently reaffirming *Knaffla* rule); *see also Pederson v. State*, 649 N.W.2d 161, 163 (Minn. 2002) (stating that petition for postconviction relief is collateral attack on judgment, which carries presumption of regularity). There are two exceptions to the *Knaffla* rule: when "(1) a claim is so novel that the legal basis was not available on direct appeal, or (2) the interests of justice require review." *Perry v. State*, 731 N.W.2d 143, 146 (Minn. 2007); *see* Minn. Stat. § 590.01, subd. 4 (2006) (codifying rule). This claim is not novel because we have already ruled on this issue; nor do we conclude that review is necessary in the interests of justice.

The postconviction court correctly rejected appellant's petition in accordance with *Knaffla*. Appellant raised the identical issue in his first postconviction appeal, and the issue was decided adversely to him by this court in *Mattmiller*, 2005 WL 1389902, at *2. The supreme court denied appellant's petition for further review. Under these circumstances, the postconviction court did not abuse its discretion by denying appellant's second petition for postconviction relief that was based on an issue raised and rejected in his first postconviction petition. *See El-Shabazz v. State*, 754 N.W.2d 370,

375 (Minn. 2008) (affirming summary denial of postconviction petition when petitioner who filed three prior postconviction petitions raised issue that was procedurally barred); *Schleicher v. State*, 718 N.W.2d 440, 450 (Minn. 2006) (affirming summary denial of second petition for postconviction relief as not an abuse of discretion when issues raised in petition were procedurally barred); *see Jones v. State*, 671 N.W.2d 743, 746 (Minn. 2003) (stating that generally failure to raise issue in prior postconviction petition precludes review in subsequent postconviction proceedings).

Finally, because appellant raised an issue that was procedurally barred under *Knaffla*, the district court did not err in summarily denying appellant an evidentiary hearing on his second postconviction petition, given this procedural history. *See* Minn. Stat. § 590.04, subd. 3 (2006) (permitting postconviction court to summarily deny a petition without an evidentiary hearing if it is the second or successive petition requesting the same or similar relief by the same petitioner or if it raises issues that have been decided previously by an appellate court in the same case); *see Spann v. State*, 740 N.W.2d 570, 572 (Minn. 2006) (stating that postconviction petitioner entitled to evidentiary hearing only if facts alleged would entitle petitioner to relief requested).

Affirmed.