STATE OF MINNESOTA
IN COURT OF APPEALS
A09-507

Kenneth Dean Bohlman, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed December 1, 2009
Affirmed
Lansing, Judge

Blue Earth County District Court
File No. 07-K0-02-001164

Kenneth Dean Bohlman, 1101 Linden Lane, Faribault, MN 55021-6400 (pro se appellant)

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

Ross E. Arneson, Blue Earth County Attorney, Government Center, 410 South Fifth Street, P.O. Box 3129, Mankato, MN 56002-3129 (for respondent)

Considered and decided by Lansing, Presiding Judge; Johnson, Judge; and Crippen, Judge.*

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

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

LANSING, Judge

The district court denied, without an evidentiary hearing, Kenneth Bohlman's postconviction challenge to the admission of the transcript and a partial tape recording of a conversation as evidence in his 2004 trial on charges of criminal sexual conduct. Because Bohlman's claims are procedurally barred by *State v. Knaffla*, 309 Minn. 246, 243 N.W.2d 737 (1976), we affirm.

F A C T S

Following a jury trial in October 2004, Kenneth Bohlman was convicted of two counts of first-degree, criminal sexual conduct and one count of third-degree, criminal sexual conduct. The district court sentenced Bohlman to 144 months' imprisonment. In his direct appeal from the conviction, Bohlman raised three issues: prosecutorial misconduct; evidentiary error in excluding evidence of the complaining witness's prior sexual abuse and statements to police; and evidentiary error in admitting a transcript and partial tape recording of a conversation between Bohlman and the complaining witness that police obtained by providing the complaining witness with a covert recording device that she agreed to wear. *State v. Bohlman*, A05-0207, 2006 WL 915765, at *2-7 (Minn. App. Apr. 11, 2006), *review denied* (Minn. July 19, 2006). Bohlman also challenged his sentence. *Id.* at *7. We affirmed Bohlman's conviction but reversed his sentence and remanded for resentencing. *Id.*

In February 2009 Bohlman filed a pro se motion seeking reconsideration of the district court's admission of his taped conversation with the victim. Bohlman argued that

the evidence was unlawfully obtained and that no warrant had been issued that authorized the recording. The state argued that the motion was essentially a petition for postconviction relief on issues that had already been raised on direct appeal or were known and could have been raised and were, therefore, *Knaffla*-barred. The district court, without holding an evidentiary hearing, denied relief on the grounds that Bohlman's motion presented "nothing new" and "[t]he interests of finality require that all matters raised and all claims known should be considered in a single postconviction appeal for relief." Bohlman appeals that determination.

D E C I S I O N

We review the district court's summary denial of a postconviction petition for abuse of discretion. *Lee v. State*, 717 N.W.2d 896, 897 (Minn. 2006). If the petition, files, and records conclusively show that the petitioner is entitled to no relief, a postconviction court may deny the petition without an evidentiary hearing. Minn. Stat. § 590.04, subd. 1 (2008); *Scales v. State*, 620 N.W.2d 706, 707-08 (Minn. 2001).

Claims that have been raised on direct appeal, or that could have been raised when the direct appeal was taken, may not be considered in a petition for postconviction relief. Minn. Stat. §§ 590.01, subd. 1, .04, subd. 3 (2008); *Knaffla*, 309 Minn. at 252, 243 N.W.2d at 741. Two exceptions to this rule permit review when the failure was not deliberate and the interests of justice require review, or when a claim is so novel that its legal basis was not available on direct appeal. *Perry v. State*, 731 N.W.2d 143, 146 (Minn. 2007). *Knaffla* does not recognize a "plain error" exception to this finality rule. *Townsend v. State*, 723 N.W.2d 14, 19 (Minn. 2006).

In his petition and on appeal, Bohlman argues that the district court plainly erred by admitting evidence of the recorded conversation he had with the victim. He contends that the evidence was unlawfully obtained without a warrant in violation of Minn. Stat. § 626A.02, subd. 1 (2000). Bohlman knew at the time of his direct appeal that evidence of the recorded conversation was admitted at trial. He specifically appealed the district court's evidentiary rulings admitting the transcript of the conversation and allowing the state to play a portion of the tape-recorded conversation. *Bohlman*, 2006 WL 915765, at *6-7. Bohlman's references in this appeal to the statute and warrant provisions challenge the admission of the same evidence. Although these arguments were not specifically developed in Bohlman's direct appeal, the *Knaffla* bar nonetheless applies because the issues were known and the arguments could have been raised. And Bohlman's arguments do not fall under either exception to the *Knaffla* rule. Because *Knaffla* bars review of the issues related to the admission of the transcript and tape-recorded conversation, the district court properly denied Bohlman's postconviction petition without an evidentiary hearing.

Finally, we note that even if Bohlman's arguments were not *Knaffla*-barred, they fail for two additional and independent reasons. First, Bohlman's legal challenge to the admissibility of the transcript and tape recording lacks merit because it is undisputed that the other participant in the conversation, the complaining witness, not only consented to the recording but facilitated it. *See* Minn. Stat. § 626A.02, subd. 2(c) (2000) (providing that it is not unlawful "for a person acting under color of law to intercept a wire, electronic, or oral communication . . . [when] one of the parties to the communication has

given prior consent to such interception"); *State v. Olkon*, 299 N.W.2d 89, 102-03 (Minn. 1980) (holding that defendant's constitutional right to privacy was not violated when one party to conversation consented to recording of communication). And second, Bohlman's petition was subject to dismissal as untimely because it was filed more than two years after disposition of his direct appeal. *See* Minn. Stat. § 590.01, subd. 4 (a)(2) (2008).

Affirmed.