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STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0170

Michael Robert Robinson, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed June 19, 2017
Affirmed
Kirk, Judge

Hennepin County District Court
File No. 27-CR-11-21246

Michael Robert Robinson, Faribault, Minnesota (pro se 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 Ross, Presiding Judge; Worke, Judge; and Kirk, Judge.

UNPUBLISHED OPINION

KIRK, Judge

On appeal from the denial of his petition for postconviction relief, appellant Michael Robinson argues that the postconviction court erred by denying his requests for plea withdrawal, an evidentiary hearing, and resentencing. Because we conclude that the

postconviction court did not err by denying Robinson's requests for plea withdrawal for an evidentiary hearing, and because Robinson is not entitled to resentencing, we affirm.

FACTS

In June 2011, Robinson was charged with four counts of first-degree controlled-substance crime (sale). In August 2012, the parties appeared for trial. Robinson moved to discharge his court-appointed attorney, explaining that he and his attorney did not "see eye-to-eye" and that he believed it would be in his best interests to be represented by different counsel. Robinson had not yet retained a different attorney, but claimed that he could obtain one. The district court denied Robinson's motion.

After a recess, the parties informed the district court that they had reached a plea agreement, which provided that Robinson would plead guilty to one count of first-degree controlled-substance crime, the state would dismiss the remaining three counts at sentencing, and Robinson would receive a 90-month sentence—a downward departure—if he remained law abiding and appeared for sentencing. If Robinson failed to remain law abiding and appear for sentencing, he would receive a presumptive 146-month sentence. Robinson pleaded guilty pursuant to the agreement and admitted that he sold more than ten grams of cocaine in March 2010. The district court instructed him to return for sentencing on November 27, 2012.

Robinson did not appear for sentencing on November 27, 2012. He next appeared before the district court in October 2014. At his sentencing hearing, Robinson moved to withdraw his guilty plea and argued that he only pleaded guilty because the district court denied his request to discharge his court-appointed attorney. The district court denied

Robinson's motion and sentenced him to 146 months in prison. In January 2015, Robinson filed a notice of appeal, challenging the judgment of conviction.

In his direct appeal, Robinson argued that the district court erred by (1) denying his presentence motion to withdraw his guilty plea, (2) not granting him a downward durational departure, and (3) sentencing him based on an incorrect criminal-history score. *State v. Robinson*, No. A15-0102, 2015 WL 7940953, at *1 (Minn. App. Dec. 7, 2015), *review denied* (Minn. Mar. 15, 2016). This court concluded that Robinson failed to establish an adequate case for plea withdrawal and that he was not entitled to a downward durational departure. *Id.* at *2-3. Because the district court used an incorrect criminal-history score when sentencing Robinson, we reversed and remanded for resentencing. *Id.* at *3-4.

In January 2016, Robinson petitioned for review by the supreme court and argued that he should have been permitted to withdraw his guilty plea before sentencing. In March 2016, the supreme court denied Robinson's petition. In April 2016, the district court amended Robinson's sentence to 129 months using the correct criminal-history score.

In September 2016, Robinson filed a petition for postconviction relief under Minn. Stat. § 590.01 (2016). Robinson again argued that he was forced to accept the plea agreement because his court-appointed counsel was inadequate. He requested that the district court hold a hearing on the matter, appoint counsel to represent him in the postconviction process, vacate his conviction, and allow him to withdraw his guilty plea. In the alternative, Robinson requested that the district court resentence him according to

the drug sentencing reform act (DSRA) or reduce his sentence to 95 months in accordance with the 2016 Minnesota Sentencing Guidelines.

In December 2016, the postconviction court denied Robinson's petition for postconviction relief. The postconviction court concluded that Robinson's request to withdraw his guilty plea was *Knaffla*-barred because it had already been addressed and rejected by this court on direct appeal. The postconviction court denied Robinson's request for an evidentiary hearing because it concluded the matters raised were *Knaffla*-barred and because Robinson had failed to allege facts that, if proved by a fair preponderance of the evidence, would entitle him to relief. Finally, the postconviction court denied Robinson's resentencing requests because it determined that petitions based on severity-level reclassifications are invalid and because Robinson was sentenced in October 2014, prior to the August 1, 2016 effective date of the 2016 sentencing guidelines. Robinson now appeals the denial of his postconviction petition.

D E C I S I O N

I. Plea Withdrawal

Robinson argues that the postconviction court erred by denying his motion for plea withdrawal. Appellate courts review "postconviction proceeding[s] to determine only whether sufficient evidence exists to support the postconviction court's findings." *Ferguson v. State*, 645 N.W.2d 437, 442 (Minn. 2002). We will not disturb a postconviction court's decision absent an abuse of discretion. *Id.*

The postconviction court denied Robinson's motion for plea withdrawal as *Knaffla*-barred. Under the *Knaffla* rule, "Once a direct appeal has been taken, all claims that were

raised in the direct appeal and all claims that were known or should have been known but were not raised will not be considered upon a subsequent petition for postconviction relief." *White v. State*, 711 N.W.2d 106, 109 (Minn. 2006). The *Knaffla* rule has two recognized exceptions. *Leake v. State*, 737 N.W.2d 531, 535 (Minn. 2007). First, a claim known but not raised on direct appeal is not barred if its novelty was so great that its legal basis was not reasonably available when the direct appeal was taken and, second, a claim is not barred in limited situations where fairness so requires if the petitioner did not deliberately and inexcusably fail to raise the issue on direct appeal. *Id.*

In his direct appeal, Robinson challenged the district court's denial of his motion for plea withdrawal, arguing that plea withdrawal was fair and just in light of the district court's refusal to allow him to hire replacement counsel prior to trial. *Robinson*, 2015 WL 7940953, at *2. He now argues that he is entitled to withdraw his guilty plea because he involuntarily submitted it after being forced to proceed with an unprepared attorney and asserts that the district court failed to conduct a "searching inquiry" to determine why he requested substitute counsel before submitting his guilty plea. Robinson raised these claims in his direct appeal, or knew or should have known of these claims at the time of his direct appeal. Because Robinson has not shown that either *Knaffla* exception applies, his claims are *Knaffla*-barred. The postconviction court did not abuse its discretion by denying Robinson's motion for plea withdrawal.

II. Evidentiary Hearing

Robinson argues that the postconviction court erred by denying his request to hold an evidentiary hearing to determine whether his guilty plea was involuntarily entered

because his court-appointed counsel was ineffective. Appellate courts "review a denial of a petition for postconviction relief, including a denial of relief without an evidentiary hearing, for an abuse of discretion." *State v. Nicks*, 831 N.W.2d 493, 503 (Minn. 2013). "A postconviction court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record." *Id.* (quotation omitted).

A person who petitions for postconviction relief under Minn. Stat. § 590.01 is entitled to a hearing on the petition "[u]nless the petition and the files and records of the proceeding conclusively show that the petitioner is entitled to no relief." Minn. Stat. § 590.04, subd. 1 (2016). A postconviction court may summarily deny a claim that is *Knaffla*-barred. *Colbert v. State*, 870 N.W.2d 616, 622 (Minn. 2015).

Robinson asserts that, if an evidentiary hearing were held, he could establish: (1) that his counsel was ineffective because she was unprepared for trial; (2) that another attorney had committed to represent him; and (3) that he only entered a guilty plea because the denial of his motion to discharge his court-appointed counsel forced him to proceed with an unprepared attorney. For the reasons explained above, Robinson's claims are *Knaffla*-barred. Because Robinson would not be entitled to relief even if he proved the facts alleged, the postconviction court did not abuse its discretion by denying Robinson's request for an evidentiary hearing.

III. Resentencing Under the DSRA

Robinson argues that he is entitled to be resentenced under the newly enacted statutes, which mitigate punishments for drug offenses. Robinson was convicted of first-degree controlled-substance crime in violation of Minn. Stat. § 152.021, subd. 1(1) (2010).

On May 22, 2016, the DSRA was signed into law. 2016 Minn. Laws ch. 160, at 576-92. The DSRA amended Minn. Stat. § 152.021 by, inter alia, raising the threshold weight of cocaine required for first-degree sale from 10 grams to 17 grams, if the offense does not involve a firearm or two aggravating factors. 2016 Minn. Laws ch. 160, § 3, at 577 (codified at Minn. Stat. § 152.021, subd. 1 (2016)). Robinson argues that his conduct constitutes a second-degree controlled-substance crime under the DSRA and asserts that the district court erred by denying his request for resentencing.[1]

To determine whether Robinson is entitled to be resentenced under the DSRA, we must interpret the sections of the DSRA under which he seeks resentencing. The interpretation of a statute is a question of law that appellate courts review de novo. *State v. Noggle*, 881 N.W.2d 545, 547 (Minn. 2016). The purpose of statutory interpretation is to ascertain and effectuate the legislature's intent. *State v. Leathers*, 799 N.W.2d 606, 608 (Minn. 2011).

The legislature has provided that "[n]o law shall be construed to be retroactive unless clearly and manifestly so intended by the legislature." Minn. Stat. § 645.21 (2016).

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[1] Relying on *Horoshak v. State*, 469 N.W.2d 474 (Minn. App. 1991), *review denied* (Minn. July 1, 1991), the postconviction court concluded that "petitions based on severity level reclassifications are invalid under Minnesota Statutes § 244.09, subd. 11," and denied Robinson's request to be resentenced for a second-degree controlled-substance crime under the DSRA. In *Horoshak*, this court concluded that the district court properly denied Horoshak's petition, which was invalid under Minn. Stat. § 244.09, subd. 11a (1990), because it requested retroactive sentence reduction on the basis of severity-level reclassification. 469 N.W.2d at 475-76. Because the legislature repealed subdivision 11a before the events here, neither that subdivision nor this court's *Horoshak* opinion controls. *See* 1997 Minn. Laws ch. 239, art. 3, §§ 25-26, at 2786 (repealing subdivision 11a, effective August 1, 1997).

Robinson concedes that his conviction became final on June 15, 2016, 90 days after the Minnesota Supreme Court denied his petition for review. Nonetheless, he argues that, under *State v. Coolidge*, 282 N.W.2d 511 (Minn. 1979), he is entitled to be resentenced because his conviction was not yet final when the DSRA reached final enactment on May 22, 2016. In *Coolidge*, the supreme court held that "a statute mitigating punishment is applied to acts committed before its effective date, as long as no final judgment has been reached." 282 N.W.2d at 514.

Here, Robinson requests to be resentenced under statutory amendments that took effect on August 1, 2016, more than a month after his conviction became final on June 15, 2016. *See* 2016 Minn. Laws ch. 160, §§ 3-4, at 577-81 (providing that Minn. Stat. §§ 152.021-.022 (2016) are "effective August 1, 2016, and appl[y] to crimes committed on or after that date). Because his conviction was final before the relevant sections of the DSRA took effect, Robinson is not entitled to be resentenced under the DSRA.

Even if the finality of Robinson's conviction did not bar the requested relief, this court would nonetheless deny his request to be resentenced under the DSRA because the legislature clearly indicated that the DSRA is not to be applied to conduct committed before the statute's effective date. In *Edstrom v. State*, the Minnesota Supreme Court said that "a statute mitigating punishment is to be applied to acts committed before its effective date, as long as no final judgment has been reached, *at least absent a contrary statement of intent by the legislature*." 326 N.W.2d 10, 10 (Minn. 1982) (emphasis added).

Here, the legislature provided that Minn. Stat. §§ 152.021-.022 (2016) are "effective August 1, 2016, and appl[y] to crimes committed on or after that date." 2016 Minn. Laws

ch. 160, §§ 3-4, at 577-81. This court has refused to apply a statutory amendment to conduct occurring before the amendment's effective date where similar language was used. In *State v. McDonnell*, we declined to apply a 2003 statutory amendment to conduct that occurred before August 1, 2003, where the legislature expressly provided that the amendment "is effective August 1, 2003, and applies to violations committed on or after that date." 686 N.W.2d 841, 846 (Minn. App. 2004) (quoting 2003 Minn. Laws 1st Spec. Sess. ch. 2, art. 9, § 1, at 1446), *review denied* (Minn. Nov. 16, 2004). In *State v. Basal*, we similarly declined to apply a 2007 statutory amendment to conduct that occurred in September 2005, where the legislature expressly provided that the amendment would take effect on January 1, 2008. 763 N.W.2d 328, 335-36 (Minn. App. 2009). Because the legislature clearly stated that the sections of the DSRA under which appellant seeks to reduce his sentence apply only to crimes committed on or after August 1, 2016, appellant is not entitled to be resentenced under the DSRA.

IV. Resentencing Under the 2016 Minnesota Sentencing Guidelines

Robinson argues that he is entitled to be resentenced under the 2016 Minnesota Sentencing Guidelines. We disagree. The portion of the DSRA that addresses the sentencing guidelines took effect on May 23, 2016, but the DSRA itself does not modify the guidelines. 2016 Minn. Laws ch. 160, § 18, at 590-91. Rather, the DSRA rejects certain amendments proposed by the commission and orders the commission to make other modifications. *Id.* Generally, modifications to the sentencing guidelines take effect on August 1 of the year in which they are submitted. Minn. Stat. § 244.09, subd. 11 (2016). But, modifications that are mandated or authorized by the legislature take effect according

to the procedural rules of the commission, which provide that amendments that do not need to be submitted to the legislature are effective on the date ordered by the commission. *Id.*; Minn. R. 3000.0600, subp. 3 (2015).

The first page of the 2016 sentencing guidelines states that the guidelines "are effective August 1, 2016, and determine the presumptive sentence for felony offenses committed on or after the effective date." Minn. Sent. Guidelines (2016). The guidelines also provide that "[m]odifications to the Minnesota Sentencing Guidelines and associated commentary apply to offenders whose date of offense is on or after the specified modification effective date." Minn. Sent. Guidelines 3.G.1 (2016). The 2016 Minnesota Sentencing Guidelines took effect on August 1, 2016. Because Robinson's offense occurred years before the 2016 sentencing guidelines took effect, he is not entitled to be resentenced under them.

Affirmed.