

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0388**

Hunter Lee Briscoe, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed December 4, 2017
Reversed and remanded
Peterson, Judge**

Clay County District Court
File No. 14-CR-14-1410

Cathryn Middlebrook, Chief Appellate Public Defender, Sara J. Euteneuer, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Brian J. Melton, Clay County Attorney, Lori H. Conroy, Assistant County Attorney, Moorhead, Minnesota (for respondent)

Considered and decided by Smith, Tracy M., Presiding Judge; Peterson, Judge; and Halbrooks, Judge.

UNPUBLISHED OPINION

PETERSON, Judge

In this appeal from the summary denial of his petition for postconviction relief, appellant Hunter Lee Briscoe argues that (1) the district court abused its discretion when it

did not review the merits of the petition, (2) his actions did not constitute the alleged crime, and (3) the jury instructions materially misstated the law. We reverse and remand.

FACTS

Briscoe was charged with third-degree burglary and misdemeanor theft for removing his dog from an animal-control facility without permission after the dog was impounded by an animal-control officer. A jury found Briscoe guilty as charged, and on March 12, 2015, the district court adjudicated Briscoe guilty of the third-degree-burglary offense and imposed a stayed 18-month sentence.

Briscoe did not file a direct appeal. Instead, in December 2016, Briscoe petitioned the district court for postconviction relief. Briscoe claimed in his petition, as he does on appeal, that his conviction must be reversed because taking his own dog did not constitute “stealing” under the burglary statute and because the district court erroneously instructed the jury.

The postconviction court summarily denied Briscoe’s petition without reaching the merits. The district court explained that because the issues Briscoe raised were questions of law and statutory interpretation, they should have been raised in a direct appeal. The postconviction court determined that because a direct appeal was previously available to Briscoe, and no evidentiary hearing on disputed facts was needed to address the issues, Briscoe’s petition was a “misuse of a post-conviction petition.” The postconviction court reasoned that to allow Briscoe to proceed “would essentially make the 90-day time requirement for [direct] appeals utterly meaningless, given the fact that all defendants have two years from their convictions to file petitions for postconviction relief.”

Briscoe now appeals.

DECISION

Briscoe argues that the district court abused its discretion when it summarily denied his postconviction petition without reviewing the merits. We agree.

Appellate courts review the denial of a petition for postconviction relief for an abuse of discretion. *Miles v. State*, 840 N.W.2d 195, 200 (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).

In Minnesota, a criminal defendant is guaranteed meaningful access to at least one right of review of a criminal conviction, whether by direct appeal or a first review by postconviction proceeding. *Deegan v. State*, 711 N.W.2d 89, 93 (Minn. 2006); *see* Minn. Stat. §§ 590.01-.11 (2016) (“postconviction statute”). Minnesota’s postconviction statute provides:

Except at a time when direct appellate relief is available, a person convicted of a crime, who claims that . . . the conviction obtained or the sentence or other disposition made violated the person’s rights under the Constitution or laws of the United States or of the state; . . . may commence a proceeding to secure relief by filing a petition in the district court in the county in which the conviction was had.

Minn. Stat. § 590.01, subd. 1.

When a postconviction petitioner does not bring a direct appeal and, instead, seeks first review by a postconviction proceeding, the petitioner is “entitled to raise nearly the same breadth of claims that could have been brought in a direct appeal,” so long as the postconviction petition complies with the procedures set forth under Minnesota Statutes

chapter 590. *Deegan*, 711 N.W.2d at 94. A first review by postconviction proceeding “is substantially similar in scope to a direct appeal.” *Id.*

In summarily denying Briscoe’s petition, the postconviction court relied on *Gaulke v. State*, 289 Minn. 354, 359, 184 N.W.2d 599, 602 (1971), where the Minnesota Supreme Court ruled that an issue of statutory right, as opposed to an issue of constitutional right, “may be asserted only by a direct appeal rather than by a petition for postconviction relief.” The postconviction court also relied on *Kelsey v. State*, 298 Minn. 531, 531, 214 N.W.2d 236, 237 (1974), in which the supreme court stated that issues that did not involve a factual dispute should have been raised on direct appeal. Both *Gaulke* and *Kelsey* are distinguishable and inapposite. In *Gaulke*, unlike here, the appellant had already received a review of his conviction by the supreme court and raised new issues at a postconviction proceeding.¹ 289 Minn. at 355, 184 N.W.2d at 600. In *Kelsey*, the supreme court had already reviewed and affirmed the petitioner’s conviction when the petitioner filed a petition for postconviction relief raising new legal issues. 298 Minn. at 531-32, 214 N.W.2d at 237.

Despite the statement in *Gaulke* that statutory issues must be asserted in a direct appeal, the supreme court in *State v. Knaffla* clarified that when the time for direct appeal has expired, “a petition for postconviction relief is proper to provide [the] defendant with

¹ In *Gaulke*, the appellant first petitioned the district court for a writ of error curam nobis in 1960 to challenge his conviction. *State ex rel. Gaulke v. Winona Cty.*, 259 Minn. 183, 183, 106 N.W.2d 560, 561 (1960). The writ of curam nobis was a common-law writ available to a convicted defendant to correct errors of fact that were unknown to a court at the time of trial, and it was used before the modern rules of criminal procedure were adopted. *State v. Kubus*, 243 Minn. 379, 381, 68 N.W.2d 217, 219 (1955).

a review of statutory assertions.” 309 Minn. 246, 252 n.6, 243 N.W.2d 737, 741 n.6 (1976). The *Knaffla* court approved bringing sufficiency-of-the-evidence claims and challenges to evidentiary rulings in a petition for postconviction relief, regardless of whether the petition raised issues of constitutional magnitude. *Id.* at 252, 243 N.W.2d at 741. The *Knaffla* court concluded that, in a postconviction proceeding, relief is not to be predicated upon a determination as to whether direct appeal from the conviction was taken within the prescribed time limit. *Id.*

Confusingly, soon after the *Knaffla* decision, the supreme court in *Hirt v. State*, 309 Minn. 574, 575, 244 N.W.2d 162, 163 (1976), stated that because an issue was “purely statutory,” it was “not properly raised in a postconviction proceeding.” But *Hirt* does not change our analysis for two reasons. First, in *Hirt*, the supreme court’s primary reason for not considering the “purely statutory” issue was that the issue had been raised on appeal but had not been litigated in district court. *Id.* at 575, 244 N.W.2d at 162. Second, any confusion created by *Hirt* concerning the scope of postconviction relief under Minnesota Statutes chapter 590 was more recently resolved in *Deegan*, which cited *Knaffla* for the principle that a postconviction petitioner may raise nearly the same breadth of claims that could have been brought in a direct appeal, so long as the procedural requirements of the postconviction-relief statute are met. 711 N.W.2d at 94. Consequently, the law in *Deegan* and *Knaffla* controls.

Briscoe complied with the procedural requirements of the postconviction-relief statute. Briscoe’s petition alleged statutory issues, as allowed under *Knaffla*, in accordance with Minn. Stat. § 590.01, subd. 1. And the petition was filed within two years after the

entry of judgment of conviction, in accordance with Minn. Stat. § 590.01, subd. 4. Because the procedural requirements were met, Briscoe was entitled to bring the same claims that he could have brought on direct appeal. *Deegan*, 711 N.W.2d at 94. The district court's decision to deny Briscoe's petition because it raised only statutory issues that should have been raised in a direct appeal was based on an erroneous view of the law and, therefore, was an abuse of discretion. Accordingly, we reverse the district court's order summarily denying Briscoe's petition for postconviction relief.

Additionally, Briscoe addresses the merits of his postconviction claims that his conviction for third-degree burglary must be reversed because (1) his actions did not constitute "stealing" as a matter of law under the burglary statute and (2) the district court materially misstated the law in its instructions to the jury on the intent-to-steal element of burglary. In general, appellate courts will not decide issues that were not first addressed by the district court. *State v. Sorenson*, 441 N.W.2d 455, 457 (Minn. 1989). Accordingly, we remand for the district court to address the merits of Briscoe's petition.

Reversed and remanded.