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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0797**

Hassan Mohamed Abdillahi, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed November 20, 2017
Affirmed
Hooten, Judge**

Hennepin County District Court
File No. 27-CR-08-52463

Hassan M. Abdillahi, Bayport, Minnesota (pro se appellant)

Michael O. Freeman, Hennepin County Attorney, Michael Richardson, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Larkin, Presiding Judge; Hooten, Judge; and Jesson, Judge.

UNPUBLISHED OPINION

HOOTEN, Judge

Appellant challenges the postconviction court's denial of his fourth petition for postconviction relief, arguing that his conviction was based on unconstitutionally suggestive identification procedures and that he is entitled to an evidentiary hearing because of newly discovered evidence. We affirm.

FACTS

A jury found appellant Hassan Mohamed Abdillahi guilty of second-degree intentional murder for the death of A.H. The district court sentenced Abdillahi to 391 months in prison. Abdillahi directly appealed his conviction to this court in 2011. This court affirmed the conviction and the Minnesota Supreme Court denied Abdillahi's petition for review. *State v. Abdillahi*, No. A09-2011, 2011 WL 691623 (Minn. App. Mar. 1, 2011), *review denied* (Minn. May 17, 2011) (*Abdillahi I*).

Abdillahi has since filed several petitions for postconviction relief. This court affirmed the denial of his first petition in June 2013, *Abdillahi v. State*, No. A12-1477, 2013 WL 2924900 (Minn. App. June 17, 2013), *review denied* (Minn. Aug. 20, 2013) (*Abdillahi II*), his second petition in August 2015, *Abdillahi v. State*, No. A14-1795, 2015 WL 4877721 (Minn. App. Aug. 17, 2015), *review denied* (Minn. Sept. 29, 2015) (*Abdillahi III*), and his third petition in August 2016, *Abdillahi v. State*, No. A16-0179, 2016 WL 4069294 (Minn. App. Aug. 1, 2016), *review denied* (Minn. Sept. 28, 2016) (*Abdillahi IV*).

In February 2017, Abdillahi filed his fourth postconviction petition accompanied by several requests to compel disclosure of certain evidence and information. The primary claim in his petition is that the police utilized unconstitutionally suggestive procedures to identify him as the suspect and that the prosecution unlawfully withheld this information from him.

In May 2017, the postconviction court denied the petition and his collateral motions without conducting an evidentiary hearing. The postconviction court concluded that all of Abdillahi's claims are barred under *Knaffla*, stating "all of the claims raised in the Fourth

Petition . . . were raised, were known, or should have been known at the time of [Abdillahi's] appeal, First Petition for Post-Conviction Relief, and/or Second and Third Petitions for Post-Conviction Relief.” The postconviction court further concluded that Abdillahi failed to establish that any of the exceptions to the *Knaffla* rule apply to his case. This appeal follows.

D E C I S I O N

Abdillahi contends that the postconviction court erred by denying his fourth postconviction petition. We review the denial of a postconviction petition, including the denial of relief without an evidentiary hearing, for an abuse of discretion. *State v. Nicks*, 831 N.W.2d 493, 503 (Minn. 2013). We review legal issues de novo and factual issues by considering whether there is sufficient evidence to support the postconviction court's findings. *Vance v. State*, 752 N.W.2d 509, 512 (Minn. 2008).

The postconviction court may summarily deny a petition without a hearing if the record demonstrates that the petitioner is not entitled to relief. *Hooper v. State*, 888 N.W.2d 138, 141 (Minn. 2016). For instance, the postconviction court may deny the petition if it is untimely or procedurally barred. *Colbert v. State*, 870 N.W.2d 616, 622 (Minn. 2015). We resolve all doubts about whether an evidentiary hearing is necessary in favor of the petitioner. *Bobo v. State*, 820 N.W.2d 511, 516 (Minn. 2012).

Here, the postconviction court concluded that Abdillahi's claim is procedurally barred by the *Knaffla* rule. Once a direct appeal has been taken, “all matters raised therein, and all claims known but not raised, will not be considered upon a subsequent petition for postconviction relief.” *State v. Knaffla*, 309 Minn. 246, 252, 243 N.W.2d 737, 741 (1976).

Minnesota courts “have extended the *Knaffla* rule to claims that were, or should have been, raised in a previous postconviction petition.” *Lussier v. State*, 853 N.W.2d 149, 152 (Minn. 2014). “There are two exceptions to the *Knaffla* rule: (1) if a novel legal issue is presented, or (2) if the interests of justice require review.” *White v. State*, 711 N.W.2d 106, 109 (Minn. 2006).

Abdillahi argues that the state engaged in prosecutorial misconduct by using “unconstitutionally suggestive” identification procedures. He asserts that police investigators coerced or pressured two witnesses, A.I. and S.M., into identifying him as the suspect of the offense. And he claims that the prosecution’s failure to disclose these identification procedures violated his due process rights and constituted a *Brady* violation. *See Brady v. Maryland*, 373 U.S. 83, 87, 83 S. Ct. 1194, 1196–97 (1963) (holding that “suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.”). The postconviction court concluded that these claims are *Knaffla*-barred because Abdillahi had previously claimed that the state committed a *Brady* violation by not disclosing A.I.’s pretrial interview, and therefore he could have or should have brought this additional *Brady* claim in a prior petition.

Abdillahi raised several forms of prosecutorial misconduct in a past appeal. For instance, in his third postconviction petition, Abdillahi alleged that the prosecution’s failure to disclose A.I.’s pretrial statements was prosecutorial misconduct that amounted to a *Brady* violation. *Abdillahi IV*, No. A16-0179, 2016 WL 4069294, at *3–4. This court concluded that even assuming that the claim was not *Knaffla*-barred from prior petitions,

the claim failed on its merits. *Id.* at *4–5. And, the alleged *Brady* violation that the prosecution withheld information regarding A.I.’s pretrial statements shares striking similarity to the claim now alleged in his fourth petition that the prosecutor committed a *Brady* violation by withholding information regarding the police’s alleged use of unconstitutionally suggestive procedures to identify him as the suspect. *See id.*, at *4. It is reasonable to conclude that Abdillahi could have raised this claim, or should have raised this claim, in a prior postconviction petition or on direct appeal. Therefore, this claim is *Knaffla*-barred.

Although Abdillahi concedes that he raised a *Brady* violation claim in a prior appeal, he contends that this claim is different and not barred due to newly discovered evidence, the interests of justice exception, his actual innocence, cause and prejudice, and equitable tolling. His support for these arguments derives from an affidavit in which he alleges that S.M. told him that the police detectives “pressured, coached and directed” S.M. and A.I. to identify him as the suspect. But, as discussed below, these additional arguments are unpersuasive.

Newly Discovered Evidence

Abdillahi may be entitled to an evidentiary hearing if his claim of newly discovered evidence passes the *Rainer* test. *See Nissalke v. State*, 861 N.W.2d 88, 91 (Minn. 2015) (citing *Rainer v. State*, 566 N.W.2d 692, 695 (Minn. 1997)). An evidentiary hearing is warranted if the petitioner establishes that:

- (1) the evidence was not known to the petitioner or counsel at the time of trial;
- (2) the failure to learn of the evidence before trial was not due to a lack of diligence;
- (3) the evidence is

material, not merely impeaching, cumulative, or doubtful; and
(4) the evidence would probably produce either an acquittal or
a more favorable result.

Roby v. State, 808 N.W.2d 20, 26 n.5 (Minn. 2011). In order for the evidence to be material, it must be credible. *Tscheu v. State*, 829 N.W.2d 400, 403 (Minn. 2013).

The only support for Abdillahi's newly discovered evidence claim is his own self-serving affidavit. See *Davis v. State*, 784 N.W.2d 387, 391 (Minn. 2010) (stating that allegations in postconviction petition must be more than argumentative assertions lacking factual support). The affidavit is grounded in hearsay because S.M. did not submit an affidavit, and the substance of the affidavit is based entirely on what S.M. allegedly told Abdillahi. Abdillahi also alleged that a private investigator would interview S.M. but had yet to do so. And while Abdillahi claims that this is new information, he fails to explain how he could not have learned of this evidence earlier with due diligence. Moreover, it is doubtful that this new information would lead to a more favorable result because S.M. refused to testify at Abdillahi's trial. Therefore, we conclude that the postconviction court did not abuse its discretion by denying his petition on the basis of newly discovered evidence.

Interests of Justice Exception

Abdillahi also asserts that his petition falls under the interests of justice exception to the *Knaffla* rule. This exception applies if fairness requires review and Abdillahi did not deliberately and inexcusably fail to raise the claim on a previous appeal. See *Blom v. State*, 744 N.W.2d 16, 18 (Minn. 2007). But fairness does not require review if Abdillahi fails to present "a colorable explanation of why he failed to raise these claims previously." *Perry*

v. State, 731 N.W.2d 143, 147 (Minn. 2007). Here, Abdillahi has raised numerous claims spanning over four previous appeals to this court. This alone demonstrates Abdillahi's familiarity with the record and that it was inexcusable for him to not raise this claim on an earlier occasion. He does not provide an adequate explanation for why he has failed to make this claim in a previous petition. The interests of justice exception is inapplicable here.

Actual Innocence

Abdillahi next argues that his petition is not barred because of his actual innocence of the alleged offense. “[A]ctual innocence’ requires the petitioner to prove it is more likely than not that no reasonable jury would convict.” *Brown v. State*, 863 N.W.2d 781, 788 (Minn. 2015) (quotation omitted). In the postconviction context, “actual innocence” is typically considered as part of the requirements to fulfill the newly discovered evidence exception for time-barred claims under Minn. Stat. § 590.01, subd. 4 (2016). *Roberts v. State*, 856 N.W.2d 287, 292 (Minn. App. 2014), *review denied* (Minn. Jan. 28, 2015). Abdillahi fails to provide any relevant authority as to why this standard is applicable to his claims, which the postconviction court concluded to be *Knaffla*-barred. Moreover, he raised a similar actual innocence claim in a prior postconviction appeal. *Abdillahi III*, No. A14-1795, 2015 WL 4877721, at *5. And, even if we were to consider his claim, his self-serving affidavit fails to provide sufficient proof that this new evidence renders it more likely than not that no reasonable jury would convict him. *See Davis*, 784 N.W.2d at 391. This claim has no merit.

Cause and Prejudice

Abdillahi apparently argues that “cause and prejudice” allows him to overcome the *Knaffla* bar to his claims. This argument relies primarily on *Murray v. Carrier*, in which the United States Supreme Court discussed the application of the cause and prejudice standard for procedural defaults in habeas cases. 477 U.S. 478, 485–88, 106 S. Ct. 2639, 2644–45 (1986). Again, Abdillahi attempts to use this analysis as an exception to the time bar under Minn. Stat. § 590.01, subd. 4, but not the procedural bar under *Knaffla*. He fails to provide any meaningful authority regarding how this “cause and prejudice” analysis overcomes his failure to raise a similar argument in a prior postconviction petition. *See State v. Butcher*, 563 N.W.2d 776, 780–81 (Minn. App. 1997) (refusing to consider argument mentioned but not developed in brief), *review denied* (Minn. Aug. 5, 1997). This argument is without merit.

Equitable Tolling

Abdillahi finally asserts that his claim is not *Knaffla*-barred because of the doctrine of “equitable tolling.” “The doctrine of equitable tolling allows a court to consider the merits of a claim when it would otherwise be barred by a statute of limitations.” *Sanchez v. State*, 816 N.W.2d 550, 560 (Minn. 2012). This doctrine may apply if Abdillahi demonstrates “that he was diligently trying to pursue relief on his claim during the limitations period and that a state actor or some other ‘paramount authority’ prevented him from doing so.” *Id.* at 562. However, as discussed previously, this argument does not adequately address the fact that the postconviction court concluded that Abdillahi’s claims are procedurally barred by *Knaffla*, not that they were untimely. And, even if this court

were to consider the merits of this argument, Abdillahi does not provide the relevant authority or required proof to invoke this doctrine. *See id.* at 561 (“[T]he standard [appellate courts] have used to toll statutes of limitations is necessarily a high one.”).

For these reasons, we conclude that the postconviction court did not abuse its discretion by denying Abdillahi’s fourth petition for postconviction relief.

Affirmed.