STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0019

John Louis Corrigan, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed August 26, 2019
Affirmed
Smith, Tracy M., Judge

Scott County District Court
File No. 70-CR-16-14594

John L. Corrigan, Shakopee, Minnesota (pro se appellant)

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Ronald Hocevar, Scott County Attorney, Todd P. Zettler, Assistant County Attorney, Shakopee, Minnesota (for respondent)

Considered and decided by Smith, Tracy M., Presiding Judge; Schellhas, Judge; and Jesson, Judge.

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

SMITH, TRACY M., Judge

Appellant John Corrigan, who is self-represented in this appeal, challenges the denial of his postconviction petition, arguing that the postconviction court (1) abused its

discretion by deciding that his petition was procedurally barred and (2) erred by summarily denying his petition. We affirm.

FACTS

The facts of this case were established at Corrigan's trial. In August 2016, A.B. was driving home from work on Highway 169 in Shakopee during afternoon rush hour. She was alone in her car. Corrigan was driving alone in his car, directly in front of A.B. in the same left-hand lane. As A.B. was changing lanes to the middle lane in order to move onto Highway 13, Corrigan cut A.B. off. A.B. moved to the next lane over, and, as she passed Corrigan, she and Corrigan exchanged angry glances. Corrigan then pulled quickly behind A.B., and he followed her car closely as she left Highway 169 and continued along Highway 13. As A.B. moved into and out of turn lanes on Highway 13, Corrigan continued to follow her closely. A.B. became very scared. After talking to her husband on the phone, A.B. pulled over near a fire station in order to stop and call the police. Corrigan followed A.B and parked near her. A.B. yelled at Corrigan through her open window, "Stop following me or I'm going to call the police." Corrigan replied, "I figured you already have." A.B. called 911 and was directed to a nearby police station. Corrigan followed A.B. to the police station, and the police arrived on the scene.

Corrigan was charged with stalking. A.B. and the responding officers testified at trial, and the jury found Corrigan guilty. Corrigan filed a motion for a new trial, asserting that A.B. had testified falsely about events. The district court did not hold an evidentiary hearing and did not grant a new trial. The district court convicted Corrigan and sentenced him to 120 days in jail. Corrigan appealed, and this court affirmed. *State v. Corrigan*,

No. A17-1145, 2018 WL 3214271 (Minn. App. July 2, 2018), *review denied* (Minn. Oct. 16, 2018). In November 2018, Corrigan filed a petition for postconviction relief, asserting error regarding the jury instructions and alleged false testimony by the victim. The postconviction court denied the petition without an evidentiary hearing, concluding that Corrigan's claims were procedurally barred.

This appeal follows.

D E C I S I O N

I. The postconviction court did not abuse its discretion by deciding that Corrigan's petition was *Knaffla*-barred.

The denial of a petition for postconviction relief is reviewed for an abuse of discretion. *Matakis v. State*, 862 N.W.2d 33, 36 (Minn. 2015). Appellate courts "will not reverse an order unless the postconviction court exercised its discretion in an arbitrary or capricious manner, based its ruling on an erroneous view of the law, or made clearly erroneous factual findings." *Id.* (quotation omitted).

The postconviction court decided that Corrigan's claims were barred under *State v. Knaffla*, 243 N.W.2d 737 (Minn. 1976). The *Knaffla* rule is that, "once a direct appeal has been taken, all claims raised in the direct appeal and all claims that were known or should have been known but were not raised in the direct appeal are procedurally barred." *Colbert v. State*, 870 N.W.2d 616, 626 (Minn. 2015) (emphasis omitted). There are two exceptions to this rule:

> First, a claim is not barred if the claim involves an issue so novel that its legal basis was not reasonably available at the time of the direct appeal. Second, in the interests-of-justice exception, the court may review a claim as fairness requires if

> the claim has substantive merit and the petitioner did not deliberately and inexcusably fail to raise the issue in a previous proceeding.

Swaney v. State, 882 N.W.2d 207, 215 (Minn. 2016) (citations omitted). A petitioner bears the burden of establishing a *Knaffla* exception. *Buckingham v. State*, 799 N.W.2d 229, 233 (Minn. 2011) (holding that an argument is *Knaffla*-barred because the petitioner failed to explain "why [the] argument was not available on direct appeal" and "why his failure to raise [the] argument should be excused"); *see also Tscheu v. State*, 829 N.W.2d 400, 403 (Minn. 2013) ("A petitioner bears the burden to establish by a preponderance of the evidence that facts exist that warrant postconviction relief.").

It is undisputed that Corrigan's claims "were known or should have been known but were not raised in the direct appeal." *Colbert*, 870 N.W.2d at 626 (emphasis omitted). It is also undisputed that they do not "involve[] an issue so novel that its legal basis was not reasonably available at the time of direct appeal." *Swaney*, 882 N.W.2d at 215. The question is whether the second *Knaffla* exception—the interests-of-justice exception—applies.

A. Deliberate and inexcusable failure to raise the issue

To satisfy the interests-of-justice exception, Corrigan had to establish that he did not inexcusably fail to raise the issue in a previous proceeding. *See Swaney*, 882 N.W.2d at 215. Corrigan brought three claims before the postconviction court: (1) the jury instructions incorrectly described the law; (2) the prosecuting attorney committed misconduct by failing to correct A.B.'s false testimony; and (3) the district court, on

Corrigan's posttrial motion alleging false testimony, should have granted an evidentiary hearing or a new trial.

As to the first two claims, Corrigan provided the postconviction court no excuse for his failure to challenge the jury instructions or assert prosecutorial misconduct on direct appeal. Corrigan thus failed to meet his burden as to those two claims, and the postconviction court did not abuse its discretion by concluding that they were *Knaffla*-barred.

As to his third claim, Corrigan blamed his appellate counsel for failing to raise on direct appeal the denial of his posttrial motion for an evidentiary hearing on the alleged false testimony. Corrigan stated in his petition, "I gave my opinion a few times that some mention of [the trial judge's] denial of an evidentiary hearing be made, but the lawyer insisted that his brief was interconnected, and ultimately, I did not know how to persuade him to do otherwise." The postconviction court determined that, even if appellate counsel's refusal excused Corrigan's failure to raise the issue on appeal, Corrigan nevertheless did not meet the substantive-merit requirement of the *Knaffla* exception. We turn to that question.

B. Substantive merit

To satisfy the interests-of-justice exception, Corrigan had to demonstrate that his false-testimony claim had substantive merit. *See Swaney*, 882 N.W.2d at 215. Corrigan argues that the postconviction court should have granted him an evidentiary hearing to establish his right to a new trial under the three-prong test derived from *Larrison v. United States*, 24 F.2d 82, 87-88 (7th Cir. 1928), *overruled by United States v. Mitrione*, 357 F.3d

712, 718 (7th Cir. 2004) (adopting a different test).[1] As the Minnesota Supreme Court has explained,

> Under *Larrison*, a petitioner is entitled to a new trial based on false trial testimony if: (1) the court is reasonably well satisfied that the testimony given by a material witness was false; (2) without the false testimony, the jury might have reached a different conclusion; and (3) the petitioner was taken by surprise when the false testimony was given and was unable to meet it or did not know that the testimony was false until after trial.

Caldwell v. State, 853 N.W.2d 766, 772 (Minn. 2014).

Corrigan asserts no newly discovered evidence in support of his claim of false testimony. *Cf. Ferguson v. State*, 645 N.W.2d 437, 442 (Minn. 2002) ("A three-prong test, known as the *Larrison* test, is applied to claims of newly-discovered evidence of falsified testimony." (footnote omitted)). Instead, he identifies 13 instances in which A.B.'s trial testimony contradicted other parts of her testimony or her prior statements to the police. The falsehoods that Corrigan alleges pertain to the following issues: (1) exactly how A.B.'s lane change occurred; (2) when the eye contact between the parties occurred during the lane change; (3) what A.B. told the police about the manner in which Corrigan drove his car and whether she indicated that Corrigan drove unsafely; (4) whether A.B. told the 911 operator that she was scared because of Corrigan and, more specifically, because of his getting out of his car; (5) at which point A.B. started to cry during the entire encounter with Corrigan; (6) whether A.B. told law enforcement that she called her husband during the

[1] The *Larrison* test is still good law in Minnesota. *See Campbell v. State*, 916 N.W.2d 502, 507 (Minn. 2018) (applying *Larrison*).

encounter; and (7) whether A.B. took it as a threat when Corrigan said, "I figured you already have [called the police]."

The postconviction court concluded that, even taking Corrigan's allegations of false testimony as true, Corrigan could not satisfy the second prong of *Larrison*—that, without the false testimony, the jury might have reached a different conclusion. The postconviction court observed that the challenged testimony "addresses such questions as: how close [Corrigan's] and the victim's cars were, when the victim began crying, and what the victim told police throughout the investigation." The postconviction court determined that the challenged testimony conflicted with other testimony "in largely minor ways" and that "[o]verall, the testimony provided the jury ample ground to conclude that [Corrigan] had violated the stalking statute." Thus, it concluded, Corrigan's claim lacked substantive merit.

Corrigan challenges this conclusion, arguing that the alleged false testimony was so significant that, without it, the jury might have reached a different conclusion. He bases this argument on his interpretation of the elements of the stalking statute. Under Minn. Stat. § 609.749, subd. 1 (2016), "'stalking' means to engage in conduct which the actor knows or has reason to know would cause the victim under the circumstances to feel frightened, threatened, oppressed, persecuted, or intimidated, and causes this reaction on the part of the victim regardless of the relationship between the actor and victim." The specific conduct—the actus reus—that is criminalized under the stalking statute is further defined in subdivision 2 as follows:

> A person who stalks another by committing any of the following acts is guilty of a gross misdemeanor:
>
> (1) directly or indirectly, or through third parties, manifests a purpose or intent to injure the person, property, or rights of another by the commission of an unlawful act; [or]
>
> (2) follows, monitors, or pursues another, whether in person or through any available technological or other means[.]

Minn. Stat. § 609.749, subd. 2 (2016). Corrigan was charged with stalking under Minn. Stat. § 609.749, subd. 2(2). As the district court instructed the jury, the first two elements of the charged offense were: (1) "the defendant followed . . . another" and (2) "the defendant knew or had reason to know that the conduct would cause the victim, under the circumstances, to feel frightened, threatened, oppressed, persecuted or intimidated." Corrigan argues that "the conduct" under the second element cannot be mere following of the victim. In other words, he argues that following of the victim cannot alone be the actus reus of the crime of stalking. And, he asserts that, without the alleged false testimony, the only remaining evidence is that he followed A.B. and, based on mere following, the jury would have reached a different conclusion.

Corrigan's argument rests on the implicit proposition that the actus reus of the crime of stalking must be unlawful independent of the stalking statute. Corrigan cites *State v. Pegelow*, 809 N.W.2d 245 (Minn. App. 2012). In *Pegelow*, the defendant was charged with harassment in violation of Minn. Stat. § 609.749, subd. 2(a)(1) (2008). 809 N.W.2d at 246. At that time, section 609.749 prohibited what it called "harassment," but the legislature subsequently amended section 609.749 and changed "harassment" to "stalking." *Compare* Minn. Stat. § 609.749 (2008) *with* Minn. Stat. § 609.749 (2016). The actus reus of the crime of harassment under subdivision 2(a)(2) was defined as "directly or indirectly manifest[ing]

a purpose or intent to injure the person, property, or rights of another by the commission of an unlawful act." *Pegelow*, 809 N.W.2d at 247. The question in *Pegelow* was whether "an unlawful act" under subdivision 2(a)(1) could include conduct that met the definition of "harass" but was not otherwise unlawful. *Id.* This court answered that it could not, holding that, to convict a defendant under subdivision 2(a)(1), "the jury must determine that the defendant committed an act that is unlawful independent of" the harassment statute. *Id.* at 251. Corrigan argues that the holding in *Pegelow* carries over to subdivision 2(2) in the current stalking statute.[2]

The argument is unpersuasive. The plain-language basis for this court's conclusion in *Pegelow* was that subdivision 2(a)(1) required an "unlawful act." *Id.* at 248. If harassment could be "an unlawful act," we concluded, subdivision 2(a)(1) would read that a person "harasses" another by the "commission of [*the harassing act*]." *Id.* (alteration in original). The definition would be circular. *Id.* But subdivision 2(2), unlike subdivision 2(1), does not require the commission of "an unlawful act"; rather, it specifies acts that, when committed with the requisite state of mind under subdivision 1 of the statute, constitute criminal stalking. Minn. Stat. § 609.749, subd. 2(2). There is nothing circular about this definition because the specific acts—following, monitoring, and pursuing of another—are not by themselves stalking. *See id.*, subds. 1-2.

Corrigan further argues, however, that a definition that does not require an independent unlawful act would be unconstitutionally vague. In *Pegelow*, we reasoned that

[2] Subdivisions 2(a)(1) and 2(a)(2) in the 2008 statute are renumbered as subdivisions 2(1) and 2(2) in the current statute.

section 609.749 must be interpreted as requiring conduct that satisfies one of the provisions of subdivision 2(a) to avoid unconstitutional vagueness. 809 N.W.2d at 248. Corrigan argues that subdivision 2(2) requires an independent unlawful act to avoid the same constitutional concern. But this court rejected that argument in *State v. Stockwell*, upholding Minn. Stat. § 609.749, subd. 2(a)(2) (2006) against a vagueness challenge. 770 N.W.2d 533, 540-41 (Minn. App. 2009), *review denied* (Minn. Oct. 28, 2009). We held that subdivision 2(a)(2), "when read as a whole, does not criminalize the mere following of a person" because the requirements of subdivision 1 apply—specifically, that that the offender knows or has reason to know the conduct will cause the victim "to feel frightened, threatened, oppressed, persecuted, or intimated" and the offender actually causes that reaction. *Id.* at 541. We concluded that subdivision 2(a)(2) "provides sufficient clarity such that an ordinary person could understand what conduct is prohibited." *Id.*

In sum, Corrigan's argument—that the actus reus of the crime of stalking under subdivision 2(2) must be unlawful independent of the stalking statute and that, without the allegedly false testimony, there is no evidence of an unlawful act—is unpersuasive. Therefore, the postconviction court did not abuse its discretion in concluding that Corrigan's false-testimony claim lacked substantive merit and that his claim was *Knaffla*-barred.

II. The postconviction court did not err by summarily denying Corrigan's petition.

Corrigan argues that the postconviction court "summarily denied" his petition and that a remand is required. Corrigan relies on *State v. O'Leary*, 359 N.W.2d 703 (Minn.

App. 1984). In *O'Leary*, the postconviction court denied relief without making the "findings of fact and conclusions of law" contemplated in Minn. Stat. § 590.04, subd. 1 (1982). *Id.* at 704. Instead, the postconviction court "summarily denied" the petition. *Id.* We held that a summary denial was not warranted in the circumstances of that case under Minn. Stat. § 590.04, subd. 3 (Supp. 1983), and remanded to the district court to make specific findings of fact and conclusions of law. *Id.* at 704. Here, in contrast, the postconviction court issued a written order with findings of fact and conclusions of law fully explaining its decision. Corrigan asserts that the findings and conclusions are inadequate, but we disagree.[3] Corrigan is not entitled to a remand.

III. Corrigan forfeited his other arguments.

Corrigan includes in his briefing to this court arguments regarding citizen's arrest and the district court's use of 10 *Minnesota Practice*, CRIMJIG 13.57 (2015) in its jury instructions on stalking. We need not address these arguments. Corrigan did not make them to the postconviction court and thus forfeited them. *See Andersen v. State*, 913 N.W.2d 417, 428 n.11 (Minn. 2018) (citing *Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996))

[3] To the extent Corrigan argues that he was entitled to an evidentiary hearing under Minn. Stat. § 590.04, subd. 1 (2018), we reject the argument. A postconviction petitioner is not entitled to an evidentiary hearing if the petition and record "conclusively show that the petitioner is entitled to no relief." *Caldwell*, 853 N.W.2d at 770 (quoting Minn. Stat. § 590.04, subd. 1). The petition and record here conclusively show that Corrigan's claims are procedurally barred, and the postconviction court therefore did not abuse its discretion in denying his petition without an evidentiary hearing. *See id.* (explaining that appellate courts review the decision to deny a postconviction petition without an evidentiary hearing for an abuse of discretion).

(holding that some of appellant's claims would not be considered on appeal because they were not raised before the postconviction court).

Affirmed.