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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0208**

Dean Aaron Anderson, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed November 12, 2019
Affirmed
Smith, Tracy M., Judge**

Isanti County District Court
File No. 30-CR-10-308

Bradford Colbert, St. Paul, Minnesota (for appellant)

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

Jeffrey Edblad, Isanti County Attorney, Cambridge, Minnesota; and

Scott A. Hersey, Special Assistant County Attorney, St. Paul, Minnesota (for respondent)

Considered and decided by Florey, Presiding Judge; Reyes, Judge; and Smith,
Tracy M., Judge.

UNPUBLISHED OPINION

SMITH, TRACY M., Judge

Appellant Dean Aaron Anderson appeals the denial of his petition for postconviction relief. Anderson was convicted of third-degree controlled-substance crime,

after having been acquitted in an earlier trial on another charge of controlled-substance crime. In his petition for postconviction relief, Anderson argued that he was subjected to serialized prosecution. The postconviction court denied relief, concluding that his claim is procedurally barred under *State v. Knaffla*, 243 N.W.2d 737 (Minn. 1976). We affirm.

FACTS

This case began with law enforcement arranging for an informant to execute three controlled buys of prescription drugs containing oxycodone from Anderson in the summer of 2010. The informant bought 150 pills from Anderson at each buy. Based on the details of the controlled buys, law enforcement obtained and executed a search warrant at Anderson's house. They found and seized four small plastic bags of white pills in a nightstand drawer. The pills in the bags appeared to be consistent with the pills bought at the controlled buys. Anderson had, however, obtained these pills through a prescription.

The state charged Anderson in four separate complaints. It charged him with first-degree sale of a controlled substance in connection with the evidence seized with the warrant and three separate second-degree sales of a controlled substance in connection with each controlled buy. The charge in this case was originally one of the second-degree sale charges.

The parties proceeded to trial with respect to the first-degree sale charge. At this first trial, the district court permitted the state to introduce evidence of the three controlled buys; according to Anderson, the district court admitted this evidence "given the nature of the common motive, intent, knowledge, and scheme or purpose." The jury acquitted Anderson.

After the first trial, the state filed an amended complaint in this case, combining all three of the controlled buys made in the summer of 2010 into a single charge of first-degree sale. The state dismissed the two remaining complaints.

The parties proceeded to a second trial. At that trial, the district court permitted the state to introduce evidence of the drugs obtained with the search warrant, which the state argued was evidence of a common scheme or plan. The jury found Anderson guilty of first-degree sale of a controlled substance. Anderson appealed. This court reversed the conviction, reducing it to a third-degree sale of a controlled substance. *State v. Anderson*, 865 N.W.2d 712, 721 (Minn. App. 2015). It did so on the grounds that the relevant statute did not apply to pills containing oxycodone. *Id.* at 720. It then remanded the case for resentencing. *Id.* at 722.

At his resentencing hearing, Anderson argued that the case against him should be dismissed on double jeopardy grounds. The district court denied the motion, stating that resentencing was proper based on this court's reversal and reduction of his conviction and remand for resentencing. The district court then sentenced Anderson to a 21-month prison sentence and stayed execution. The district court indicated that Anderson was to be placed on probation for 20 years and then, since Anderson had 493 days of custody credit, immediately discharged him from probation.

Almost two years later, Anderson filed a petition for postconviction relief, seeking to have his conviction vacated. He argued that his conviction after his previous acquittal violated Minn. Stat. § 609.035 (2008), which prohibits serialized prosecution for offenses making up a unitary course of conduct. The postconviction court rejected Anderson's

petition, concluding that his claim is barred under *Knaffla* “as a claim that he knew or should have known about on his direct appeal.”

This appeal follows.

D E C I S I O N

Anderson asserts that the postconviction court erred by denying his petition for relief on the basis that his serialized-prosecution claim is *Knaffla* barred.

The standard of review for the denial of postconviction relief is for an abuse of discretion. *Matakis v. State*, 862 N.W.2d 33, 36 (Minn. 2015). Legal issues are reviewed de novo, but review of factual issues “is limited to whether there is sufficient evidence in the record to sustain the postconviction court’s findings.” *Vance v. State*, 752 N.W.2d 509, 512 (Minn. 2008). 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.” *Reed v. State*, 793 N.W.2d 725, 729 (Minn. 2010).

Under the *Knaffla* rule, “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 the *Knaffla* bar. *Zornes v. State*, 903 N.W.2d 411, 421 (Minn. 2017). First, “a defendant’s failure to raise a claim may be excused when the claim is so novel that the legal basis was not available in the earlier proceeding.” *Id.* (quotation omitted). Second, “[u]nder the interests-of-justice exception to the *Knaffla* rule, the court may review a claim as fairness requires when the claim has

substantive merit and the petitioner did not deliberately and inexcusably fail to raise the issue in the direct appeal or a previous postconviction petition.” *Colbert*, 870 N.W.2d at 626.

Anderson claims that the state violated Minn. Stat. § 609.035, subd. 1 (2008), which states:

[I]f a person’s conduct constitutes more than one offense under the laws of this state, the person may be punished for only one of the offenses and a conviction or acquittal of any one of them is a bar to prosecution for any other of them. All the offenses, if prosecuted, shall be included in one prosecution which shall be stated in separate counts.

Section 609.035 bars multiple, or serialized, prosecutions arising from a single behavioral incident. *State v. Schmidt*, 612 N.W.2d 871, 876 (Minn. 2000).

Anderson argues that the state violated section 609.035 when it tried him in this case after the jury acquitted him in the first trial. He claims that the state conceded that the two cases were one incident when it argued in the first case that evidence of the controlled buys should be admitted because the events were “all intertwined” and were “part of the same case.” He argues that his postconviction petition is not barred by *Knaffla* because he raised the argument at his resentencing and, alternatively, that his argument falls under *Knaffla*’s two exceptions, specifically the fairness exception.

The postconviction court denied Anderson’s petition, concluding that it is *Knaffla* barred. It stated that Anderson “knew or should have known about [the claim] on his direct appeal” and yet he did not raise it. It also noted that neither exception to *Knaffla* applied: (1) the language of section 609.035 dated back to at least 1997 and thus would not qualify

as novel, and (2) Anderson did not sufficiently explain why his previous failure to raise the argument on direct appeal was not deliberate and inexcusable.

Failure to Raise Claim on Direct Appeal

Anderson's brief does not claim that he raised the section 609.035 argument in his direct appeal. He instead focuses on how he raised the matter at resentencing and points to *State v. Hodges* for support. 384 N.W.2d 175 (Minn. App.), *aff'd as modified*, 386 N.W.2d 709 (Minn. 1986). In *Hodges*, the appellate court considered the appellant's arguments related to section 609.035, even though the appellant had only briefly mentioned the arguments to the district court in their sentencing memorandum. *Id.* at 181-82. *Hodges* is distinguishable, however, as this court was considering, on direct appeal, arguments that were briefly made during sentencing. *Id.* In other words, the case involved timely arguments that were at least briefly mentioned. While the subject of the arguments in this case and *Hodges* overlap, *Hodges* did not involve untimely arguments or the application of the *Knaffla* rule. Anderson offers no authority that indicates that raising an argument at a resentencing hearing that was not made in an earlier direct appeal is sufficient to prevent *Knaffla* from barring the claim.

Furthermore, Anderson had access to the relevant facts and procedural history needed to make his serial-prosecution claim, as the claim is based on the two trials he participated in. Thus, Anderson knew or should have known of the claim at the time of his direct appeal. Nothing in the record or in Anderson's briefs contradicts this conclusion. As such, unless Anderson's claim falls under one of the exceptions to *Knaffla*, his claim is procedurally barred.

Novel-Legal-Issue Exception

Anderson claims that this is a novel issue, as no Minnesota appellate court has directly addressed the issue. It may be true that an appellate court has not considered the specific issue of whether a serialized-prosecution claim can be established under section 609.035 based on the use of certain types of common-objective evidence. Serialized-prosecution arguments, however, have been made for decades. *See, e.g., State v. Mendoza*, 297 N.W.2d 286, 288 (Minn. 1980) (holding defendant waived the issue of serial prosecution by not raising it at the district court). The Minnesota Supreme Court first held that section 609.035 prohibits serialized prosecutions over 50 years ago. *State v. Johnson*, 141 N.W.2d 517 (Minn. 1966).

Given the long history of serialized-prosecution arguments, the claim was reasonably available to Anderson at the time of his direct appeal. Thus, the postconviction court did not abuse its discretion by concluding that the novelty exception to the *Knaffla* does not apply.

Interests-of-Justice Exception

The postconviction court concluded that, because Anderson did not explain why his failure to raise his serialized-prosecution claim was not deliberate and inexcusable, his claim does not fall under the interests-of-justice exception to *Knaffla*. This reasoning is consistent with Minnesota Supreme Court decisions. *See, e.g., Swaney v. State*, 882 N.W.2d 207, 216 (Minn. 2016) (deciding that the interests-of-justice exception did not apply because the appellant offered “no argument as to why his failure to raise this issue in his pro se brief on direct appeal was not deliberate and inexcusable”).

Anderson argues that the fact that he raised the issue at resentencing shows that he did not “deliberately and inexcusably” fail to raise the issue. The rule, however, requires a party who brings a direct appeal to raise the issue in that appeal, not at resentencing or some later hearing. *Colbert*, 870 N.W.2d at 626. At oral argument, Anderson’s counsel suggested that Anderson’s failure to raise the argument on direct appeal is explained by the difficulties an individual faces when they wish to raise an argument that their lawyer does not want to make. But, in his direct appeal, Anderson filed a pro se supplemental brief in which he raised other arguments not made in his counseled brief. He could have included there the argument that the state had subjected him to a serialized prosecution, but he did not do so.

Since Anderson has not shown that he did not “deliberately and inexcusably” fail to raise the serialized prosecution on his direct appeal, the postconviction court did not abuse its discretion by concluding the interests-of-justice exception does not apply.

Pro se Arguments

Anderson also raises three arguments in his pro se supplemental brief. He claims that the third-degree drug charge was “not a fact found by the jury” and thus his conviction was unlawful. This claim ignores how this court, in reducing Anderson’s conviction from a first-degree charge to a third-degree charge, determined that a third-degree conviction was appropriate by relying on facts found by the jury at his trial.

Next, Anderson appears to argue that he did not have sufficient access to the records of his first trial until now, which he claims goes to the interests-of-justice exception to the *Knaffla* rule. Access to these records, however, was not required to at least raise the

serialized-prosecution claim, so even if Anderson could not access the records, it does not excuse his failure to raise the claim in his first appeal.

Anderson concludes by stating he is entitled to an evidentiary hearing under due process. Minn. Stat. §§ 590.01-.11 (2018) describes the postconviction petition process, including when the postconviction court may determine that an evidentiary hearing is not necessary, *see* Minn. Stat. § 590.04. The postconviction court determined that *Knaffla* bars Anderson's claim, so an evidentiary hearing was not necessary. Anderson does not provide any argument as to why section 590.04 fails to sufficiently protect a petitioner's due process rights.

Accordingly, the postconviction court did not err by concluding that Anderson's serialized-prosecution claim is *Knaffla* barred.

Affirmed.