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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0763**

Fredrick Dewayne Hines, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed January 13, 2020
Affirmed
Ross, Judge**

Hennepin County District Court
File No. 27-CR-13-20179

Fredrick Dewayne Hines, St. Cloud, Minnesota (pro se appellant)

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

Michael O. Freeman, Hennepin County Attorney, Sean P. Cahill, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Rodenberg, Presiding Judge; Ross, Judge; and Jesson, Judge.

UNPUBLISHED OPINION

ROSS, Judge

Fredrick Hines is serving a prison sentence for criminal sexual conduct, domestic assault, and terroristic threats made against his former girlfriend. He now appeals from the district court's summary denial of his petition for postconviction relief. The district court

rejected Hines's petition as *Knaffla*-barred, time-barred, or without merit. Because the district court did not abuse its discretion, we affirm.

FACTS

The state charged Fredrick Hines in 2013 with terroristic threats, two counts of criminal sexual conduct, and domestic assault against his girlfriend. The district court found him guilty of these charges after a bench trial. It sentenced Hines to 360 months' imprisonment on the first-degree criminal-sexual-conduct conviction and 12 months and one day on the terroristic-threats conviction, with the terms to run consecutively for a total of 372 months. It combined sentences on the remaining convictions into the 372-month sentence.

Hines appealed his convictions and sentences. We affirmed the convictions, but we reversed and remanded because the district court did not sentence the offenses in the order in which they occurred. *State v. Hines*, No. A14-1944, 2015 WL 5664856, at *1, *6, *8 (Minn. App. Sept. 28, 2015). On remand the district court sentenced Hines to 36 months on the terroristic-threats conviction and 360 months on the first-degree criminal-sexual-conduct conviction, with the sentences to run concurrently.

Hines filed a petition for postconviction relief in March 2019, and the district court denied the petition without an evidentiary hearing, concluding that the claims were either *Knaffla*-barred, time-barred, or without merit. The district court did correct a clerical error in the warrant of commitment, which had mistakenly indicated that the prison terms were to run consecutively. Hines appeals.

DECISION

Hines challenges the district court's denial of his petition for postconviction relief. We review the denial of a postconviction petition for an abuse of discretion. *Matakis v. State*, 862 N.W.2d 33, 36 (Minn. 2015). We will reverse only if the postconviction court acted in an arbitrary or capricious manner, based its decision on a flawed application of the law, or made clearly erroneous factual findings. *Id.*

The district court rejected Hines's ineffective-assistance-of-trial-counsel claim as *Knaffla*-barred. A postconviction petitioner cannot raise any claims he did raise or could have raised on direct appeal. Minn. Stat. § 590.01, subd. 1 (2018); *State v. Knaffla*, 243 N.W.2d 737, 741 (Minn. 1976). Hines raised several theories asserting ineffective trial counsel on direct appeal, and we rejected them on the merits. *Hines*, 2015 WL 5664856, at *7–8. Because Hines raised multiple ineffective-assistance-of-trial-counsel arguments and any other bases for his trial counsel's ineffectiveness could also have been raised, the district court properly rejected the new assertions under *Knaffla*.

The district court determined that most of Hines's remaining claims are temporally barred. A petition for postconviction relief must be filed within two years after the later of the entry of judgment of conviction or sentence, or an appellate court's disposition of the direct appeal. Minn. Stat. § 590.01, subd. 4(a) (2018). The two-year limitations period began to run on October 28, 2015, when Hines's direct appeal became final, which was 30 days after the decision was filed. *See* Minn. R. Crim. P. 29.04, subd. 2 (providing for 30-day period to petition Minnesota Supreme Court for review); *Moua v. State*, 778 N.W.2d 286, 288 (Minn. 2010) (recognizing that a conviction becomes final when

the judgment has been rendered, the availability of appeal has been exhausted, and the time for petition for review has elapsed). Hines did not file his postconviction petition until March 13, 2019, almost a year and a half after the two-year limitations period expired.

Hines cannot establish an exception to the two-year bar. Hines raised two of the five statutory exceptions to the two-year bar—newly discovered evidence and interests of justice. *See* Minn. Stat. § 590.01, subd. 4(b)(2), (5). Neither applies.

Hines identified no new evidence. A petitioner qualifies for the newly-discovered-evidence exception by showing that the evidence is newly discovered, that it could not have been discovered through due diligence within the two-year period, that it is not cumulative to evidence presented at trial, that it is not merely for impeachment purposes, and that it establishes clearly and convincingly that the petitioner is innocent. *Id.*, subd. 4(b)(2); *Andersen v. State*, 913 N.W.2d 417, 425 (Minn. 2018). Hines’s alleged newly discovered evidence is four pages of “[Victim] Interview Notes” which the prosecutor took during an interview with the victim nearly six months after the offense and which Hines says reflect a different version of the victim’s story. The document is not newly discovered. At trial Hines showed the document to the victim on cross-examination and attempted to use it to impeach her.¹ Because the document was known to Hines during trial, it is not now “newly discovered” evidence.

¹ Hines argues that this court’s opinion affirming his conviction on direct appeal mischaracterized the facts by stating that the document was not in the record, not authenticated, and not used to impeach the victim at trial. *See Hines*, 2015 WL 5664856, at *6. We take this opportunity to correct Hines’s misunderstanding. Although Hines gave the document to the victim at trial and *attempted* to impeach her credibility with a prior inconsistent statement, *see* Minn. R. Evid. 613(a), the document was never properly

Justice does not require excusing the delay. The interests-of-justice exception applies only in exceptional circumstances, such as those that implicate the integrity of judicial proceedings. *Carlton v. State*, 816 N.W.2d 590, 607 (Minn. 2012). And this exception must be raised within two years of the date when the claim arose. Minn. Stat. § 590.01, subd. 4(c); *Colbert v. State*, 811 N.W.2d 103, 105 (Minn. 2012). Hines’s argument rests on the interview notes, which he knew about and attempted to use at trial. Because more than two years passed from the time the claim arose, the district court properly concluded that the interests-of-justice exception does not apply. It correctly determined that Hines’s claims are time-barred.

The district court also rejected Hines’s ineffective-assistance-of-appellate-counsel claim on the merits. “[W]e can affirm the denial of postconviction relief on grounds other than those on which the postconviction court relied.” *Dukes v. State*, 718 N.W.2d 920, 921–22 (Minn. 2006). Because the claim is time barred for the same reason as his other claims, we affirm this determination as well without addressing the substance.

Hines argues unconvincingly that the district court erred in resentencing him. We remanded because the district court imposed a consecutive sentence without sentencing the offenses in the order in which they occurred in accordance with Minnesota Sentencing Guidelines 2.F (2012). *Hines*, 2015 WL 5664856, at *6. The district court then sentenced the offenses in the proper order with concurrent terms. Hines urges that the resentencing

authenticated under Minnesota Rule of Evidence 901, and the district court never admitted it as substantive evidence. *See* Minn. R. Evid. 613(b). We properly rejected his argument on direct appeal.

court failed to follow our remand orders strictly. A district court must execute the remanding court's mandate strictly to its terms. *State v. Hutchins*, 856 N.W.2d 281, 286 (Minn. App. 2014), *review granted* (Minn. Dec. 30, 2014) *and order granting review vacated* (Minn. July 20, 2015). If the remanding court does not provide specific instructions as to how the district court is to carry out the order, the district court then “has discretion to proceed in any manner consistent with the remand order.” *Id.* We have carefully reviewed our remand instructions and the district court's decisions on remand, and we are satisfied that the district court followed our instructions and acted within its discretion in resentencing Hines.

We are also satisfied that the district court appropriately denied Hines's request for an evidentiary hearing. An evidentiary hearing is not necessary if the petition and record conclusively show that the petitioner is not entitled to the relief requested. Minn. Stat. § 590.04, subd. 1 (2018); *Francis v. State*, 781 N.W.2d 892, 896 (Minn. 2010). Hines's claims are either procedurally barred or facially meritless. The district court did not abuse its discretion by denying the petition without an evidentiary hearing.

Affirmed.