This is opinion is nonprecedential except as provided by Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1323

John Louis Corrigan, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed June 14, 2021
Affirmed
Reyes, 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 Larkin, Presiding Judge; Bjorkman, Judge; and Reyes, Judge.

NONPRECEDENTIAL OPINION

REYES, Judge

In this appeal from the postconviction court's denial of his second postconviction petition, appellant argues that (1) his claims are not procedurally barred and (2) the former

stalking statute, Minn. Stat. § 609.749, subd. 2(2) (2016), is overbroad and unconstitutional as applied to him. We affirm.

FACTS

The facts underlying this case are set out in two prior opinions of this court. *See State v. Corrigan*, No. A17-1145, 2018 WL 3214271 (Minn. App. July 2, 2018), *review denied* (Minn. Oct. 16, 2018) (*Corrigan I*); *State v. Corrigan*, No. A19-0019, 2019 WL 4010308 (Minn. App. Aug. 26, 2019) (*Corrigan II*). Appellant John Louis Corrigan drove directly behind A.B. after she had maneuvered around him to access her highway exit. He followed her for several miles through numerous turns before he eventually parked near her when she stopped. At one point, A.B. yelled at him to stop following her or she would call the police. Appellant responded, "I figured you already would have." At the direction of a 911 dispatcher, A.B. stopped at a nearby police station, where appellant likewise stopped, and the police arrived. Respondent State of Minnesota charged appellant with stalking under Minn. Stat. § 609.749, subd. 2(2). A jury found appellant guilty. The district court convicted appellant and sentenced him to 120 days in jail.

Appellant, represented by an attorney, filed a direct appeal of his conviction. He argued that the district court erred by failing to (1) recuse; (2) include appellant's requested jury instructions; and (3) reject the stalking charge for lack of probable cause. *See Corrigan I*, 2018 WL 3214271 at *1. He also argued that insufficient evidence supported his conviction. *Id.* This court affirmed the district court's decision. *Id.*

Subsequently, appellant, then self-represented, filed his first postconviction petition. He argued that his conviction relied on false testimony and that the district court misapplied

the stalking statute. The postconviction court summarily dismissed his petition. On appeal, this court construed his arguments to be that (1) the jury instructions incorrectly described the law; (2) the prosecuting attorney committed misconduct by failing to correct false testimony; and (3) the district court should have held an evidentiary hearing or new trial on appellant's motion alleging false testimony. *Corrigan II*, 2019 WL 4010308 at *2. We affirmed, concluding that appellant's claims were *Knaffla*-barred except for the evidentiary-hearing claim, which we rejected on its merits. *Id.* at *2-5; *see State v. Knaffla*, 243 N.W.2d 737 (Minn. 1976).

Appellant, again self-represented, then filed his second postconviction petition, arguing that the stalking statute, Minn. Stat. § 609.749, subd. 2(2), is overbroad and unconstitutional as applied to him. He argued that his claims are not procedurally barred and that, even if they were, both exceptions to the *Knaffla* bar apply. The postconviction court summarily denied all of appellant's claims as *Knaffla*-barred. This appeal follows.

DECISION

Appellant asserts that his constitutional arguments are not *Knaffla*-barred because they rely on caselaw that was not available until after his conviction. We disagree.

"A petition for postconviction relief after a direct appeal has been completed may not be based on grounds that could have been raised on direct appeal of the conviction or sentence." Minn. Stat. § 590.01, subd. 1 (2018); *see also Knaffla*, 243 N.W.2d at 741. Thus, under the *Knaffla* bar, all claims that were raised, known, or should have been known at the time of the direct appeal are barred. *Knaffla*, 243 N.W.2d at 741.

Two exceptions to the *Knaffla* bar exist: when "(1) a novel legal issue is presented . . . or (2) the interests of justice require review."[1] *Zumberge v. State*, 937 N.W.2d 406, 411-12 (Minn. 2019). To meet the first exception, the petitioner's claim must be "so novel that its legal basis was not reasonably available at the time of the direct appeal." *Swaney*, 882 N.W.2d at 215; *see also Ademondi v. State*, 616 N.W.2d 716, 718 (Minn. 2000) (stating that Ademondi's claim under Vienna Convention had reasonable basis in law at time of appeal, even though no caselaw mentioned that law until after Ademondi's case). To meet the second exception, the petitioner must show that fairness requires review and that the petitioner unintentionally and excusably failed to raise the claim on direct appeal. *Fox v. State*, 474 N.W.2d 821, 825 (Minn. 1991). The petitioner bears the burden of establishing a *Knaffla* exception. *Buckingham v. State*, 799 N.W.2d 229, 233 (Minn. 2011).

We review a postconviction court's denial of a postconviction petition for an abuse of discretion. *Zumberge*, 937 N.W.2d at 411. The postconviction court abuses its discretion when it "exercise[s] its discretion in an arbitrary or capricious manner, base[s] its ruling on an erroneous view of the law, or [makes] clearly erroneous factual findings." *Id.* (quotation omitted). We review the postconviction court's factual findings for clear error and its legal conclusions de novo. *Swaney*, 882 N.W.2d at 214.

[1] It is an open question whether these exceptions still apply after codification of the *Knaffla* bar in Minn. Stat. § 590.01, subd. 1. *See Swaney v. State*, 882 N.W.2d 207, 215 n.4 (Minn. 2016). Because appellant's claims do not satisfy either exception, we need not resolve this issue.

We first determine whether appellant's claim is *Knaffla*-barred. Here, appellant did not raise his constitutional arguments in either prior appeal. However, he argued that the stalking statute was overbroad in his posttrial motion for a new trial, showing that he knew of the claim. Further, a challenge to the constitutionality of a conviction statute is not a novel argument on appeal or in postconviction proceedings. *See, e.g.*, *White v. State*, 711 N.W.2d 106, 109 (Minn. 2006) (rejecting White's claim that conviction statute was unconstitutional as *Knaffla*-barred); *Henderson v. State*, 675 N.W.2d 318, 323 (Minn. 2004) (same). Because appellant knew or should have known of his constitutional claims at the time of his direct appeal, his arguments are *Knaffla*-barred.

We next determine whether a *Knaffla* exception applies. The state argues that appellant forfeited any argument that a *Knaffla* exception applies because he "never claimed to meet an exception." Indeed, appellant asserts that "[n]o *Knaffla* exception is pleaded" because his claims are not *Knaffla*-barred. We agree with the state with respect to the second exception. Appellant makes no legal or factual argument with regard to that exception and we therefore conclude that he forfeited it. *State v. Rey*, 890 N.W.2d 135, 140 n.3 (Minn. App. 2017) (stating that "issues not briefed are forfeited") (citing *State v. Butcher*, 563 N.W.2d 776, 780 (Minn. App. 1997), *review denied* (Minn. Aug. 5, 1997)).

However, with regard to the first exception, appellant argues that the Minnesota Supreme Court's decision in *In re Welfare of A.J.B.*, 929 N.W.2d 840 (Minn. 2019), and this court's decision in *State v. Peterson*, 936 N.W.2d 912 (Minn. App. 2019), constitute new legal authority that was not available at the time of his direct appeal. But the basis for appellant's constitutional arguments is the First Amendment and associated caselaw. That

basis was not only reasonably available at the time of his direct appeal, but also known to appellant as evidenced by its inclusion in his posttrial motion. Moreover, *A.J.B.* and *Peterson* relate to different subdivisions in Minn. Stat. § 609.749 (2016) and therefore merely bolster a then-existing legal basis. *A.J.B.*, 929 N.W.2d at 848 (Minn. 2019) (subdivision 2(6)); *Peterson*, 936 N.W.2d 912 (subdivision 2(4)). That caselaw unavailable at the time of direct appeal now provides analogous support for his argument does not mean the basis for his argument did not exist at that time. *See Ademondi*, 616 N.W.2d at 718. Appellant does not meet the first exception.

Because appellant's claims are *Knaffla*-barred and no exception applies, we do not consider his substantive constitutional arguments.

Affirmed.