STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0234

John Stephen Woodward, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed October 25, 2021
Affirmed
Frisch, Judge

Rice County District Court
File No. 66-CR-10-2907

Zachary A. Longsdorf, Longsdorf Law Firm, PLC, Inver Grove Heights, Minnesota (for appellant)

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

John Fossum, Rice County Attorney, Sean R. McCarthy, Assistant County Attorney, Faribault, Minnesota (for respondent)

Considered and decided by Frisch, Presiding Judge; Johnson, Judge; and Bryan, Judge.

NONPRECEDENTIAL OPINION

FRISCH, Judge

Appellant challenges the denial of his second petition for postconviction relief, arguing that his claims are not time- or *Knaffla*-barred. We affirm.

FACTS

The Underlying Offense, Trial, Conviction, Sentence, and First Appeal

In 2007, appellant John Stephen Woodward was convicted of aiding and abetting several controlled-substance crimes and sentenced to 94 months in prison. While incarcerated, Woodward met Thomas Jackson, a fellow inmate. Woodward told Jackson that he had been "set up" by the Dakota County Attorney and wished that the county attorney were dead. When Woodward learned that Jackson was about to be released, Woodward suggested that Jackson kill the county attorney for him.

In June 2010, Woodward and Jackson met to plan to kill the county attorney. They drew a map of the county attorney's home, his route to work, locations to execute the crime, and where to dispose of the gun. Woodward agreed to pay Jackson $10,000 in furtherance of the scheme and did in fact pay Jackson $2,500 through an intermediary.

Approximately four weeks later, Jackson approached a special investigations officer to inform him of Woodward's plan. The officer instructed Jackson to record Woodward to confirm that Woodward did in fact plan to have Jackson kill the county attorney for him. Woodward ultimately confirmed on the recordings that he wanted to hire Jackson to kill the county attorney.

In September 2010, the state charged Woodward with conspiracy to commit first-degree murder.[1] We have summarized the state's case against Woodward in two previous opinions: *State v. Woodward*, No. A13-0703, 2014 WL 2921837 (Minn. App. June 30, 2014), *rev. denied* (Minn. Aug. 11, 2015), and *Woodward v. State*, No. A18-0253, 2018 WL 6729761 (Minn. App. Dec. 24, 2018), *rev. denied* (Minn. Mar. 19, 2019). At trial, Woodward alleged that Jackson coerced and intimidated him and argued that he was entrapped. In December 2012, a jury found Woodward guilty of conspiracy to commit first-degree murder, and the district court sentenced him to 192 months in prison. In 2014, Woodward appealed, and we affirmed his conviction.

First Petition for Postconviction Relief

In August 2017, Woodward petitioned for postconviction relief. The postconviction court denied the petition without a hearing. In February 2018, Woodward appealed, arguing that the postconviction court abused its discretion in not granting him a hearing. We affirmed and held that Woodward's claims were procedurally barred under *State v. Knaffla*, 243 N.W.2d 737, 741 (Minn. 1976) (holding that "where direct appeal has once been taken, all matters raised therein, and all claims known but not raised, will not be considered upon a subsequent petition for postconviction relief").

[1] The state also charged Woodward with a second count of conspiracy to commit first-degree murder and with conspiracy to commit first-degree assault. He was acquitted on both counts.

Second Petition for Postconviction Relief

In 2020, Woodward filed a second postconviction petition raising allegations that he (1) was denied the right to effective assistance of counsel at trial, (2) discovered new exculpatory evidence justifying a new trial, and (3) that this evidence was concealed by the state. In other filings in support of his petition, Woodward summarily alleged that he was denied the right to effective assistance of counsel in his direct appeal and that "exculpatory evidence was destroyed or not preserved under circumstances that suggest the presence of bad faith."

The arguments in the petition concern a recording of a phone call between Jackson's sister, Brenda Benedict, and the special investigations officer. Woodward alleged that the recording showed that Jackson "ma[de] up the allegations against Woodward." In support of his petition, Woodward submitted a new affidavit from Benedict wherein she attested that she "clearly stated [to the officer] Mr. Woodward was innocent." Woodward argued that the phone call between Benedict and the officer was "not adequately disclosed to him or his trial counsel prior to trial." Woodward, however, conceded that a recording of the call *was* "disclosed, but in a way that was designed to obfuscate the importance of these documents." Woodward also alleged that the officer improperly allowed Jackson to turn his recording device on and off while Jackson secretly recorded Woodward and that the officer did not properly record calls that Jackson made through other inmates' phone accounts.

The postconviction court held that all of Woodward's claims were time- and *Knaffla*-barred, denied his request for an evidentiary hearing, and dismissed his petition for

postconviction relief. Specifically, the postconviction court held that Woodward asserted claims past the two-year statutory period to obtain postconviction review, that neither the newly-discovered-evidence exception nor the interests-of-justice exception saved Woodward's claims from the time-bar, and that Woodward's claims were procedurally barred because Woodward could have asserted, or did in fact assert, all of the identified issues either on direct appeal or as part of his first postconviction proceeding.

Woodward appeals.

DECISION

An individual convicted of a crime may petition for relief from a conviction. Minn. Stat. § 590.01, subd. 1 (2020). "Unless the petition and the files and records of the proceeding conclusively show that the petitioner is entitled to no relief," the postconviction court must hold an evidentiary hearing, make findings and conclusions, and either deny the petition or order appropriate relief. Minn. Stat. § 590.04, subd. 1 (2020). "In determining whether an evidentiary hearing is required, a postconviction court considers the facts alleged in the petition as true and construes them in the light most favorable to the petitioner." *Andersen v. State*, 913 N.W.2d 417, 422-23 (Minn. 2018) (quotation omitted). "But a court need not hold an evidentiary hearing when the petitioner alleges facts that, if true, are legally insufficient to entitle him to the requested relief." *Jackson v. State*, 929 N.W.2d 903, 905 (Minn. 2019) (quotation omitted).

We review the denial of a postconviction petition without an evidentiary hearing for an abuse of discretion. *Colbert v. State*, 870 N.W.2d 616, 621 (Minn. 2015). "A postconviction court does not abuse its discretion unless it has 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." *Henderson v. State*, 906 N.W.2d 501, 505 (Minn. 2018) (quotation omitted).

I. The postconviction court did not abuse its discretion in denying Woodward's second petition as untimely.

Woodward concedes that his second petition for postconviction relief was untimely but argues that the newly-discovered-evidence exception and the interests-of-justice exception exempt him from the time-bar. We address each exception in turn.

A. The newly-discovered-evidence exception does not apply.

A postconviction court may consider an untimely petition for relief upon the production of newly discovered evidence, which requires the petitioner to allege (1) the existence of newly discovered evidence, (2) the evidence could not have been ascertained by the petitioner's exercise of due diligence within the two-year time period for filing a postconviction petition, (3) the evidence is not cumulative with respect to the evidence presented at trial, (4) the newly discovered evidence is not for impeachment purposes, and (5) the evidence establishes by a clear-and-convincing standard that the petitioner is innocent of the underlying offense for which he was convicted. Minn. Stat. § 590.01, subd. 4(b)(2) (2020). "All five criteria must be satisfied to obtain relief." *Riley v. State*, 819 N.W.2d 162, 168 (Minn. 2012).

Here, the evidence identified by Woodward is not newly discovered because the evidence was produced prior to trial and Woodward could have discovered the evidence with the exercise of due diligence within the required time to file a postconviction petition.[2]

First, neither the Benedict affidavit nor the phone call are newly discovered evidence. The substance of the affidavit derives entirely from a recorded phone call between Benedict and the special investigations officer. Woodward admits that the state disclosed a recording of this call to him prior to trial, at least seven years before he filed his petition. But Woodward now argues that the state disclosed the call "in a way that was designed to obfuscate [its] importance." Woodward's petition and files contain no evidence or allegation that the state intentionally obfuscated the call, affirmatively misrepresented its contents, or described the evidence in a manner distinct from other disclosed evidence to conceal its contents. And the petition and files contain no evidence that Woodward was prevented from reviewing the evidence before the expiration of the time for filing a postconviction petition or that it was unduly burdensome for him to do so. Because Woodward had access to the call between Benedict and the officer for at least seven years before he filed his petition, this evidence (and Benedict's new affidavit regarding that evidence) is not newly discovered.

Second, even if the Benedict affidavit did constitute newly discovered evidence, Woodward could have discovered this evidence years ago through the exercise of due

[2] Because Woodward must satisfy all five factors for the exception to apply and because we conclude that Woodward fails to establish factors (1) and (2), we decline to analyze the remaining three factors.

diligence. Woodward concedes that the evidence was produced to him before trial. He had access to this evidence for at least seven years prior to filing his petition. Although Woodward summarily alleges that he was incarcerated in a segregated unit for a limited period of time during which he claims he was unable to review evidence, he does not claim that he was prevented from reviewing the evidence for the *totality* of the two-year postconviction filing period. And his limited segregated incarceration does not explain the lengthy delay in bringing the current postconviction petition, many years after his conviction. Woodward could have timely discovered the evidence if he had conducted a reasonable search of the evidence that was produced to him before trial.

B. The interests-of-justice exception does not apply.

A second exception to the time-bar exists where "the petitioner establishes to the satisfaction of the court that the petition is not frivolous and is in the interests of justice." Minn. Stat. § 590.01, subd. 4(b)(5) (2020). The interests-of-justice exception is "implicated only in exceptional and extraordinary situations." *Carlton v. State*, 816 N.W.2d 590, 607 (Minn. 2012) (quotation omitted). A claim under the interests-of-justice exception "must relate to an injustice that delayed the filing of the petition, not to the substantive merit of the petition." *Odell v. State*, 931 N.W.2d 103, 106 (Minn. 2019) (quoting *Hooper v. State*, 888 N.W.2d 138, 142 (Minn. 2016)). Thus, "[t]his exception only applies if a petitioner 'alleges that an injustice occurred that prevented him from timely petitioning for postconviction relief.'" *Fox v. State*, 938 N.W.2d 252, 256 (Minn. 2020) (quoting *Odell*, 931 N.W.2d at 106).

Woodward does not argue that an injustice delayed him from filing his petition. He posits that his filing was delayed because, "[p]rior to his trial, and for another six months after trial, Woodward was illegally held in the [segregation unit], which precluded Woodward from taking part in his defense and working on his own behalf." But Woodward was only housed in the segregation unit until 2013; he does not explain why or how he was prevented from filing this petition until 2020, seven years after his release from segregation.

Even so, the alleged newly discovered evidence does not rise to the "exceptional" circumstances required to justify the interests-of-justice exception. *Carlton*, 816 N.W.2d at 607. The substance of the evidence—Benedict's speculative personal belief that Jackson "set up" Woodward—does not establish Woodward's innocence and is not admissible evidence at all; it is instead comprised of inadmissible hearsay, lay-witness opinion testimony, and is lacking in foundation. Minn. R. Evid. 602, 701, 802.

The postconviction court therefore did not abuse its discretion in denying Woodward an evidentiary hearing because his petition is time-barred and no exception applies.

II. The postconviction court did not abuse its discretion in denying Woodward's second petition as *Knaffla*-barred.

"Claims that were raised on direct appeal, or were known or should have been known but were not raised on direct appeal, are procedurally barred." *Sontoya v. State*, 829 N.W.2d 602, 604 (Minn. 2013) (citing *Knaffla*, 243 N.W.2d at 741); *see also* Minn.

Stat. § 590.01, subd. 1. A claim is not *Knaffla*-barred, however, if "(1) the claim is novel; or (2) the interests of fairness and justice warrant relief." *Sontoya*, 829 N.W.2d at 604.

Woodward's claims are procedurally barred because he could have raised them at an earlier proceeding, either in his direct appeal or his first postconviction petition. Woodward does not set forth any reason for why he could not have earlier raised the claims that he currently asserts. Instead, Woodward contends, without authority, that "[a] newly discovered evidence claim cannot be procedurally barred, because those bars apply to claims that were either previously raised or known but not raised." But the evidence upon which Woodward bases his current petition is not newly discovered and has been in his continuous possession for at least seven years prior to him filing his petition.

Woodward next argues that, because "his claims have merit" and "he had impediments to raising these claims at an earlier time," the interests of justice require consideration of his petition. A court may consider an otherwise *Knaffla*-barred claim "in limited situations when fairness so requires and when the petitioner did not deliberately and inexcusably fail to raise the issue on direct appeal." *Ademodi v. State*, 616 N.W.2d 716, 718 (Minn. 2000) (quoting *Russell v. State*, 562 N.W.2d 670, 672 (Minn. 1997)). But here, Woodward offers no excuse for his failure to previously raise issues related to evidence he has had in his possession for many years.[3]

[3] Woodward summarily asserts that he received ineffective assistance of trial counsel, but he makes no argument that his counsel's performance fell below an objective standard of reasonableness or that, but for his counsel's error, the result of the proceeding would have been different. *See Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984). "A petitioner seeking postconviction relief has the burden of establishing by a fair preponderance of the evidence that the facts warrant relief." *Erickson v. State*, 725 N.W.2d 532, 534 (Minn.

Accordingly, the postconviction court acted well within its discretion in denying Woodward's petition as both time- and *Knaffla*-barred.

Affirmed.

2007) (quotation omitted). "If the petition and the files and records of the proceeding conclusively show that the petitioner is entitled to no relief, a petitioner is not entitled to an evidentiary hearing." *Id.* (quotation omitted). "Further, allegations in a petition for postconviction relief must be more than argumentative assertions without factual support." *Id.* (quotation omitted).

Woodward bore the burden to allege facts in his petition sufficient to establish by a fair preponderance of the evidence that he was entitled to relief. *Id.* Mere "argumentative assertions without factual support" are insufficient to meet the threshold requirement for an evidentiary hearing on a postconviction petition. *Id.* A district court may deny an evidentiary hearing in the absence of proof supporting the allegations in the petition. *Id.* at 537. In light of Woodward's failure to set forth facts in his petition to support the claim of ineffective assistance of counsel, we see no abuse of discretion by the postconviction court in the denial of an evidentiary hearing.