STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0749

Mo Savoy Hicks, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed December 6, 2021
Affirmed
Segal, Chief Judge

Anoka County District Court
File No. 02-CR-11-3045

Mo Savoy Hicks, Bayport, Minnesota (pro se appellant)

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

Anthony C. Palumbo, Anoka County Attorney, Kelsey R. Kelley, Assistant County Attorney, Anoka, Minnesota (for respondent)

Considered and decided by Smith, Tracy M., Presiding Judge; Segal, Chief Judge; and Bjorkman, Judge.

NONPRECEDENTIAL OPINION

SEGAL, Chief Judge

In this appeal from the district court's order denying his fourth petition for postconviction relief, appellant argues that the district court erred in concluding that his claims for relief were *Knaffla*- and time-barred. We affirm.

FACTS

In August 2007, J.R.'s sister reported to law enforcement that J.R. was missing. The police executed a search warrant at J.R.'s apartment and discovered a large volume of blood in various rooms in the apartment, including on a mattress in her bedroom. A medical examiner determined that J.R. could not have survived after she lost the amount of blood discovered in the apartment. J.R. was declared legally dead in July 2008. Three years later, human remains were discovered at a park and a DNA analysis confirmed they were the remains of J.R. A medical examiner determined that the cause of death was a blunt force injury to the head.

Respondent State of Minnesota charged appellant Mo Savoy Hicks with second-degree intentional murder and second-degree unintentional murder. Hicks waived his right to a jury trial and the district court held a court trial. At trial, two individuals with whom Hicks had been incarcerated testified that Hicks told them that he had hit J.R. over the head with a hammer and buried her near a place where he used to live. The state's theory at trial was that Hicks killed J.R. in her bedroom and only then was her body moved and buried in the park. The state presented physical evidence linking Hicks to the crime, as well as a chronology of the places Hicks had lived, to show that J.R.'s remains were discovered near one of his previous addresses.

The district court found Hicks guilty of second-degree unintentional murder, but not guilty of second-degree intentional murder. The district court sentenced Hicks to 420 months in prison, an upward durational departure, after finding that the concealment of J.R.'s body constituted an aggravating factor. This court affirmed Hicks's conviction and

sentence on direct appeal, and the supreme court granted review and affirmed on the sentencing issue. *State v. Hicks*, 837 N.W.2d 51, 65 (Minn. App. 2013), *aff'd*, 864 N.W.2d 153, 163 (Minn. 2015).

Hicks filed his first petition for postconviction relief in 2017. In that petition, he challenged the constitutionality of both the statute under which he was convicted and the sentencing guidelines. The district court denied the petition without a hearing. Hicks filed a second petition for postconviction relief in 2019, which was denied without a hearing. His third petition for postconviction relief was filed in 2020. He argued in his third petition that he was entitled to relief because "the facts upon which the conviction rests are false" and the result of perjury and "discarded evidence." In the petition, Hicks challenged the state's blood and DNA evidence and argued that the two witnesses who had been incarcerated with him had committed perjury. The district court also denied Hicks's third petition without a hearing.

In March 2021, Hicks filed the petition that is the subject of this appeal, his fourth petition for postconviction relief (the petition). He again asserted that the facts upon which he was convicted "were false or discarded and violated [his] rights guaranteed by the 5th and 14th amendments of the Constitution." In his memorandum he argued that he was presenting novel legal issues of "excited utterance recantation" and "forensic exposition" related to bloodstain evidence. Hicks provided no sworn evidence in support of the petition aside from his own affidavits.

In connection with his recantation argument, Hicks pointed to two letters written by one of the witnesses Hicks had been incarcerated with and who had testified against Hicks

at trial. The letters were sent to the county attorney in 2013 and imply that the witness's testimony was not truthful. The letters gave the county attorney "30 days to get me out of here" or the witness would go to the press and "expose" that the county sheriff's office rigged the witness's polygraph exam to falsely show that the witness had passed the exam. Copies of the letters were provided to Hicks's appellate counsel during the pendency of Hicks's direct appeal in 2013.

As to the bloodstain evidence, Hicks cited to publications on bloodstain patterns that he claimed discredit the state's theory that J.R. died on the mattress in her bedroom. He asserted that this should be treated as new evidence because he only became aware of the publications shortly before he filed the petition.

The district court denied the petition without a hearing after determining that the claims were both *Knaffla*- and time-barred. Hicks now appeals.

DECISION

Hicks challenges the district court's denial of his fourth petition without a hearing.[1] We review a summary denial of a petition for postconviction relief for an abuse of discretion. *Riley v. State*, 819 N.W.2d 162, 167 (Minn. 2012). "A [district] court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record." *Id.* (quotation omitted).

[1] In his brief, Hicks asserts that he is appealing the denial of his third and fourth petitions for postconviction relief. The district court denied the third petition in April 2020, and Hicks did not timely appeal that decision. *See* Minn. R. Crim. P. 28.02, subd. 4(3)(c) (stating that "an appeal by the defendant from an order denying a petition for postconviction relief must be filed within 60 days after entry of the order"). The denial of the third petition is therefore not before this court.

***Knaffla* Bar**

Hicks's first argument is that the district court erred in determining that the petition was *Knaffla*-barred because his claims fall within an exception. Minnesota statutes provide that "[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 (2020). The statute reflects the rule established in *State v. Knaffla*, which states that after a direct appeal has been taken, all claims raised in that appeal and all claims known at the time of that appeal "will not be considered upon a subsequent petition for postconviction relief." 243 N.W.2d 737, 741 (Minn. 1976). The bar also applies to claims that were raised, or could have been raised, in previous petitions for postconviction relief. *Schleicher v. State*, 718 N.W.2d 440, 449 (Minn. 2006). There are two exceptions to the *Knaffla* bar that allow consideration of claims: "(1) if a novel legal issue is presented, or (2) if the interests of justice require review." *Taylor v. State*, 691 N.W.2d 78, 79 (Minn. 2005). Hicks's argument on appeal is that the petition comes within the novel-legal-issue exception based on his theories of "excited utterance recantation" and "forensic exposition" of bloodstain evidence.

Turning first to Hicks's arguments about the two "recantation" letters, the record shows that copies of the two letters, which were sent to the county attorney's office by the witness in September and October 2013, were provided to Hicks's appellate counsel during the pendency of his direct appeal. Hicks has thus been aware of the letters since 2013. Hicks does not deny that he was aware of the letters back in 2013, but argues that the petition comes within the novel-legal-issue exception to *Knaffla* because he is now

asserting a new theory—that the letters constitute an "excited utterance recantation." It appears, however, that Hicks made this same type of argument in his third petition for postconviction relief. He asserted in that petition that the witness committed perjury and, in referencing the letters, argued that the "recantations are more akin to an excited utterance." Hicks thus raised the issue in a prior petition for postconviction relief and it does not qualify as a "novel legal issue."[2]

Hicks's second argument is that the petition raised the novel issue of "forensic exposition." Hicks points to two publications, *Forensic Biology* and *Bloodstain Pattern Analysis with an Introduction to Crime Scene Reconstruction*.[3] He claims that he only recently became aware of these publications. He argues that, according to the publications, if J.R. had died on the mattress as theorized by the state, there should have been a void in the bloodstain on the mattress where her body would have lain. He argues that, because he was previously unaware of the information in the publications, this argument about bloodstain patterns should be treated as coming within an exception to the *Knaffla* bar. The publications relied on by Hicks, however, are not new and were published prior to the date Hicks filed his first petition for postconviction relief. In essence, Hicks's argument

[2] We also note that review is not required by the interests of justice. There is well-settled law governing witness-recantation claims in petitions for postconviction relief that take into account whether the recantation bears indicia of trustworthiness. *See, e.g.*, *Campbell v. State*, 916 N.W.2d 502, 508-09 (Minn. 2018).

[3] *See* Richard Li, *Forensic Biology* (2d ed. 2015); Tom Bevel & Ross M. Gardner, *Bloodstain Pattern Analysis with an Introduction to Crime Scene Reconstruction* (3d ed. 2008).

constitutes no more than a challenge to the sufficiency of the evidence for conviction and does not qualify under either exception to the *Knaffla* bar.

The district court thus did not err in concluding that the claims in the petition were procedurally barred under *Knaffla*. *See Schleicher*, 718 N.W.2d at 449.

Timeliness

The district court also denied the petition for postconviction relief as untimely. A petition for postconviction relief must be filed within two years after "the entry of judgment of conviction or sentence if no direct appeal is filed" or "an appellate court's disposition of petitioner's direct appeal." Minn. Stat. § 590.01, subd. 4(a) (2020). Hicks filed a direct appeal, and the supreme court affirmed in June 2015. *Hicks*, 864 N.W.2d at 163. Hicks did not file the current petition for postconviction relief until March 2021, and it is therefore untimely under Minn. Stat. § 590.01, subd. 4(a).

Untimely petitions may still be considered if the petitioner establishes that he meets one of five listed statutory exceptions. Minn. Stat. § 590.01, subd. 4(b) (2020). The petitioner bears the burden of proving that he meets one of the statutory exceptions. *State v. Rainer*, 502 N.W.2d 784, 787 (Minn. 1993). Under Minn. Stat. § 590.01, subd. 4(b)(2), a district court may hear an otherwise untimely petition if

> the petitioner alleges the existence of newly discovered evidence, including scientific evidence, that could not have been ascertained by the exercise of due diligence by the petitioner or petitioner's attorney within the two-year time period for filing a postconviction petition, and the evidence is not cumulative to evidence presented at trial, is not for impeachment purposes, and establishes by a clear and convincing standard that the petitioner is innocent of the offense or offenses for which the petitioner was convicted.

Hicks argued to the district court that the bloodstain publications should be considered "new evidence" because it is new to him and "is of a complicated scientific nature that is not easily accessible or easily understood." The district court correctly concluded that this does not make it "newly discovered evidence."

Hicks's argument also fails because at most the bloodstain theories contained in the publications amount to a challenge to the state's forensic evidence and testimony. The evidence would thus be for "impeachment purposes." Hicks knew that testimony concerning the blood on the mattress would be presented by the state at trial and had the opportunity to counter that evidence at that time. Evidence "for impeachment purposes" does not constitute newly discovered evidence under Minn. Stat. § 590.01, subd. 4(b)(2).

On this record, we discern no abuse of discretion by the district court in summarily denying the petition for postconviction relief as untimely.

Affirmed.