

*This opinion is nonprecedential except as provided by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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0882**

Joshua Raymond Armendariz, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed April 11, 2022
Affirmed
Gaïtas, Judge**

Blue Earth County District Court
File Nos. 07-CR-17-4136, 07-CR-17-4198, 07-CR-18-319, 07-CR-18-5197

Joshua Raymond Armendariz, Waseca, Minnesota (self-represented appellant)

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

Patrick R. McDermott, Blue Earth County Attorney, Susan B. DeVos, Assistant County
Attorney, Mankato, Minnesota (for respondent)

Considered and decided by Frisch, Presiding Judge; Gaïtas, Judge; and Klaphake,
Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

GAÏTAS, Judge

Appellant Joshua Raymond Armendariz appeals from the district court's summary denial of his petition for postconviction relief. We affirm.

FACTS

Between October 2017 and January 2019, respondent State of Minnesota charged Armendariz with multiple offenses in seven separate court files. In February 2019, Armendariz and the state reached a global resolution. Armendariz pleaded guilty to the following charges: threats of violence,¹ Minn. Stat. § 609.713, subd. 1 (2016); fleeing a police officer in a motor vehicle, Minn. Stat. § 609.487, subd. 3 (2016); third-degree driving while impaired (DWI), Minn. Stat. § 169A.20, subd. 1(7) (2016); felony domestic assault, Minn. Stat. § 609.2242, subd. 4 (2016); and felony violation of a no-contact order, Minn. Stat. § 629.75, subd. 2(d)(1) (2016). Under the terms of the agreement, all other charges, and three additional court files, would be dismissed at sentencing. The agreement also called for concurrent sentencing so long as Armendariz remained law abiding between his plea hearing and sentencing. If he did not, the state could seek permissive consecutive

¹ Armendariz entered an *Alford* plea to the threats of violence offense. An *Alford* plea permits “a court to accept a defendant’s guilty plea, even though the defendant [maintains] his innocence, where the State [demonstrates] ‘a strong factual basis for the plea’ and the defendant clearly [expresses] his desire to enter the plea based on his belief that the State’s evidence would be sufficient to convict him.” *State v. Theis*, 742 N.W.2d 643, 647 (Minn. 2007) (quoting *North Carolina v. Alford*, 400 U.S. 25 (1970)).

sentences for any or all of the offenses.² Following the plea hearing, Armendariz was charged with several new offenses. At his sentencing hearing, the state sought consecutive sentencing. The district court imposed consecutive sentences totaling 69 months and three days in prison.

Armendariz, represented by counsel, then filed a direct appeal, which was stayed so he could pursue postconviction relief. In the district court, Armendariz moved to withdraw his guilty pleas and requested that his motion be heard by a different judge than the one who had presided over his plea and sentencing hearings. The case was assigned to the same judge. In a written order, the district court addressed Armendariz's allegation of judicial bias, corrected one of the sentences that had improperly included a three-month custody enhancement, and denied Armendariz's motion to withdraw his guilty pleas. Armendariz then reinstated his direct appeal, challenging only the district court's denial of his motion to withdraw his guilty pleas. On appeal, he argued that the district court's decision to impose consecutive sentences violated his plea agreement. *State v. Armendariz*, No. A19-1059, 2021 WL 79797, at *1 (Minn. App. Jan. 11, 2021), *rev. denied* (Minn. Mar. 30, 2021). We affirmed, concluding that the district court was entitled to impose

² The district court had discretion to impose consecutive sentences without departing from the sentencing guidelines. *See* Minn. Sent. Guidelines 2.F.2.a (Supp. 2017) (stating that a district court may impose permissive consecutive sentences “if the presumptive disposition for the current offense(s) is commitment,” and “[i]f the offender is being sentenced for multiple current felony convictions for crimes on the list of offenses eligible for permissive consecutive sentences”); Minn. Sent. Guidelines 6 (Supp. 2017) (listing the offenses eligible for permissive consecutive sentences).

consecutive sentences under the terms of the plea agreement, and therefore did not abuse its discretion in denying Armendariz’s motion to withdraw his guilty pleas. *Id.* at *4-6.

Shortly thereafter, Armendariz filed a petition for postconviction relief in the district court. In his postconviction petition, Armendariz raised the following three claims: (1) the district court erred by failing to recuse from the earlier postconviction proceedings after exhibiting bias at sentencing, (2) the district court erred by sentencing him to a longer duration than was called for under his plea agreement, and (3) his sentences are unlawful because they are based on an incorrect criminal history score. The district court summarily denied the postconviction petition.

Armendariz appeals.

DECISION

Armendariz argues that the district court erred in denying his postconviction petition. Appellate courts “review the denial of a postconviction petition for an abuse of discretion.” *Dolo v. State*, 942 N.W.2d 357, 362 (Minn. 2020). A district court abuses its discretion by exercising its discretion in an arbitrary or capricious manner, basing its decision on an erroneous view of law, or making clearly erroneous factual findings. *Pearson v. State*, 891 N.W.2d 590, 596 (Minn. 2017).

Where, as here, a defendant has already taken a direct appeal, “all matters raised therein, and all claims known but not raised, will not be considered upon a subsequent petition for postconviction relief.” *State v. Knaffla*, 243 N.W.2d 737, 741 (Minn. 1976). Issues that were raised on direct appeal, or could have been raised on direct appeal, are said to be “*Knaffla* barred” if they are raised again, which means that a court cannot consider

them. *Zumberge v. State*, 937 N.W.2d 406, 411 (Minn. 2019). In these circumstances, the *Knaffla* rule always applies unless there are exceptional circumstances. *Zumberge*, 937 N.W.2d at 411-12. Exceptional circumstances exist where (1) a postconviction petition presents “a novel legal issue . . . that was unavailable at the time of the direct appeal” or (2) “the interests of justice require review.” *Id.*

Applying these principles here, we conclude that two of the three issues that Armendariz raises in his postconviction petition are *Knaffla* barred. First, Armendariz argues that the district court judge assigned to his case was biased against him and should have recused from his motion to withdraw his guilty plea, which was filed during the stay of his direct appeal. Although the district court ruled on this issue, Armendariz did not pursue it in his subsequent appeal to our court. Because the issue was known to Armendariz at the time of his direct appeal but not raised, it is barred under *Knaffla*. See *Hannon v. State*, 752 N.W.2d 518 (Minn. 2008) (explaining that judicial-bias claims not raised on direct appeal after conviction are *Knaffla*-barred).

Second, Armendariz argues that the district court erred by imposing a different—and longer—sentence than the one that was promised at the time of his plea agreement. But he raised this issue in his direct appeal to our court, and we determined that the plea agreement allowed the district court to sentence consecutively if he failed to remain law abiding. See *Armendariz*, 2021 WL 79797, at *6. Moreover, we concluded that the district court did not err in finding that Armendariz failed to remain law abiding and in imposing consecutive sentences on that basis. *Id.* Because we previously decided that the district

court permissibly sentenced Armendariz to consecutive prison terms after he violated the conditions of his plea agreement, his second claim is also barred under *Knaffla*.³

A district court does not abuse its discretion when it denies claims for postconviction relief that are procedurally barred by the *Knaffla* rule. *Zumberge*, 937 N.W.2d at 411. Because Armendariz’s claims of judicial bias and improper deviation from the plea agreement are *Knaffla* barred, the district court did not abuse its discretion in summarily denying them.⁴

Armendariz’s final issue is a challenge to his criminal history score. He argues that the district court erred in sentencing him because “the court was not presented with a correct criminal history score within the sentencing worksheet.” Although Armendariz did not raise this issue in the district court, a defendant cannot waive or forfeit review of the calculation of his criminal-history score because a sentence based on an incorrect criminal-history score is an illegal sentence, which can be corrected at any time under the rules of criminal procedure. *See* Minn. R. Crim. P. 27.03, subd. 9; *State v. Maurstad*, 733 N.W.2d 141, 147-48 (Minn. 2007). But after a direct appeal, the defendant bears the burden of

³ Armendariz has not alleged special circumstances that would preclude the application of *Knaffla*.

⁴ We also note that the district court was not required to hold a hearing on Armendariz’s postconviction petition. When “the petition and the files . . . conclusively show that the petitioner is entitled to no relief,” the district court may deny a postconviction petition without a hearing. Minn. Stat. § 590.04, subd. 1 (2020). Moreover, the district court may summarily deny a postconviction petition when it raises issues that an appellate court has already decided in the same case. *Id.*, subd. 3 (2020).

proving that a criminal history score is inaccurate when bringing such a challenge under the criminal procedure rules. *Williams v. State*, 910 N.W.2d 736, 743 (Minn. 2018).

We have carefully reviewed Armendariz's sentences and the corresponding sentencing worksheets in the record. We note that the sentencing worksheet for one of his four convictions—the conviction for threats of violence, which was sentenced first—erroneously included a three-month custody enhancement. But while his first appeal was stayed, the district court corrected this error, reducing the 33-month sentence originally imposed to the presumptive sentence of 30 months without the enhancement.

The remaining sentencing worksheets in the record reflect the presumptive sentences for concurrent sentencing. Because a district court generally must reduce a defendant's criminal history score to zero when imposing consecutive sentences, the presumptive sentences listed on those worksheets are incorrect for the purpose of consecutive sentencing. *See* Minn. Sent. Guidelines 2.F.2.b (Supp. 2017) (providing that, when sentencing consecutively, the district court must use a criminal history score of zero, or the mandatory minimum if longer, to determine the presumptive duration). But although the district court sentenced Armendariz consecutively, it did not impose the sentence durations included in the sentencing worksheets. Rather, the district court imposed three consecutive sentences of 12 months and one day. Those sentences reflect the presumptive duration for the offenses of fleeing a police officer in a motor vehicle, felony domestic assault, and felony violation of a no-contact order as calculated using a zero criminal history score. *See* Minn. Sent. Guidelines 4.A, 5.A (Supp. 2017). Thus, although the district court did not state on the record that it had reduced Armendariz's criminal history

score to a zero in sentencing those offenses, we can infer from the sentences imposed that it did. Because Armendariz received sentences that reflect the use of a correct criminal history score, he has not shown that they are unlawful.

Affirmed.