This opinion is nonprecedential except as provided by Minn.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
A21-1423

Dane Michael Vandervoort, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed July 18, 2022
Affirmed
Reilly, Judge

Renville County District Court
File No. 65-CR-19-69

Dane VanderVoort, Lino Lakes, Minnesota (pro se appellant)

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

Kelsie Kingstrom, Renville County Attorney, Olivia, Minnesota (for respondent)

Considered and decided by Reilly, Presiding Judge; Worke, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

REILLY, Judge

Appellant challenges the district court's denial of his motion to correct sentence, which the district court deemed to be a petition for postconviction relief. Because the district court properly construed the motion as a postconviction petition and denied it as procedurally barred under *State v. Knaffla*, 243 N.W.2d 737 (Minn. 1976), we affirm.

FACTS

In March 2019, appellant Dane Michael VanderVoort[1] threatened his ex-girlfriend and her friend with a gun, and then pointed a gun at a responding police officer. Respondent State of Minnesota charged appellant in a nine-count complaint with first-degree assault—use of deadly force against a peace officer; three counts of second-degree assault; kidnapping; burglary; attempted disarming of a peace officer; terroristic threats; and theft.

Appellant agreed to plead guilty to the three second-degree assault charges, and the state agreed to dismiss the remaining six charges. The parties agreed that two of the counts would be sentenced concurrent to one another, and the third count would be sentenced consecutive to the other counts, for a total sentence of 72 months. The parties agreed that appellant would be permitted to seek a downward dispositional departure, although the state would oppose that request.

The district court accepted the plea agreement and sentenced appellant to two concurrent 36-month prison terms, and a consecutive 36-month prison term, consistent with the parties' agreement. The district court also denied appellant's motion for a downward dispositional departure. We affirmed the district court's sentencing decision on

[1] The case caption of this opinion spells appellant's last name as "Vandervoort," which is the way the caption is spelled in some of the district court files. *See* Minn. R. Civ. App. P. 143.01 (directing that the title of the action not be changed on appeal). In his appellant's brief, however, appellant spells his last name as "VanderVoort," with the second "v" capitalized. We therefore use that spelling here.

direct appeal. *State v. Vandervoort*, No. A20-0123, 2020 WL 7019331 (Minn. App. Nov. 30, 2020), *rev. denied* (Minn. Feb. 24, 2021).

Appellant filed a motion for corrected sentence under Minnesota Rule of Criminal Procedure 27.03, claiming that he was entitled to a reduced sentence. The district court construed the motion as a petition for postconviction relief and denied it without an evidentiary hearing. The district court reasoned that appellant's claims were procedurally barred because his arguments were known or should have been known at the time of his direct appeal. The district court also determined that appellant's claims failed on their merits. This appeal follows.[2]

DECISION

I. The district court properly construed appellant's motion for correction of sentence as a postconviction petition.

We first consider whether the district court properly treated appellant's motion for correction of sentence as a postconviction petition. A defendant may challenge a sentence in two ways: by petitioning for postconviction relief under Minnesota Statutes section 590.01, subdivision 1 (2020); or by moving to correct sentence under Minnesota Rule of Criminal Procedure 27.03, subdivision 9. *Washington v. State*, 845 N.W.2d 205, 210 (Minn. App. 2014). Rule 27.03, subdivision 9, permits correction of an unlawful sentence "at any time." A postconviction petition is subject to the rule that, after a direct appeal, "all matters raised therein, and all claims known but not raised, will not be considered upon

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[2] The state did not file a brief and we ordered the matter to proceed under Minn. R. Civ. App. P. 142.03 (directing that when a respondent fails to file a brief or seek an extension the matter is to be decided on the merits).

a subsequent petition for postconviction relief." *Knaffla*, 243 N.W.2d at 741. A petitioner may not use rule 27.03 "to circumvent the procedural requirements of the postconviction statute." *Wayne v. State*, 870 N.W.2d 389, 391 (Minn. 2015).

Appellant filed a motion for correction of sentence under rule 27.03. Appellant argued that his sentences should run concurrently rather than consecutively or, in the alternative, that the district court should reduce the duration of his commitment. The district court properly treated appellant's motion as a postconviction petition. In *State v. Coles*, the supreme court held that "where the sentence at issue is imposed as part of a plea agreement," and the appellant's requested relief would alter the benefit of the bargain struck, then rule 27.03, subdivision 9, "does not apply." 862 N.W.2d 477, 481 (Minn. 2015). Here, appellant executed an agreement with the state to plead guilty to three second-degree assault charges in exchange for the state's dismissal of six other charges. The agreement contemplated that appellant would receive two concurrent 36-month sentences and one consecutive 36-month sentence, for an aggregate sentence of 72 months.

Appellant's motion to reduce his sentence implicates his plea agreement. Granting appellant's motion to modify his sentence would mean that appellant would retain the benefit of the dismissed charges, but the state would lose the benefit of the agreed-upon sentences. *See id.* at 481 ("If the defendant succeeds in reducing his or her sentence, he or she retains the benefit of the reduced criminal charge, but the State no longer receives the benefit of the longer sentence."). Thus, we conclude that the district court did not err by treating appellant's request for correction of sentence as a petition for postconviction relief.

II. Appellant's claims are *Knaffla*-barred.

We next consider whether the district court abused its discretion by summarily denying appellant's motion without an evidentiary hearing. A district court must hold a hearing on a petition for postconviction relief "[u]nless the petition and the files and records of the proceeding conclusively show that the petitioner is entitled to no relief." Minn. Stat. § 590.04, subd. 1 (2020). We review the denial of a postconviction petition, "including a denial of relief without an evidentiary hearing, for an abuse of discretion." *State v. Nicks*, 831 N.W.2d 493, 503 (Minn. 2013). The district court abuses its discretion if its decision is based on an erroneous view of the law or clearly erroneous factual findings. *Riley v. State*, 819 N.W.2d 162, 167 (Minn. 2012).

We determine that appellant's claims are procedurally barred under *Knaffla*. "[W]here 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." *Knaffla*, 243 N.W.2d at 741; *see also* Minn. Stat. § 590.01, subd. 1 (providing that a postconviction petition after a direct appeal "may not be based on grounds that could have been raised on direct appeal of the conviction or sentence"). Appellant argues that his sentences should run concurrently or that he should receive a reduced sentence. Appellant already raised these arguments below, and these claims could have been raised in his direct

appeal. Because appellant failed to raise these arguments on direct appeal, the district court did not err in denying his petition without an evidentiary hearing.[3] We therefore affirm.[4]

Affirmed.

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[3] There are two exceptions to an otherwise *Knaffla*-barred claim. *Hooper v. State*, 838 N.W.2d 775, 787 (Minn. 2013). Appellant does not assert that either exception applies here.

[4] While we need not reach this issue, appellant's challenge also fails on the merits. Appellant pleaded guilty to three counts of second-degree assault with a firearm in violation of Minn. Stat. § 609.222, subd. 1 (2018). The statute calls for a presumptive commitment of 36 months as the mandatory minimum sentence for this offense. Minn. Stat. § 609.11, subds. 5(a), 9 (2018). Thus, we discern no abuse of discretion in the district court's sentencing decision.