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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1558**

Joseph F. Thomas, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent

**Filed December 3, 2012
Affirmed
Stoneburner, Judge**

Steele County District Court
File Nos. KX-93-942, K9-93-1063

Joseph F. Thomas, Moose Lake, Minnesota (pro se appellant)

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Daniel A. McIntosh, Steele County Attorney, Sasha J. Zekoff, Assistant County Attorney, Owatonna, Minnesota (for respondent)

Considered and decided by Kalitowski, Presiding Judge; Stoneburner, Judge; and Larkin, Judge.

UNPUBLISHED OPINION

STONEBURNER, Judge

Appellant challenges the district court's summary denial of his pro se motion to vacate his 1994 convictions. The district court addressed the motion as a petition for

postconviction relief and dismissed the petition as untimely and procedurally barred. We affirm.

FACTS

In 1994, appellant Joseph F. Thomas was found guilty of multiple counts of first- and third-degree criminal sexual conduct in violation of Minn. Stat. §§ 609.342, subd. 1(e)(i), (e)(ii) (1992), .344, subd. 1(b), (c), (d) (Supp. 1993), and three counts of gross-misdemeanor furnishing alcohol to a minor in violation of Minn. Stat. § 340A.503, subd. 2(1) (1992). Because several of the offenses were part of the same course of conduct, Thomas was sentenced for only four of the felony convictions and the three gross-misdemeanor convictions. The district court sentenced Thomas to 76 months in prison, 39 months of supervised release, and five years of conditional release for one conviction of first-degree criminal sexual conduct; 60 months in prison, 31 months of supervised release, and ten years of conditional release for another conviction of first-degree criminal sexual conduct; and 34 months in prison, 18 months of supervised release, and ten years of conditional release for each of two convictions of third-degree criminal sexual conduct, all to be served consecutively. The district court also sentenced Thomas to one year in jail for each of the convictions for furnishing alcohol to minors, to be served concurrently with the other sentences.

Thomas appealed, arguing that the charges were improperly joined, the prosecutor committed prejudicial misconduct, and the evidence was insufficient to support one of the convictions. This court affirmed the convictions. *See State v. Thomas*, 1995 WL 507602 (Minn. App. Aug. 29, 1995), *review denied* (Minn. Oct. 27, 1995).

In 2006, Thomas moved for clarification of his sentences. The district court issued an order clarifying the total sentence and the number of months to be served in prison. Thomas appealed, and this court affirmed with a modification to reflect that one of Thomas's convictions is subject to a reduction for good-time. *See Thomas v. State*, 2007 WL 2363894 (Minn. App. Aug. 21, 2007).

In May 2011, Thomas moved in open court for vacation of "all judgments and sentences" based on various challenges to the validity of the complaint. Specifically, Thomas asserted that the district court lacked jurisdiction because (1) after the prosecutor was granted leave to amend the complaint, an amended complaint was never signed by a judicial officer; (2) the amended complaint did not comply with the law; (3) the facts alleged in the amended complaint did not constitute an offense; and (4) the prosecutor failed to file a valid and timely complaint.¹

The postconviction court treated Thomas's motion as a petition for postconviction relief and dismissed the petition as untimely and procedurally barred by *Knaffla*. This appeal followed.

¹ The state argues that all of Thomas's arguments are time-barred and procedurally barred under *Knaffla* without acknowledging that subject-matter jurisdiction can be challenged at any time and can never be waived. *See Reed v. State*, 793 N.W.2d 725, 731 (Minn. 2010) ("Because a subject-matter-jurisdiction claim involves a court's power to hear a case, the claim can never be forfeited or waived." (quotation and alteration omitted)). But subject-matter jurisdiction over criminal matters is conferred by statute, not by complaint; therefore, Thomas's challenges to the complaint as a matter of law do not implicate subject-matter jurisdiction. *See Minn. Stat. § 609.025* (2010) ("A person may be convicted and sentenced under the law of this state if the person . . . commits an offense in whole or in part within this state.").

DECISION

Under *State v. Knaffla*, 309 Minn. 246, 252, 243 N.W.2d 737, 741 (1976), an appellant who files a direct appeal may not later raise in a petition for postconviction relief issues that were or could have been presented on appeal. Review of a denial of postconviction relief based on the *Knaffla* procedural bar is for an abuse of discretion. *Quick v. State*, 692 N.W.2d 438, 439 (Minn. 2005). Appellate courts “afford great deference to a district court’s findings of fact and will not reverse the findings unless they are clearly erroneous.” *Dukes v. State*, 621 N.W.2d 246, 251 (Minn. 2001). A decision will not be reversed unless the court “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.” *Reed*, 793 N.W.2d at 729. This court reviews issues of law de novo. *Id.*

In this case, the postconviction court concluded:

The issues currently raised by [Thomas] could have been raised at the pretrial stage of this case . . . [and t]hese issues could have been raised as part of his direct appeal in 1995[,] . . . [but b]ecause [Thomas] failed to raise these issues at the pretrial and appellate stages of the case, [Thomas’s] motion is procedurally barred under Minnesota Statute Section 590.01, subd. 1 and [*Knaffla*].

There are two exceptions to the *Knaffla* bar, applicable if “(1) the defendant presents a novel legal issue or (2) the interests of justice require the court to consider the claim.” *Buckingham v. State*, 799 N.W.2d 229, 231 (Minn. 2011). Thomas does not claim to present a novel legal issue, but he argues that the interests of justice require consideration of his claims. To come under this exception, the “claim must have merit

and must be asserted without deliberate or inexcusable delay.” *Wright v. State*, 765 N.W.2d 85, 90 (Minn. 2009). And “fairness does not require that we review a claim when [the appellant] has not presented a colorable explanation of why he failed to raise these claims previously.” *Perry v. State*, 731 N.W.2d 143, 147 (Minn. 2007).

Thomas first asserted his current challenges more than 17 years after his convictions without any explanation for not timely asserting the claims. Because the claims asserted were all known or knowable at the time of the convictions and Thomas’s delay in making the claims is inexcusable, the interests-of-justice exception to the *Knaffla* bar does not apply and the district court did not abuse its discretion by holding that Thomas’s postconviction claims are barred.

Because Thomas’s claims are barred by *Knaffla*, we do not reach the argument that the claims are also untimely under Minn. Stat. § 590.01, subd. 4 (2010), which provides that, with exceptions that do not apply in this case, a petition for postconviction relief may not be filed more than two years after an appellate court’s disposition of the petitioner’s direct appeal.

Affirmed.