STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1313

Justin Michael Buermann, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed August 26, 2013
Affirmed
Kalitowski, Judge

Otter Tail County District Court
File No. 56-K8-05-000396

Lynne Torgerson, Minneapolis, Minnesota (for appellant)

Lori Swanson, Attorney General, Christie Bennett Eller, Deputy Attorney General, St. Paul, Minnesota; and

David J. Hauser, Otter Tail County Attorney, Fergus Falls, Minnesota (for respondent)

Considered and decided by Kalitowski, Presiding Judge; Cleary, Judge; and Willis, Judge.*

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

U N P U B L I S H E D O P I N I O N

KALITOWSKI, Judge

Appellant Justin Michael Buermann challenges the district court's denial of his petition for postconviction relief and motion to withdraw an *Alford* plea. We affirm.

D E C I S I O N

I.

When reviewing a postconviction court's decisions, we review issues of law de novo, and we review factual findings to determine whether the findings are supported by sufficient evidence. *Leake v. State*, 737 N.W.2d 531, 535 (Minn. 2007). The petitioner may not file a petition for postconviction relief "more than two years after the later of: (1) the entry of judgment of conviction or sentence if no direct appeal is filed; or (2) an appellate court's disposition of petitioner's direct appeal," unless an exception applies. Minn. Stat. § 590.01, subd. 4(a), (b) (2012).

One exception to the two-year requirement is when "the petitioner establishes to the satisfaction of the court that the petition is not frivolous and is in the interests of justice." *Id.*, subd. 4(b)(5). For the interests-of-justice exception to apply, the petition for postconviction relief must be filed no more than two years after the time the claim arose. *Id.*, subd. 4(c) (2012); *Sanchez v. State*, 816 N.W.2d 550, 557-58 (Minn. 2012). A claim for postconviction relief arises when the petitioner "knew or should have known that he had a claim." *Sanchez*, 816 N.W.2d at 560. This is an objective standard; a petitioner's subjective, actual knowledge is irrelevant. *Id.* at 558.

It is undisputed that Buermann filed his postconviction petition more than two years after the disposition of his direct appeal. Buermann argues that his petition falls within the interests-of-justice exception. We disagree.

In 2006, Buermann was found guilty of one count of first-degree criminal sexual conduct for the sexual abuse of K.T.B.; Buermann entered an *Alford* plea to a second count of first-degree criminal sexual conduct for the sexual abuse of a second victim, K.B. In 2012, he filed a petition for postconviction relief and a motion to withdraw his *Alford* plea. In his petition, and now on appeal, Buermann argues that his "actual innocence is clearly established by new evidence that [K.T.B.] has an absent vagina." Buermann presented no evidence about when he learned of the medical record indicating that the victim has an "absent vagina," other than his own assertion that he did not learn about the medical record in question until August 2011.

But the record indicates that the state disclosed this medical record before trial. And the postconviction court found Buermann's assertion that he did not see the medical record until after the appeal "not credible and immaterial." We must defer to this credibility determination. *Opsahl v. State*, 710 N.W.2d 776, 782 (Minn. 2006). Thus, Buermann knew or should have known about his plea claim when his direct appeal became final, which was 90 days after the Minnesota Supreme Court denied review on November 13, 2007. *Berkovitz v. State*, 826 N.W.2d 203, 207 (Minn. 2013). Because Buermann did not petition for postconviction relief until January 23, 2012,—almost four years after his direct appeal became final—subdivision 4(c) prevents Buermann from invoking the interests-of-justice exception in subdivision 4(b)(5).

Moreover, even if we concluded that Buermann's petition was timely, we agree with the postconviction court's conclusion that he is not entitled to relief. The medical record stated that (1) the victim has had oral, rectal, and vaginal intercourse; (2) the vagina has no abnormalities; and (3) "the vagina is absent, and what is minimally left of it is estrogenized." Buermann submitted an affidavit by Dr. James Ingaglio, explaining that women with vaginal agenesis may have a "shorter vagina" and that "at best, only the tip of a penis could possibly enter an absent vagina based on the degree of vaginal agenesis such as a shorter vagina or a remnant vagina." Therefore, even if Buermann could present evidence that the victim has an "absent vagina," the evidence neither establishes his innocence nor creates a factual dispute requiring an evidentiary hearing.

Moreover, the postconviction court properly determined that Buermann's claim is barred by *State v. Knaffla*, 309 Minn. 246, 243 N.W.2d 737 (1976). 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).

Once direct appeal has 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*, 309 Minn. at 252, 243 N.W.2d at 741; *see also Quick*, 692 N.W.2d at 439 ("*Knaffla* also bars claims that should have been known at the time of direct appeal."). "But a claim is not *Knaffla*-barred if (1) the claim is novel; or (2) the interests of fairness and justice warrant relief." *Sontoya v. State*, 829 N.W.2d 602, 604 (Minn. 2013). "Claims allowed under the second exception must have substantive merit and must be asserted without deliberate or inexcusable delay." *Id.*

Buermann asserts that "the interests of justice require the court to consider the claim." We disagree.

Here, Buermann's claim was known or should have been known at the time of his direct appeal. Thus, Buermann's claim is *Knaffla*-barred unless an exception applies. Buermann argues that the interests of justice warrant relief. But as discussed above, Buermann's claim lacks merit. Moreover, Buermann has not shown that his delay was excusable. Therefore, as the postconviction court stated, all "issues were known or knowable at the time of petitioner's direct appeal," and "the interests of fairness and justice do not require relief."

II.

The validity of a plea is a question of law, which we review de novo. *State v. Raleigh*, 778 N.W.2d 90, 94 (Minn. 2010).

The postconviction court "must allow a defendant to withdraw a guilty plea upon a timely motion and proof to the satisfaction of the court that withdrawal is necessary to correct a manifest injustice." Minn. R. Crim. P. 15.05, subd. 1. "A manifest injustice exists if a guilty plea is not valid. To be constitutionally valid, a guilty plea must be accurate, voluntary, and intelligent. A defendant bears the burden of showing his plea was invalid." *Raleigh*, 778 N.W.2d at 94 (citations omitted).

Here, the postconviction court concluded that Buermann's "argument that his plea to count two was manifestly unjust is based solely upon the problems he cites with his conviction for count one. . . . [Buermann] has provided no legal basis to receive postconviction relief from his conviction for count one." Buermann argues on appeal that

he "asserted his innocence throughout the jury trial" on count one and that his conviction of count one "would have been introduced by the state as *Spreigl* evidence [for count two]. Such evidence is overwhelmingly convicting." He also asserts that "a second conviction would have presented him with a consecutive sentence of at least 144 months, instead of a concurrent sentence." Buermann concludes that, because of these circumstances, "he determined a guilty plea to be his best available option despite his stated claim of his innocence."

Buermann's argument is without merit. Buermann fails to support his argument that we should allow him to withdraw his plea to count two because *Spreigl* evidence might have been used against him. Similarly, Buermann's assertion that he should be permitted to withdraw his guilty plea because the *Spreigl* evidence would have been "overwhelmingly convicting" lacks support. And finally, Buermann asserts that he analyzed the circumstances and "determined [that] a guilty plea [was] his best available option," which shows that it was a voluntary and intelligent decision.

Moreover, as the postconviction court concluded, Buermann's argument that his plea was unjust is based on his claim that the "absent vagina" evidence entitles him to postconviction relief. But as already noted here, this evidence neither establishes his innocence nor creates a factual dispute. We therefore conclude that Buermann's guilty plea was constitutionally valid.

Affirmed.