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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1384**

Jeremy James Coppage,
a/k/a Jeremy J. Davila, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed March 25, 2013
Affirmed
Worke, Judge**

Hennepin County District Court
File No. 27-CR-05-034095

Jeremy James Coppage, a/k/a Jeremy J. Davila, Rush City, Minnesota (pro se appellant)

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

Michael O. Freeman, Hennepin County Attorney, Linda M. Freyer, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Kalitowski, Presiding Judge; Worke, Judge; and Schellhas, Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant challenges the district court's denial of his postconviction petition, arguing that he is entitled to relief because the factual basis supporting his guilty plea was

insufficient, and because he received ineffective assistance of trial and appellate counsel. Appellant also argues that he was entitled to an evidentiary hearing. We affirm.

D E C I S I O N

In May 2012, appellant Jeremy James Coppage petitioned for postconviction relief seeking to withdraw his 2005 guilty plea to first-degree attempted murder arising from a drive-by shooting. The district court denied his petition without a hearing. We review a district court's summary denial of a postconviction petition for abuse of discretion. *Powers v. State*, 695 N.W.2d 371, 374 (Minn. 2005). We review issues of law de novo, and issues of fact for sufficiency of the evidence. *Leake v. State*, 737 N.W.2d 531, 535 (Minn. 2007). Appellant bears the burden of establishing the facts alleged in the petition by a preponderance of the evidence. *Powers*, 695 N.W.2d at 374. “[A] petitioner’s allegations must be supported by more than mere argumentative assertions that lack factual support. *Henderson v. State*, 675 N.W.2d 318, 322 (Minn. 2004). A defendant is entitled to a hearing on his petition, “[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 (2010).

A defendant may withdraw a guilty plea after sentencing when “necessary to correct a manifest injustice.” Minn. R. Crim. P. 15.05, subd. 1. Manifest injustice exists if a plea is invalid, meaning that the plea does not comply with constitutional requirements that it be accurate, voluntary, and intelligent. *State v. Rhodes*, 675 N.W.2d 323, 326 (Minn. 2004).

Appellant asserts that his plea was inaccurate because his actions while engaged in a drive-by shooting were reckless, and attempted first-degree murder requires an intentional act. He further argues that trial and appellant counsel were ineffective for failing to raise this argument. But, in 2008, appellant filed his first postconviction petition, arguing that he was entitled to withdraw his guilty plea because the district court improperly promised him a probationary sentence. The district court denied the petition, and we affirmed. *See Coppage v. State*, No. A08-1842 (Minn. App. Aug. 25, 2009), *review denied* (Minn. Nov. 17, 2009). In 2010, appellant filed his second postconviction petition, arguing that he could not be convicted of an intentional crime because a drive-by shooting is a crime of recklessness. That petition was also denied by the district court as *Knaffla*-barred because the petitioner could have raised the argument in his prior petition but did not do so. *See State v. Knaffla*, 309 Minn. 246, 252, 243 N.W.2d 737, 741 (1976) (concluding that claims not previously raised but that were available to the petitioner are not to be considered). Not deterred, appellant filed his third postconviction petition in 2011, this time alleging that he received ineffective assistance of trial and appellate counsel for failing to raise the arguments he raised in his second postconviction petition. That petition was also denied as *Knaffla*-barred and as time-barred under the two-year statutory time limit provided by Minn. Stat. § 590.01, subd. 4 (2010). Now, in his fourth petition, appellant has raised essentially the same arguments that he raised in his previous petitions.

Claims that were or could have been raised in previous petitions for postconviction relief are not considered in subsequent petitions. *Powers v. State*, 731 N.W.2d 499, 501

(Minn. 2007) (citing *Knaffla*, 309 Minn. at 252, 243 N.W.2d at 741); *see also* Minn. Stat. § 590.04, subd. 3 (2010) (stating that the district court may summarily deny relief when issues were previously raised and decided). There are two exceptions to the *Knaffla* rule: “(1) if a novel legal issue is presented, or (2) if the interests of justice require review.” *Schleicher v. State*, 718 N.W.2d 440, 447 (Minn. 2006). The second exception is only available when the petitioner’s failure to previously raise the issue was not deliberate and inexcusable. *Perry v. State*, 731 N.W.2d 143, 146 (Minn. 2007).

We conclude that neither exception applies to save appellant’s petition. Appellant’s argument that he lacked the requisite intent to commit the crime is not a novel argument; it was available to appellant when he pleaded guilty, and it was raised in a previous postconviction petition. Appellant’s argument that he received ineffective assistance of trial and appellate counsel for failing to raise this argument is equally without merit. Appellant could have raised this argument previously, and he in fact raised it in his third postconviction petition. Therefore, appellant’s petition is *Knaffla*-barred.

In addition, appellant’s petition is time-barred under Minn. Stat. § 590.01, subd. 4(a)(1), which provides that a petition for postconviction relief may not be filed more than two years after the date of sentence if no direct appeal is filed. Appellant did not directly appeal his conviction. In 2005, the district court imposed a stayed sentence of 180 months and five years’ probation. In August 2007, appellant’s probation was revoked and his prison sentence was executed. Appellant filed the instant petition nearly

seven years after sentencing. Therefore, appellant's petition is time-barred unless it falls within one of the exceptions to the two-year time limit.

Appellant argues that his petition falls within the interests-of-justice exception under Minn. Stat. § 590.01, subd. 4(b)(5), which provides that “a court may hear a petition for postconviction relief if . . . the petitioner establishes to the satisfaction of the court that the petition is not frivolous and is in the interests of justice.” “A petition is frivolous if it is perfectly apparent, without argument, that the petition is without merit.” *Gassler v. State*, 787 N.W.2d 575, 586 (Minn. 2010). The district court concluded that appellant's petition was frivolous because it lacked a legal basis and was undertaken following the adverse consequences of his plea and subsequent probation violations. We agree.

First, as previously explained, appellant's claims are *Knaffla*-barred and therefore are facially without merit. Second, appellant's argument that he could not have been convicted of attempted first-degree murder for a drive-by shooting is without legal basis. A person is guilty of first-degree murder if he “causes the death of a human being with intent to effect the death of the person or another, while committing or attempting to commit . . . a drive-by shooting.” Minn. Stat. § 609.185(a)(3) (2004). A person is guilty of felony drive-by shooting if he “recklessly discharges a firearm at or toward another motor vehicle” while in a motor vehicle. Minn. Stat. § 609.66, subd. 1e(a) (2004). To be guilty of an attempted crime, a person must specifically intend a certain result. *State v. Zupetz*, 322 N.W.2d 730, 735 (Minn. 1982). However, the recklessness element refers to the manner in which a firearm is discharged in the course of a drive-by shooting, and is

not inconsistent with finding that a person also had the specific intent to cause a person's death. *See State v. Cole*, 542 N.W.2d 43, 51 (Minn. 1996) (concluding that "'recklessness' and 'intent' are not mutually exclusive"). Because a person can both intend to commit first-degree murder and act recklessly, appellant's argument is without merit. For these reasons, we conclude that appellant's petition and the files and records in the proceeding conclusively show that appellant was not entitled to the requested relief, and the district court did not abuse its discretion by denying the petition and refusing to hold an evidentiary hearing.

Affirmed.