**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A12-1894**

Maurice Level Ward, Sr., petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed June 3, 2013**
**Affirmed; motions denied**
**Chutich, Judge**

Anoka County District Court
File No. 02-CR-10-1766

Maurice Level Ward, Sr., Bayport, Minnesota (pro se appellant)

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

Anthony C. Palumbo, Anoka County Attorney, Marcy S. Crain, Assistant County Attorney, Anoka, Minnesota (for respondent)

Considered and decided by Peterson, Presiding Judge; Chutich, Judge; and Smith, Judge.

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

**CHUTICH**, Judge

Appellant Maurice Level Ward, Sr., challenges the district court's dismissal of his petition for postconviction relief. Because Ward's equal-protection and sentencing

arguments could have been raised in his direct appeal and because his other arguments are without merit, we affirm.

## FACTS

In June 2010, a jury found Ward guilty of two counts of promotion of prostitution and one count of receiving profit derived from prostitution. The district court imposed concurrent sentences within the ranges prescribed by the sentencing guidelines. Ward filed a direct appeal, and we affirmed the convictions. *State v. Ward*, No. A10-2063, 2011 WL 5829073 (Minn. App. Nov. 21, 2011), *review denied* (Minn. Jan. 17, 2012). The supreme court denied Ward's petition for review.

Ward filed a petition for postconviction relief in district court in August 2012, appearing to argue that the promotion-of-prostitution statute violates equal protection and that his sentence is unlawful. The district court concluded that Ward was not entitled to an evidentiary hearing and dismissed his petition, finding that his postconviction arguments could have been made in his direct appeal and thus were barred by Minnesota. Statute section 590.01, subdivision 1 (2012). Ward appealed.

## D E C I S I O N

The district court may deny a postconviction petition summarily if the petition, files, and record conclusively demonstrate that no relief is warranted. Minn. Stat. § 590.04, subd. 1 (2012). We review the summary denial of a postconviction petition for an abuse of discretion. *Powers v. State*, 695 N.W.2d 371, 374 (Minn. 2005). "A postconviction court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record." *Riley v. State*, 819 N.W.2d 162,

167 (Minn. 2012) (quotation omitted). We review a postconviction court's factual findings for clear error and its legal conclusions de novo. *Martin v. State*, 825 N.W.2d 734, 740 (Minn. 2013).

Minnesota law provides that "[a] petition for postconviction relief after a direct appeal has been completed may not be based on grounds that could have been raised on direct appeal of the conviction or sentence." Minn. Stat. § 590.01, subd. 1. This provision codifies the so-called *Knaffla* rule, which states that "a petition for postconviction relief raising claims that were raised on direct appeal, or were known or should have been known but were not raised at the time of the direct appeal, are procedurally barred." *Andersen v. State*, ___ N.W.2d ___, ___, 2013 WL 1136318, at *4 (Minn. 2013) (citing *State v. Knaffla*, 309 Minn. 246, 252, 243 N.W.2d 737, 741 (1976)).

*Knaffla* does not bar a postconviction claim when "(1) the claim is novel or (2) the interests of fairness and justice warrant relief." *Id.* To warrant relief under the second exception, a petition "must have substantive merit and must be asserted without deliberate or inexcusable delay." *Id.* We review the denial of postconviction relief based on the *Knaffla* procedural bar for an abuse of discretion. *Quick v. State*, 692 N.W.2d 438, 439 (Minn. 2005).

Ward raises three main issues in his appellate brief, and we address each in turn.

**1. Equal Protection**

Ward contends that the promotion-of-prostitution statute under which he was convicted, Minnesota Statutes section 609.322, subdivision 1(a)(2) (2010), is unconstitutional because while it uses similar language to the statute prohibiting

patronizing prostitution, African-Americans are disproportionately convicted of promoting prostitution while Caucasians are more often convicted of patronizing prostitution. Because promoting prostitution carries more severe penalties than patronizing prostitution, Ward asserts that this racial disparity shows that the statute violates equal protection.

Because Ward could have raised this argument in his direct appeal,[1] it is barred by *Knaffla* and neither of the *Knaffla* exceptions applies. First, Ward's equal-protection claim does not present a novel legal issue. *See Case v. State*, 364 N.W.2d 797, 800 (Minn. 1985) (holding that to qualify for the first *Knaffla* exception, a claim must be "so novel that it can be said that its legal basis was not reasonably available to counsel at the time the direct appeal was taken and decided"). Second, postconviction relief is not necessary to satisfy the interests of fairness and justice because the claim lacks substantive merit. *See Andersen*, ___ N.W.2d at ___, 2013 WL 1136318, at *4.

Challenges to a statute's constitutionality are reviewed de novo, and we presume that statutes are constitutional. *State v. Frazier*, 649 N.W.2d 828, 832 (Minn. 2002). To prove that a statute violates equal protection, a party must "demonstrate that the statute classifies individuals on the basis of some suspect trait." *Id.* at 833–34. If the statute

[1] As noted by the state, Ward raised this equal-protection argument for the first time in his reply brief filed in his direct appeal. We did not address his pro se equal-protection argument in our opinion in the direct appeal, however, presumably because a party may not raise a new issue in a reply brief under the appellate rules. *See State v. Petersen*, 799 N.W.2d 653, 660 (Minn. App. 2011) ("Issues not raised or argued in appellant's brief cannot be revived in a reply brief."), *review denied* (Minn. Sept. 28, 2011); Minn. R. Civ. App. P. 128.02, subd. 4 ("The reply brief must be confined to new matter raised in the brief of the respondent.").

does not create a racial classification on its face, the party must show that the statute has a racially disparate impact. *Id.* at 834.

Minnesota Statutes section 609.322, subdivision 1(a)(2), prohibits "promot[ing] the prostitution of [a person] under the age of 18 years." On its face, the statute does not classify persons based on race, and Ward has presented no statistical data or other evidence to support his assertion that the statute disproportionately impacts African Americans or other racial minorities. Because Ward has not met his burden to show a racially disparate impact, his equal-protection argument lacks merit and is barred by *Knaffla*.

**2. Sentencing**

Ward next contends that his sentence was invalid because the district court used the age of the victim as an aggravating factor without a jury finding on that factor as required by the Supreme Court's decisions in *Apprendi v. New Jersey*, 530 U.S. 466, 120 S. Ct. 2348 (2000) and *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531 (2004). This sentencing issue was clearly known or should have been known at the time of Ward's direct appeal, and is thus also barred by *Knaffla*. Moreover, no exception applies because the claim presents no novel legal issue and has no substantive merit.

The district court enjoys broad discretion in sentencing matters. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981). In Ward's case, the district court imposed sentences that were within the ranges prescribed by the sentencing guidelines. Because *Apprendi* and *Blakely* only prescribe procedures for imposing an aggravated sentence *above* the prescribed range, Ward's reliance on those cases is misplaced. *See Apprendi*, 530 U.S. at

490, 120 S. Ct. at 2362–63 (holding that "any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt"); *Blakely*, 542 U.S. at 305, 124 S. Ct. at 2538 (holding that sentencing departures above a statutory maximum must be based on facts found by the jury, rather than the judge, to be valid under the Sixth Amendment); *see also State v. Shattuck*, 704 N.W.2d 131, 137 (Minn. 2005) (explaining that the "statutory maximum" sentence referred to in *Apprendi* and *Blakely* is the maximum sentence that a judge may impose without additional findings, i.e., the top of the guidelines range). Equally important, the age of the victim was an element of the offense in this case and was not used as an aggravating factor. *Cf. State v. Thompson*, 720 N.W.2d 820, 830 (Minn. 2006) ("[E]lements of an offense cannot be used as aggravating factors to impose an upward sentencing departure for that same offense." (quotation omitted)).

Nor does Rule 27.03, subdivision 9, of the Minnesota Rules of Criminal Procedure compel a different result. The rule provides that "[t]he court may at any time correct a sentence not authorized by law." Minn. R. Crim. P. 27.03, subd. 9. As discussed above, however, Ward's sentence is not unlawful so the rule is inapplicable.

**3. Failure to Address Alleged Constitutional Violation**

Ward further contends that the district court abused its discretion by denying his postconviction petition without ruling on his arguments because courts have a constitutional duty to rule on or otherwise provide a remedy to an injured party. First, because Ward's arguments lacked substantive merit, the district court properly denied his petition summarily. Minn. Stat. § 590.04, subd. 1. Moreover, because the longstanding

and well-established *Knaffla* rule precludes a postconviction court from inquiring into and ruling on issues that were known or should have been known at the time of a direct appeal, constitutional or otherwise, we conclude that Ward's argument concerning the district court's failure to address his claims does not warrant relief.[2]

We therefore conclude that the district court properly exercised its discretion in summarily dismissing Ward's petition for postconviction relief.[3]

**Affirmed; motions denied.**

---

[2] Ward also asserts that because the supreme court refused to consider his equal-protection argument when it denied his petition for review of his direct appeal, he was denied due process because he cannot bring a writ of habeas corpus in federal court. Ward made some mention in his postconviction petition that he needed this court to rule on his constitutional claims before he could obtain "federal review," but did not argue to the district court that his due-process rights were violated by the failure to make a ruling on his claims. Thus, the due-process issue is waived for purposes of appellate review. *See Ferguson v. State*, 645 N.W.2d 437, 448 (Minn. 2002) ("We generally will not consider arguments made for the first time on appeal. This procedural bar applies even in postconviction proceedings raising constitutional issues of criminal procedure." (citation omitted)).

[3] After briefing in this appeal was complete, Ward continued to file motions including a "motion for respondent conformation of appendix," a "motion to strike respondent's procedurally barred arguments," and a "motion for correction pursuant to rule 110.05." These motions are unnecessary or without merit, and are denied in their entirety.