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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0726**

Herman Lavar Wade, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed October 22, 2012
Affirmed
Chutich, Judge**

Hennepin County District Court
File No. 27-CR-01-042162

Herman Lavar Wade, Moose Lake, Minnesota (pro se appellant)

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

Michael O. Freeman, Hennepin County Attorney, Lee W. Barry, III, Assistant County Attorney, David C. Brown, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Chutich, Presiding Judge; Halbrooks, Judge; and
Toussaint, Judge.*

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

UNPUBLISHED OPINION

CHUTICH, Judge

In this pro se appeal, appellant Herman Lavar Wade challenges the district court's denial of his petition for postconviction relief arising out of his conviction of second-degree murder. Because the district court properly denied the petition, we affirm.

FACTS

This appeal is Wade's third to this court, and the facts underlying it are as follows. In 2001, Wade shot and killed C.M. Wade confronted C.M. after he discovered that C.M. had used counterfeit money to pay for drugs. Hennepin County charged Wade with first- and second-degree murder and Wade pleaded guilty to second-degree unintentional murder.

At his sentencing hearing, Wade moved to withdraw his guilty plea. The district court denied his motion and sentenced him to 171 months in prison. Wade appealed, challenging the denial of his motion to withdraw his plea and the length of his sentence. *State v. Wade*, No. A08-0863, 2009 WL 1750949 (Minn. App. June 23, 2009). Because it was unclear which standard the district court had applied in considering the withdrawal motion—the “manifest injustice” or the required “fair and just” standard—this court remanded the case to district court “for full consideration of Wade's presentencing motion to withdraw his guilty plea.” *Id.* at *2. This court also remanded for resentencing if the district court denied Wade's motion to withdraw his plea. *Id.* at *3.

On remand, after full consideration, the district court denied Wade's motion “based on the extreme prejudice to the state in proceeding with the plea and then the

delay during the PSI and the ability of the state thereafter to proceed.” The district court reduced Wade’s sentence to 156 months.

Wade filed a second direct appeal. *State v. Wade*, No. A09-2135, 2010 WL 3632458 (Minn. App. Sept. 21, 2010), *review denied* (Minn. Dec. 14, 2010). He again challenged the denial of his motion to withdraw his plea, arguing that the district court abused its discretion by not specifically addressing the grounds he asserted for withdrawing his plea. *Id.* at *3. He also contended that the “state’s assertion of prejudice [was] insufficient to support the district court’s conclusion.” *Id.* Wade raised a number of additional pro se arguments regarding his plea. He claimed that “he was coerced into pleading guilty, the district court failed to conduct his plea colloquy correctly, there was an inadequate factual basis, and his competency was never determined.” *Id.* at *4. Wade also alleged that he received ineffective assistance of counsel because “his [former trial] counsel failed to investigate a witness . . . ; his counsel did not move to suppress evidence; his counsel did not investigate the state’s witnesses; and his counsel allegedly pressured him to plead guilty.” *Id.* This court affirmed, concluding that “the district court did not abuse its discretion by denying [Wade’s] motion to withdraw his guilty plea,” and concluding that Wade’s pro se arguments lacked merit. *Id.* at *3, *4.

Wade then filed a postconviction petition with the district court. Wade argued that he received ineffective assistance of counsel and that the district court erred by denying his request to withdraw his plea. The district court denied the petition without an evidentiary hearing, concluding that his arguments had been raised in his previous direct appeals, and thus were barred under the rule articulated in *State v. Knaffla*, 309 Minn.

246, 252, 243 N.W.2d 737, 741 (1976). Wade now appeals the district court's denial of his postconviction petition.

D E C I S I O N

We review the district court's summary denial of a postconviction petition for abuse of discretion. *Lee v. State*, 717 N.W.2d 896, 897 (Minn. 2006). The postconviction court will not be reversed unless the district 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 v. State*, 793 N.W.2d 725, 732 (Minn. 2010).

I. *Knaffla*-Barred Claims

Wade asserts several claims in his postconviction appeal that we conclude are barred under the *Knaffla* rule. The *Knaffla* rule provides that when a direct appeal has been taken, "all claims raised in the direct appeal and all claims of which the defendant knew or should have known at the time of the direct appeal are procedurally barred." *Buckingham v. State*, 799 N.W.2d 229, 231 (Minn. 2011); *see also State v. Knaffla*, 309 Minn. at 252, 24 N.W.2d at 741. "A claim is not *Knaffla*-barred, however, if (1) the defendant presents a novel legal issue or (2) the interests of justice require the court to consider the claim." *Buckingham*, 799 N.W.2d at 231.

First, Wade argues that his guilty plea was invalid because it had an insufficient factual basis. Wade asserted this same argument in one of his previous direct appeals and this court determined that his claim was without merit. *Wade*, 2010 WL 3632458, at *4. Because Wade has not established that an exception to the *Knaffla* rule applies, this

argument is barred. *See id.*; *see also* Minn. Stat. § 590.04, subd. 3 (2010) (stating that a district court “may summarily deny a petition when the issues raised in it have previously been decided” by an appellate court).

Wade also contends that the district court erred by negotiating the plea agreement, and by failing to pronounce his sentence in two parts pursuant to Minn. Stat. § 244.101, subd. 1 (2010).¹ These claims are based upon the district court’s actions during the plea and sentencing hearings, and thus could have been raised at the time of the prior appeals. Because Wade knew or should have known about these claims at the time of his direct appeals, the district court properly concluded that these claims were barred. *See Reed*, 793 N.W.2d at 729–30 (“This [*Knaffla*] bar also applies to claims that *should have been known* on direct appeal.” (emphasis added)).

II. Ineffective Assistance of Counsel

In his postconviction petition, Wade also raised a new ineffective-assistance-of-counsel argument. Specifically, Wade claimed that his trial counsel was ineffective for

¹ Minn. Stat. § 244.101, subd. 1, states that the court must pronounce a felon’s sentence in two parts “(1) a specified minimum term of imprisonment . . . and (2) a specified maximum supervised release term.” We construe section 244.101, subdivision 1, as a directory statute because it does not provide consequences for noncompliance. *See Carl Bolander & Sons Co. v. City of Minneapolis*, 488 N.W.2d 804, 809–10 (Minn. App. 1992), *aff’d*, 502 N.W.2d 203 (Minn. 1993). Thus, any failure by the district court to comply with the requirements of Minn. Stat. § 244.101 would not invalidate Wade’s sentence. *Id.* (“Violation of a directory statute does not result in the invalidity of the action taken.” (quotation omitted)).

failing to timely appeal his conviction and sentence.² “[A] claim of ineffective assistance of trial counsel that cannot be resolved on the trial court record alone need not be brought in a direct appeal and may be brought in a postconviction petition.” *Leake v. State*, 737 N.W.2d 531, 535–36 (Minn. 2007). Thus, the district court incorrectly relied on *Knaffla* in denying Wade’s ineffective-assistance-of-counsel claim.

Nevertheless, the trial court properly denied this claim because no evidence in the record supports Wade’s assertion that his trial counsel failed to timely file an appeal. To the contrary, Wade successfully filed two direct appeals. Wade provides nothing more than “conclusory, argumentative assertions, without factual support,” which are insufficient to support a petition for postconviction relief. *State v. Turnage*, 729 N.W.2d 593, 599 (Minn. 2007). Because the record demonstrates that Wade was not entitled to relief on his claim of ineffective assistance of counsel, the district court’s reliance on the *Knaffla* bar is harmless error. *See* Minn. Stat. § 590.04, subd. 1 (stating that the district court may deny a petition for postconviction relief without a hearing if “the petition and the files and records of the proceeding conclusively show that the petitioner is entitled to no relief”); *see also* Minn. R. Crim. P. 31.01 (“Any error that does not affect substantial rights must be disregarded.”).

² On appeal, Wade also asserts that the state public defender’s office failed to “perfect” his direct appeal. *See Leake v. State*, 737 N.W.2d 531, 536 (Minn. 2007) (“Claims of ineffective assistance of appellate counsel on direct appeal are not barred by the *Knaffla* rule in a postconviction appeal because they could not have been brought at any earlier time.”). Wade did not raise this issue before the district court in his postconviction petition. Therefore, the record is not fully developed and the issue is not properly before us on appeal. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

Because Wade's claims are *Knaffla*-barred, or otherwise fail on the merits, the district court did not err in summarily denying his postconviction petition.

Affirmed.