STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1052

Ronald Alfred Thomas, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed February 3, 2014
Affirmed
Rodenberg, Judge

Polk County District Court
File No. 60-CR-08-1902

Ronald Alfred Thomas, Bayport, Minnesota (pro se appellant)

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

Greg Widseth, Polk County Attorney, Scott A. Buhler, Assistant County Attorney, Crookston, Minnesota (for respondent)

Considered and decided by Kalitowski, Presiding Judge; Rodenberg, Judge; and Chutich, Judge.

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

RODENBERG, Judge

Appellant Ronald Alfred Thomas appeals from the district court's summary denial of his petition for postconviction relief. We affirm.

FACTS

Appellant pleaded guilty to and was convicted of one count of first-degree criminal sexual conduct in violation of Minn. Stat. § 609.342, subds. 1(e)(i), 2 (2006). By agreement, the state dismissed four other counts upon appellant's *Alford/Norgaard* plea of guilty. At the plea hearing, appellant acknowledged that he sought to benefit by the plea agreement, which capped his possible sentence at 30 years in prison (compared to a possible 50-year maximum sentence were he to be convicted of all five original counts). Appellant also acknowledged his understanding that, by pleading guilty, he was waiving his right to challenge any adverse pretrial rulings.[1] Appellant also stated that he had conferred with his attorney and was entering the plea voluntarily, understanding that the state would seek an upward sentencing departure. The state summarized the evidence that it intended to introduce at trial and submitted exhibits to the district court as factual support for the guilty plea, due to appellant's claimed total lack of memory of the offense.

The district court accepted the guilty plea, convicted appellant, and sentenced him to the statutory-maximum 30 years in prison. Appellant directly appealed from the judgment of conviction, wherein he challenged his sentence. *State v. Thomas*, No. A10-0974, (Minn. App. Apr. 5, 2011) (affirming an upward durational departure from the presumptive 234-month sentence). The facts regarding appellant's crime are adequately

[1] The district court had previously denied appellant's suppression motion and his request to assert an intoxication defense to first-degree criminal sexual conduct, ruling that a search of appellant's home after the crime did not violate appellant's rights.

set forth in that prior opinion. Appellant then filed a pro se petition for postconviction relief in the district court, which was denied without a hearing pursuant to the *Knaffla* bar. Minn. Stat. § 590.01, subd. 1 (2012); *State v. Knaffla*, 309 Minn. 246, 252, 243 N.W.2d 737, 741 (1976). This appeal followed.

D E C I S I O N

"A petitioner bears the burden to establish by a preponderance of the evidence that facts exist that warrant postconviction relief." *Tscheu v. State*, 829 N.W.2d 400, 403 (Minn. 2013); *see also* Minn. Stat. § 590.04, subd. 3 (2012) (placing the burden of proof on the petitioner). An evidentiary hearing is "not required unless facts are alleged which, if proved, would entitle a petitioner to the requested relief." *Fratzke v. State*, 450 N.W.2d 101, 102 (Minn. 1990); *see also* Minn. Stat. § 590.04, subd. 1 (2012) (describing situations requiring an evidentiary hearing). The allegations "must be more than argumentative assertions without factual support." *Hodgson v. State*, 540 N.W.2d 515, 517 (Minn. 1995) (quotation omitted). We review a summary denial of a postconviction petition without a hearing for an abuse of discretion. *State v. Nicks*, 831 N.W.2d 493, 503 (Minn. 2013); *Quick v. State*, 692 N.W.2d 438, 439 (Minn. 2005) (applying this standard to a decision based on the *Knaffla* bar). To determine whether a district court abused its discretion, we review issues of law de novo and issues of fact for sufficiency of the evidence. *Butala v. State*, 664 N.W.2d 333, 338 (Minn. 2003).

Historically, Minnesota's postconviction statute has been interpreted as providing broad review of criminal convictions. *Id.* However, "[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; *see also Knaffla*, 309 Minn. at 252, 243 N.W.2d at 741 (holding that, when a 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."). There are two exceptions to the *Knaffla* bar: (1) the appellant presents a novel legal issue, or (2) the interests of justice require the district court to consider the claim. *Buckingham v. State*, 799 N.W.2d 229, 231 (Minn. 2011).

Appellant attempts to raise several issues in this appeal. Although his briefing is imprecise and hard to follow, he appears to argue the following: (1) the district court erred in imposing a sentence that was an upward durational departure from the sentencing guidelines; (2) appellant's appointed trial and appellate counsel were ineffective; (3) appellant's guilty plea is invalid; and (4) the district court erred in its pretrial rulings that were adverse to appellant.

Sentencing issues

Appellant appealed from the judgment of conviction wherein his appellate counsel raised only sentencing issues. Appellant did not file a pro se supplemental brief in that direct appeal. In his postconviction petition, appellant raises several arguments relating to his sentence. "In the main, post-conviction remedies exist to try fundamental issues that have not been tried before." *Knaffla*, 309 Minn. at 252, 243 N.W.2d at 741. Because we reviewed appellant's sentence on direct appeal, any further arguments regarding his sentence are now barred.

Ineffective assistance of counsel

Appellant's petition to the district court alleged that his trial counsel was ineffective, and his briefing on appeal argues that both his trial and appellate counsel were ineffective. *Knaffla* bars a postconviction claim of ineffective assistance of trial counsel when the claim is based solely on the trial record and the claim was known or should have been known at the time of the direct appeal. *Evans v. State*, 788 N.W.2d 38, 44 (Minn. 2010). *Knaffla* does not bar a claim of ineffective assistance of counsel when additional evidence outside of the existing record is required to determine the merits of the ineffectiveness claim. *Barnes v. State*, 768 N.W.2d 359, 364 (Minn. 2009).

In his petition to the district court, appellant argued that his trial attorney failed to inform him that he could receive an upward departure if he pleaded guilty and that his attorney coerced him into pleading guilty. These claims regarding the assistance of trial counsel are *Knaffla* barred because they could have been raised on direct appeal. The claims also require no evidence beyond the trial record, and the transcript of the plea hearing is sufficient. *See Evans*, 788 N.W.2d at 44. And we note that appellant's own testimony at the plea hearing is contrary to the allegations he now makes regarding his understanding of his guilty plea and its consequences, and the circumstances under which it was entered. *See, e.g.*, *State v. Irestone*, 283 Minn. 513, 513-14, 166 N.W.2d 345, 346 (1969) (noting that appellant's unsupported allegations were refuted by his own testimony in the record).

Appellant's claim of ineffective assistance of appellate counsel, which could not have been raised in his direct appeal, is not barred by *Knaffla*.[2] *See Townsend v. State*, 582 N.W.2d 225, 228-29 (Minn. 1998) (reaching an ineffectiveness claim pertaining to appellate counsel while noting that a similar claim relating to trial counsel was barred). Appellant appears to make two arguments concerning ineffective appellate counsel: (1) that appellate counsel failed to address the lack of evidentiary support for the elements of intent or premeditation, and (2) that appellate counsel failed to address the toxicology report, which showed that appellant was under the influence of prescription drugs at the time of his crime.

To establish his claim of ineffective assistance of counsel, appellant has the burden of showing that "(1) his counsel's performance fell below an objective standard of reasonableness, and (2) that a reasonable probability exists that, but for his counsel's unprofessional errors, the result of the proceedings would have been different." *State v. Nissalke*, 801 N.W.2d 82, 111 (Minn. 2011). "We need not address both the performance and prejudice prongs if one is determinative." *Id.* (quotation omitted). Appellant makes no argument as to how the outcome of the direct appeal would have been different if his appellate counsel had raised the additional issues of the adequacy of his guilty plea and the evidentiary and other pretrial rulings of the district court. Our review of the record satisfies us that appellant's guilty plea, while in the form of an *Alford/Norgaard* plea,

[2] Because appellant failed to raise this issue before the district court, we would be justified in not considering the merits of this claim for that reason alone. *See Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996). But in the interests of justice, we address the claim on the merits. *Id.*

effectively addressed all the elements of the offense. And appellant explicitly acknowledged at the plea hearing that, in pleading guilty, he was foregoing any challenge to the district court's pretrial rulings. As such, appellant did not carry his burden to show that appellate counsel was ineffective.

Withdrawal of guilty plea

Appellant argues that his guilty plea is invalid. A reviewing court will reverse a district court's determination of whether to permit the withdrawal of a guilty plea only when the district court abused its discretion. *Barragan v. State*, 583 N.W.2d 571, 572 (Minn. 1998). "[T]he 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 occurs if the plea is not accurate, voluntary, and intelligent." *State v. Christopherson*, 644 N.W.2d 507, 510 (Minn. App. 2002), *review denied* (Minn. July 16, 2002).

Appellant could have challenged the validity of his guilty plea on direct appeal. *See Brown v. State*, 449 N.W.2d 180, 182 (Minn. 1989) ("A defendant is free to simply appeal directly from a judgment of conviction and contend that the record made at the time the plea was entered is inadequate . . . ."). Raising the issue on direct appeal from the judgment of conviction is appropriate when the record itself contains the necessary facts to adjudicate the claim; when material fact issues must be resolved, the proper forum for such a claim is via a postconviction petition to the district court. *State v. Anyanwu*, 681 N.W.2d 411, 413 n.1 (Minn. App. 2004). Appellant fails to articulate any argument on appeal that *Knaffla* was improperly applied to his claim regarding the

validity of his guilty plea.[3] Even if appellant's claim is not barred by *Knaffla*, a review of the merits does not lead us to a different result.

Appellant argued to the district court that his plea was not knowing, voluntary, or intelligent, and that he "was coerced by his own attorney" to enter a guilty plea. On appeal, he argues only that the district court should not have accepted his plea because, due to his intoxication at the time of the offense, appellant was incapable of forming the requisite intent for the crime. But these arguments are misguided for two reasons. First, in order to conclude that appellant's contentions have merit, we would have to discredit significant portions of appellant's own testimony at the plea hearing. We decline to do so. The transcript of the plea hearing establishes that appellant, having been fully informed of his rights, understood the consequences of his plea and was entering his plea freely and voluntarily. *See Irestone*, 283 Minn. at 514, 166 N.W.2d at 346 (refuting the "argumentative assertions" of an appellant with his prior inconsistent statements in the record). Second, the criminal sexual conduct charge to which appellant pleaded guilty does not contain an intent or premeditation element. Minn. Stat. § 609.342, subd. 1(e)(i). Appellant has failed to allege any legal or factual basis entitling him to withdraw his guilty plea, and therefore has not met his burden of proof. *See Tscheu*, 829 N.W.2d at 403. The district court did not abuse its discretion in declining appellant's request to withdraw his guilty plea.

[3] And appellant does *not* identify his prior appellate counsel's failure to raise this issue on direct appeal as having been ineffective. He makes other claims that appellate counsel was ineffective, as discussed above.

Appellant's other claims

Appellant raises other claims in this proceeding concerning whether the district court erred in its pretrial rulings, which were adverse to appellant. For example, appellant argues that the district court should have allowed him to assert an intoxication defense (voluntary or involuntary) and excluded certain evidence as the product of an unconstitutional search.[4] "Where a defendant in a criminal case who is represented by competent counsel enters a plea of guilty to a charge contained in [a complaint] filed against him, the general rule is that he waives all defenses other than that the [complaint] charges no offense." *State ex rel. Savage v. Rigg*, 250 Minn. 370, 375, 84 N.W.2d 640, 645 (1957). To the extent that any of appellant's remaining claims are not barred by *Knaffla*, they have been waived by operation of his valid guilty plea. *Id.*

It is appellant's burden to show that, by a preponderance of the evidence, facts exit warranting postconviction relief. *See Tscheu*, 829 N.W.2d at 403. Because appellant's cursory and conclusory arguments and allegations are insufficient to carry this burden, *see Hodgson*, 540 N.W.2d at 517, the district court did not abuse its discretion in summarily denying appellant's petition for postconviction relief without a hearing.

Affirmed.

[4] If appellant has attempted to raise any additional issues, he has failed to adequately articulate them to the extent that would warrant our review. *See State v. Butcher*, 563 N.W.2d 776, 780 (Minn. App. 1997) (holding that mere allegation of error without argument for support is deemed a waiver on appeal), *review denied* (Minn. Aug. 5, 1997).