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STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0670

Tyrone Lavell Straub, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed January 21, 2014
Affirmed
Worke, Judge

Hennepin County District Court
File No. 27-CR-11-1481

Tyrone Lavell Straub, Lino Lakes, Minnesota (pro se appellant)

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

Michael O. Freeman, Hennepin County Attorney, Thomas A. Weist, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

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

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

WORKE, Judge

Appellant challenges the district court's denial of his postconviction-relief petition, arguing that he received ineffective assistance of counsel. We affirm.

FACTS

In January 2011, while he was on supervised probation from a 2010 conviction, appellant Tyrone Lavell Straub was charged with second-degree controlled-substance crime. On May 27, 2011, Straub pleaded guilty to second-degree controlled-substance crime. The presumptive sentence was 111 months in prison. Straub requested that sentencing occur in July. The district court indicated that it was considering departing from the presumptive sentence and imposing a 60-month sentence. The court stated:

> I want you to understand if you don't appear for sentencing or if there are serious allegations or concerns between now and sentencing, you are looking at [111] months. . . . [Y]ou understand the benefit of all of this . . . your incentive to remain law abiding, take care of your family, and your treatment obligations will result in a departure.

On June 16, 2011, Straub was arrested after officers observed a drug transaction between Straub and another individual and found crack cocaine in Straub's vehicle. Straub admitted that he purchased crack cocaine that day and was charged with third-degree controlled-substance crime.

On July 6, 2011, Straub appeared for sentencing and moved to withdraw his guilty plea; alternatively, he requested to resolve the June 16 matter before sentencing because if it were going to be the basis for denying a departure, it should be proved beyond a reasonable doubt. Straub stated: "I honestly want to withdraw my plea, because if I'm going to get the maximum for going to trial, then I might as well take it to trial." The district court denied the motion to withdraw the guilty plea. The state moved the district court to dismiss the new charge if the district court sentenced Straub to the presumptive

sentence because "the consequences of any new conviction would be subsumed." The district court sentenced Straub to 111 months in prison and dismissed the new charge.

Straub filed a direct appeal, arguing that the district court interjected itself into plea negotiations and refused to allow him to withdraw his guilty plea. *See State v. Straub*, No. A11-1754, 2012 WL 2685057, at *1 (Minn. App. July 9, 2012), *review denied* (Minn. Sept. 25, 2012). Straub argued "that it was fair and just to permit him to withdraw his guilty plea because the new criminal charges against him had yet to be proven beyond a reasonable doubt and should not have been used as a basis for denying the durational departure." *Id.*, at *3. This court rejected Straub's arguments, including a pro se ineffective-assistance-of-counsel claim based on his attorney's failure to remove the district court judge who was "interested" in the outcome of the case. *Id.*, at *3-4.

On January 8, 2013, Straub petitioned for postconviction relief, seeking to withdraw his guilty plea because he was denied effective assistance of counsel. The district court denied Straub relief, ruling that all issues have been considered by this court. This appeal followed.

D E C I S I O N

A 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). This court reviews the district court's summary denial of a postconviction petition for an abuse of discretion. *Powers v. State*, 695 N.W.2d 371, 374 (Minn. 2005). "A [district] 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 district court's factual findings for clear error and its legal conclusions de novo. *Martin v. State*, 825 N.W.2d 734, 740 (Minn. 2013).

"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 (2012); *see State v. Knaffla*, 309 Minn. 246, 252, 243 N.W.2d 737, 741 (1976) (stating that when "direct appeal has once 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* 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) (quotation omitted). The second exception is only available if fairness requires it and the petitioner's failure to raise the issue on direct appeal was not deliberate and inexcusable. *Perry v. State*, 731 N.W.2d 143, 146 (Minn. 2007).

Straub argues that he received ineffective assistance of counsel when he attempted to withdraw his guilty plea because his attorney failed to point out that the state had not proved the new charges beyond a reasonable doubt and that there was no evidence that he violated the conditions of his release because he did not fail any chemical testing.

Straub's ineffective-assistance claim is *Knaffla* barred because he raised it on direct appeal. He acknowledges that he "raised the same 'topic' of ineffective assistance of counsel" but argues that *Knaffla* bars the "exact argument as before." Straub is incorrect because *Knaffla* also bars claims that are "essentially the same" as claims raised

on direct appeal. *Powers v. State*, 731 N.W.2d 499, 501 (Minn. 2007). Straub argued on direct appeal that his counsel was ineffective because she failed to remove the district court judge who was "interested" in the outcome of the case. But he also argued that "it was fair and just to permit him to withdraw his guilty plea because the new criminal charges against him had yet to be proven beyond a reasonable doubt and should not have been used as a basis for denying the durational departure." *See Straub*, 2012 WL 2685057, at *3. Straub presents essentially the same argument—he just reframes the plea-withdrawal argument as an ineffective-assistance claim.

Additionally, *Knaffla* also bars "all claims known but not raised." 309 Minn. at 252, 243 N.W.2d at 741. Straub knew about this claim in district court because the transcript from his sentencing hearing shows that Straub argued to withdraw his plea, or alternatively, resolve the case involving the new charge first because the new charge had not been proved beyond a reasonable doubt. He also knew that this claim existed at the time of direct appeal because he raised it as a basis for plea withdrawal. *See Straub*, 2012 WL 2685057, at *3. Straub claims that because the state dismissed the new charge it should not have been factored into the district court's sentencing decision. But the state did not move to dismiss the charge because Straub was not guilty; the state moved to dismiss the charge because if the district court sentenced Straub to the presumptive 111-month sentence an additional conviction would be subsumed within that sentence. Because Straub knew that this claim existed at the time of sentencing and at the time of direct appeal, he is procedurally barred from raising it in a postconviction petition.

Finally, Straub urges this court to examine reports of his negative chemical test results. But these records presented as part of Straub's appendix are not part of the district court record; thus, it is not part of the record on appeal. *See Plowman v. Copeland, Buhl & Co.*, 261 N.W.2d 581, 583 (Minn. 1977) ("It is well settled that an appellate court may not base its decision on matters outside the record on appeal, and that matters not produced and received in evidence below may not be considered."). Moreover, negative chemical tests do not negate the fact that officers witnessed the hand-to-hand drug transaction and discovered crack cocaine in Straub's vehicle, and that Straub admitted that he was in possession of crack cocaine after buying it on June 16.

Because Straub's claim of ineffective assistance of counsel is *Knaffla* barred, the district court did not abuse its discretion by denying his petition for postconviction relief.

Affirmed.