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Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1672**

Marlowe Brooks, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed June 10, 2008
Affirmed
Stoneburner, Judge**

Hennepin County District Court
File No. 00087189

Marlowe Brooks, 970 Pickett Street North, Bayport, MN 55003 (pro se appellant)

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul,
MN 55101-2134; and

Michael O. Freeman, Hennepin County Attorney, Thomas A. Weist, Assistant County
Attorney, C-2000 Government Center, 300 South Sixth Street, Minneapolis, MN 55487
(for respondent)

Considered and decided by Stoneburner, Presiding Judge; Lansing, Judge; and
Worke, Judge.

UNPUBLISHED OPINION

STONEBURNER, Judge

Appellant challenges the denial of his fourth petition for postconviction relief,
arguing that he is entitled to an order vacating an unlawful sentence imposing restitution.

He also argues that the district court abused its discretion by holding that his motion to withdraw his guilty pleas is procedurally barred. Because appellant's sentence is not unlawful and his plea-withdrawal claim has previously been decided, we affirm.

FACTS

In 2001, appellant Marlowe Brooks pleaded guilty to second-degree murder and attempted first-degree murder for fatally shooting one man and shooting at another as they walked out of a music store in Minneapolis. Before sentencing, Brooks moved to withdraw his guilty pleas, which the district court denied. At sentencing, the district court ordered Brooks to pay restitution to the Crime Victims Reparations Board (CVRB) for the funeral expenses of the deceased victim. The amount of restitution was not determined at the time of sentencing. According to Brooks, the district court ordered restitution in the amount of \$6,000 approximately eight days after the sentencing hearing.¹

On direct appeal from his conviction, Brooks primarily challenged the district court's denial of his motion to withdraw his guilty pleas, which this court affirmed. *State v. Brooks*, No. C1-01-1253 (Minn. App. June 11, 2002), *review denied* (Minn. Aug. 20, 2002). Neither his plea-withdrawal motion in district court nor his direct appeal raised the issue of the restitution award.

¹ The record on appeal contains only one document referencing the amount of restitution: an order for judgment filed approximately four months after sentencing. The order recites that restitution was ordered at sentencing but was not paid, finds that the state has proved by a preponderance of the evidence that "the victim, Minnesota Center for Crime Victims, has been damaged in the amount of \$6,000.00," and enters judgment against Brooks in that amount.

In his first petition for postconviction relief, Brooks argued that he should be allowed to withdraw his guilty pleas because restitution was not part of his plea agreement, but he did not challenge the amount of restitution or the deceased victim's or CVRB's entitlement to restitution. The petition was denied, and this court affirmed. *Brooks v. State*, No. A03-515 (Minn. App. Feb. 3, 2004), *review denied* (Minn. Apr. 20, 2004).

In his next petition for postconviction relief, Brooks argued that his trial counsel was ineffective because he failed to object to the restitution award.² Brooks did not challenge the amount of restitution in this petition, but he argued that his counsel should have challenged restitution because neither the relatives of the deceased victim nor the CVRB had requested restitution. The district court summarily denied the petition and this court affirmed, noting that this was Brooks's third challenge to the effectiveness of counsel and that the claims were procedurally barred. *Brooks v. State*, No. A04-1735, 2005 WL 1271322, at *1 (Minn. App. May 31, 2005), *review denied* (Minn. Aug. 16, 2005).

Brooks's next postconviction petition, challenging the factual basis of his guilty plea to attempted first-degree murder and arguing that he should not have been sentenced on both counts, did not address restitution. The district court's summary denial of that petition on procedural grounds was affirmed by this court partially on procedural grounds and partially on the merits. *Brooks v. State*, No. A06-169, 2006 WL 3593046, at *2-*3

² This postconviction petition is not in the file provided to this court on appeal and information about it is taken from the state's response to the petition and Brooks's reply to the state's response.

(Minn. App. Dec. 12, 2006) (*Brooks III*) (noting that Brooks’s sentencing challenge was not procedurally barred), *review denied* (Minn. Feb. 28, 2007).

In his latest petition for postconviction relief, Brooks argued that the restitution award should be vacated due to procedural errors, including lack of documentation of the amount of the funeral expenses, and because the deceased victim’s possession of illegal drugs at the time he was shot precluded an award of restitution. Brooks also argued that he should be allowed to withdraw his guilty pleas “in the interests of justice,” despite denial of such relief on direct appeal and subsequent holdings that additional motions to withdraw his pleas are procedurally barred.

The district court held that Brooks’s current claims are “procedurally barred, the restitution was within the [sentencing] [c]ourt’s discretion and [the claims are] without merit.” Brooks’s fifth appeal to this court followed.

D E C I S I O N

In our prior *Brooks* decisions, this court has exhaustively described the *Knaffla* procedural bar to review of claims already asserted or that could have been asserted and has fully explained that exceptions to the *Knaffla* rule do not apply to Brooks’s claims regarding his guilty pleas. *See State v. Knaffla*, 309 Minn. 246, 252, 243 N.W.2d 737, 741 (1976) (holding that claims that were raised or could have been raised on appeal will not be considered in a postconviction petition); *see also Taylor v. State*, 691 N.W.2d 78, 79 (Minn. 2005) (stating a novel-issues exception and an interests-of-justice exception to the *Knaffla* rule). For reasons stated in those opinions, *Knaffla* bars consideration of Brooks’s most recent challenge to the denial of his motion to withdraw his guilty pleas.

But, we stated in our last *Brooks* opinion that motions to correct an illegal sentence are not barred by *Knaffla. Brooks III*, 2006 WL 3593046, at *2. “[A] court at any time may correct a sentence not authorized by law.” Minn. R. Crim. P. 27.03, subd. 9. In *State v. Stutelberg*, we interpreted this rule to permit challenges to a sentence despite previous, unsuccessful challenges. 435 N.W.2d 632, 634 (Minn. App. 1989). And court-ordered restitution is part of a criminal sentence. Minn. Stat. § 609.10, subd. 1(5) (2006). We will, therefore, address Brooks’s challenge to restitution.

Brooks argues that restitution was prohibited in this case because the autopsy report for the deceased victim indicates that he possessed rock cocaine at the time of the shooting. *See* Minn. Stat. § 611A.53, subd. 2(d) (2006) (providing that a victim “in the act of committing a crime at the time the injury occurred” is not entitled to reparations). But restitution for funeral expenses was awarded to the CVRB, not to the deceased victim or his relatives. *See* Minn. Stat. § 611A.01(b)(ii) (2006) (defining “victim” to include a government entity that incurs loss as a result of a crime). Therefore, Brooks’s challenge to restitution under section 611A.53, subdivision 2(d) has no merit.

Brooks also argues that the restitution award was unlawful because the procedural process for making such an award was not followed, and the record does not provide any factual basis for the amount imposed. *See* Minn. Stat. § 611A.04, subs. 1, 1a (2006) (providing that a victim, or the CVRB on the victim’s behalf, may request restitution upon competent evidence). But Brooks waived his right to assert these challenges by failing to timely assert them.

“[District] courts are given broad discretion in awarding restitution.” *State v. Tenerelli*, 598 N.W.2d 668, 671 (Minn. 1999). A defendant challenging restitution “must do so by requesting a hearing within 30 days of receiving written notification of the amount of restitution requested, or within 30 days of sentencing, whichever is later.” Minn. Stat. § 611A.045, subd. 3(b) (2006). Failure to challenge the restitution order within 30 days renders a postconviction challenge untimely and precludes review on the merits. *Mason v. State*, 652 N.W.2d 269, 272-73 (Minn. App. 2002) (noting that a defendant’s ignorance of the 30-day requirement does not excuse failure to comply and affirming denial of postconviction relief because challenge to restitution was untimely), *review denied* (Minn. Dec. 30, 2002).

Brooks concedes that he received notice of the amount of restitution approximately eight days after his May 29, 2001 sentencing hearing. It is an understatement to say that Brooks’s challenge to the manner and amount of the award is untimely. Because entry of the restitution award of \$6,000 was not unlawful, Brooks’s sentence is not unlawful, and the district court did not abuse its discretion in denying his petition for postconviction relief, we affirm.

Affirmed.