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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1994**

Aeropajito Vazquez, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed October 7, 2008
Affirmed
Peterson, Judge**

Ramsey County District Court
File No. K1-00-2355

Aeropajito Castro Vazquez, OID 140815, MCF-Stillwater, 970 Pickett Street North,
Bayport, MN 55003-1490 (pro se appellant)

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

Susan Gaertner, Ramsey County Attorney, Mark N. Lystig, Assistant County Attorney,
Suite 315, 50 West Kellogg Boulevard, St. Paul, MN 55102 (for respondent)

Considered and decided by Peterson, Presiding Judge; Klaphake, Judge; and
Worke, Judge.

UNPUBLISHED OPINION

PETERSON, Judge

In this pro se appeal from the denial of his second petition for postconviction relief, appellant argues that the district court erred when it concluded that his current claims are procedurally barred and denied his request for an evidentiary hearing. We affirm.

FACTS

Appellant Aeropajito Castro Vazquez was convicted of second-degree murder following the July 20, 2000 death of his estranged wife. He appealed his conviction, and this court affirmed. *State v. Vazquez*, 644 N.W.2d 97 (Minn. App. 2002). In this, appellant's second petition for postconviction relief, he raised three issues: the denial of his request for a jury instruction on the lesser included offense of second-degree unintentional murder, the sufficiency of the evidence, and ineffective assistance of appellate counsel. The district court concluded that appellant's claims are procedurally barred and denied his petition without an evidentiary hearing.¹

¹ The district court also concluded that appellant's petition was barred by Minn. Stat. § 590.01, subd. 4(a)(2) (2006), which provides, "No petition for postconviction relief may be filed more than two years after . . . an appellate court's disposition of petitioner's direct appeal." But the amendment that created this time limit also states: "This section is effective August 1, 2005. Any person whose conviction became final before August 1, 2005, shall have two years after the effective date of this act to file a petition for postconviction relief." 2005 Minn. Laws ch. 136, art. 14, § 13, at 1098. Appellant's conviction was final before August 1, 2005, which means that he had until August 1, 2007 to file for postconviction relief. Because his petition was filed July 16, 2007, the district court erred in concluding that it was barred by Minn. Stat. § 590.01, subd. 4(a)(2).

DECISION

In reviewing a postconviction decision, an appellate court will determine whether there was sufficient evidence to support the findings. *Pippitt v. State*, 737 N.W.2d 221, 226 (Minn. 2007). The postconviction court's factual findings will not be set aside unless clearly erroneous, but its legal determinations are reviewed de novo. *Id.* The decision will not be overturned unless the postconviction court abused its discretion. *Id.*

I.

“It is well settled 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.’” *Powers v. State*, 731 N.W.2d 499, 501 (Minn. 2007) (*Powers IV*) (quoting *State v. Knaffla*, 309 Minn. 246, 252, 243 N.W.2d 737, 741 (1976)). “Additionally, matters raised or known but not raised in an earlier petition for postconviction relief will generally not be considered in subsequent petitions for postconviction relief.” *Id.* “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.” *Id.* at 502. When postconviction relief is denied as *Knaffla*-barred, this court reviews that denial for an abuse of discretion. *See Powers v. State*, 695 N.W.2d 371, 374 (Minn. 2005) (*Powers III*) (applying abuse-of-discretion standard to denial of postconviction relief based on *Knaffla*).

Because appellant raised his ineffective-assistance-of-appellate-counsel claim in his first postconviction petition, we will not consider the issue in this second

postconviction proceeding. Appellant's jury-instruction and sufficiency-of-the-evidence issues involve events that occurred at trial, so those issues were known at the time of his direct appeal, and they are barred under *Knaffla*.

Appellant contends that his claim regarding jury instructions is not barred by *Knaffla* because it is based on *State v. Dahlin*, 695 N.W.2d 588 (Minn. 2005), which was decided after his first postconviction petition was denied. But the supreme court has rejected this argument, reasoning:

A new rule of law, announced after a direct appeal has been completed, may present a claim that was unknown on direct appeal, and thus is not barred by *Knaffla*. But if a defendant's conviction was already final at the time the new rule of law was announced, the defendant ordinarily may not take advantage of the new rule because it will not be retroactive.

....

... If *Dahlin* is a new rule of law, it does not apply retroactively to [appellant's] case, which was not pending when *Dahlin* was decided. If *Dahlin* is not a new rule of law, [appellant's] lesser-included offense claims are barred by *Knaffla*....

Stiles v. State, 716 N.W.2d 327, 329 (Minn. 2006) (footnote omitted) (citations omitted).

Appellant's conviction was final in or about May 2002, when his opportunity to petition for further review expired, and thus was not pending when *Dahlin* was decided in 2005. See *O'Meara v. State*, 679 N.W.2d 334, 339 (Minn. 2004) (stating that a case is final when a judgment of conviction has been rendered, the availability of appeal exhausted, and time to petition for further review has passed); see also Minn. R. Crim. P. 29.04, subd. 2 (requiring a party to serve and file a petition for review within 30 days of

the filing of the court of appeals decision). As in *Stiles*, if *Dahlin* is a new rule of law, it does not apply retroactively to appellant's case, and if it is not a new rule, appellant's jury-instruction claim is barred under *Knaffla*. Appellant cites no other basis for concluding that his current claims present a novel legal issue or should be addressed in the interests of justice. Because appellant's claims are procedurally barred under *Knaffla*, we conclude that the district court did not abuse its discretion in denying appellant relief, and we will not address the merits of appellant's claims.

II.

An evidentiary hearing is only required when "there are material facts in dispute which must be resolved in order to determine the postconviction claim on the merits." *King v. State*, 562 N.W.2d 791, 794 (Minn. 1997). "If a petitioner does not allege facts that if proved would entitle him to relief, a court may deny a petitioner a hearing if 'the files and records of the proceeding conclusively show that the petitioner is entitled to no relief.'" *McDonough v. State*, 675 N.W.2d 53, 56 (Minn. 2004) (quoting Minn. Stat. § 590.04, subd. 1 (2002)). Summary denial of a postconviction petition is reviewed for an abuse of discretion. *Powers III*, 695 N.W.2d at 374.

The files and records conclusively show that appellant's current claims are *Knaffla*-barred. Appellant has not identified any material facts in dispute, and no material fact dispute is evident in his filings. Thus, he has failed to show that the district court abused its discretion in declining to hold an evidentiary hearing.

Affirmed.

