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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2104**

Dean Lawrence Brooks, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent

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

Scott County District Court
File No. 98-05546

F. Clayton Tyler, 331 Second Avenue South, #230, Minneapolis, MN 55401 (for appellant)

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

Michael J. Groh, Assistant Scott County Attorney, Justice Center, JC340, 200 Fourth Avenue West, Shakopee, MN 55379 (for respondent)

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

UNPUBLISHED OPINION

KLAPHAKE, Judge

On November 12, 1998, appellant Dean Lawrence Brooks pleaded guilty to second-degree murder in violation of Minn. Stat. § 609.19, subd. 1(1) (1998), and was

sentenced in accordance with the plea agreement to 36 years, an upward departure from the sentencing guidelines. On August 5, 1999, appellant filed a petition for postconviction relief, which was denied after a four-day evidentiary hearing. This court affirmed the district court's determination. *State v. Brooks*, 2001 WL 436157 (Minn. App. May 1, 2001), *review denied* (Minn. July 24, 2001). Appellant also filed a writ of habeas corpus; the federal district court's denial of the writ was affirmed by the Eighth Circuit Court of Appeals. This appeal follows appellant's second petition for postconviction relief.

Appellant challenges the district court's summary denial of his second petition for postconviction relief claiming (1) the interests of justice exception to the *Knaffla* rule warrants review of his original competency determination and sentence, and (2) the district court should have held an evidentiary hearing to determine if his request to be transferred to a mental health facility had merit. Because appellant has failed to show fairness requires a second look at the issue of competency or sentencing and because the request for transfer is not a proper subject of a petition for postconviction relief, we affirm.

D E C I S I O N

When reviewing a denial of postconviction relief, this court examines whether the postconviction court's findings are supported by sufficient evidence. *Russell v. State*, 562 N.W.2d 670, 672 (Minn. 1997). Petitions for postconviction relief are collateral attacks on judgments, which carry a presumption of regularity. *Pederson v. State*, 649 N.W.2d 161, 163 (Minn. 2002). This court will not disturb the decision of a

postconviction court absent an abuse of discretion. *Dukes v. State*, 621 N.W.2d 246, 251 (Minn. 2001). A petitioner is entitled to an evidentiary hearing and the postconviction court must make findings of fact and conclusions of law “[u]nless the petition and the files and records of the proceeding conclusively show that the petitioner is entitled to no relief.” Minn. Stat. § 590.04, subd. 1 (2006).

Procedurally Barred Claims

Appellant attempts to conflate two legally distinct issues: (1) he seeks review of his competency at the time he entered into the plea agreement, and, in the alternative, (2) he requests transfer to a mental health facility based on review of his current mental health treatment and condition, pursuant to Minn. Stat. § 241.69 (2006 & Supp. 2007). The rules governing petitions for postconviction relief, including whether an evidentiary hearing is necessary, pertain only to the first issue.

Appellant’s central argument is that he is entitled to an evidentiary hearing because he claims the district court did not conclusively show that he was not entitled to relief. A petitioner is entitled to an evidentiary hearing only if the petitioner alleges facts that, if proved, would entitle the petitioner to the relief requested. *Spann v. State*, 740 N.W.2d 570, 572 (Minn. 2007); Minn. Stat. § 590.04, subd. 1. Here, appellant presented no facts that were not presented at the time of his competency hearing and sentencing nor any justifiable reason why he is entitled to relief now when he was denied the same requests in the prior petition for postconviction relief. Based on our review of the record, the district court did not abuse its discretion in denying an evidentiary hearing on the facts presented with respect to the competency and sentencing issues.

Appellant also argues the length of his sentence should again be reviewed in the “interests of justice” as an exception to the *Knaffla* rule, contending “fairness” requires review of the sentence imposed because it was so “egregious.” He also argues fundamental fairness requires a review of his sentence because the district court failed to adhere to the process meant to protect appellant’s constitutional rights, namely the right to a presentence investigation report (PSI) prior to sentencing. Appellant’s complaints regarding the lack of a PSI also operate as a collateral attack on the district court’s competency determination. Appellant suggests that if the district court had ordered a presentence investigation, it would have been clear to the court that appellant was not competent to enter a plea agreement.

The postconviction court correctly denied appellant’s petition on the grounds that the claims raised were barred by *State v. Knaffla*, 309 Minn. 246, 243 N.W.2d 737 (1976). Once a defendant has taken a direct appeal, or in this case a first petition for postconviction relief, a postconviction court will not consider any claim that the defendant raised or could have raised in the direct appeal. *Id.* at 252, 243 N.W.2d at 741. Two exceptions to the *Knaffla* rule permit review when “(1) a claim is so novel that the legal basis for the appeal was not available on direct appeal, or (2) the interests of justice require review.” *Perry v. State*, 731 N.W.2d 143, 146 (Minn. 2007); *see also* Minn. Stat. § 590.01, subd. 4 (codifying similar requirements). Even if the legal basis for the claim was reasonably available, this court may allow substantive review of the claim in limited situations when fairness so requires and when the petitioner did not “deliberately and

inexcusably” fail to raise the issue on direct appeal. *Roby v. State*, 531 N.W.2d 482, 484 (Minn. 1995) (quotation omitted).

In his first petition for postconviction relief, this court rejected each of appellant’s claims raised here. In his petition below, appellant presented detailed arguments regarding his lack of competency to enter a plea bargain and the improper upward departure of the 36-year sentence imposed—each of these arguments was rejected in his first petition. On appeal, appellant makes more general arguments and fails to present specific grounds as to why his claims fall within the exceptions to the *Knaffla* rule, other than to state that “the sentence imposed was so egregious as to require a second review.” We conclude appellant has made an insufficient showing that his claims fall within either exception. Under *Knaffla*, appellant is barred from renewing these same claims, which were already raised unsuccessfully in his first petition.

Appellant also argues he was entitled to an evidentiary hearing so the court could evaluate his current mental health condition to better clarify his mental state both now and at the time of sentencing. As noted above, this argument improperly merges two distinct legal issues. Evidence concerning the state of appellant’s current mental health is not relevant to the original decision regarding whether appellant was competent to enter a plea agreement in 1998 or to the sentence imposed.

Request for Transfer to Mental Health Facility

In the alternative, appellant argues that the district court erred in refusing to conduct an evidentiary hearing regarding his request to be transferred to a mental health facility pursuant to Minn. Stat. § 241.69. A petition for postconviction relief is not the

proper mechanism for obtaining the relief requested. *See, e.g., Rainer v. State*, 566 N.W.2d 692, 696 (Minn. 1997) (holding challenge to deduction from prison wages for room and board was not proper subject of postconviction relief). Petitions for postconviction relief concern only review and evaluation of convictions, dispositions, and/or sentencing. *See* Minn. Stat. § 590.01.

Because none of the arguments in appellant's petition for postconviction relief required an evidentiary hearing and because those of his arguments that are not barred by *Knaffla* are not the proper subject of a petition for postconviction relief, we conclude that the postconviction court did not abuse its discretion when it denied appellant's petition for postconviction relief without an evidentiary hearing.

Affirmed.