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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2285**

Kennedy M. Nyangweso, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed September 30, 2008
Affirmed
Shumaker, Judge**

Hennepin County District Court
File No. 02-2956

Kennedy Nyangweso, OID #211454, 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, Donna J. Wolfson, Assistant County
Attorney, C-2000 Government Center, Minneapolis, MN 55487 (for respondent)

Considered and decided by Toussaint, Chief Judge; Shumaker, Judge; and
Stoneburner, Judge.

UNPUBLISHED OPINION

SHUMAKER, Judge

Pro se appellant challenges the district court's denial of his petition for postconviction relief on the basis that his claims are procedurally barred under *Knaffla*

and without merit. Because appellant's claims do not fall within either *Knaffla* exception, we affirm.

FACTS

Appellant Kennedy Nyangweso was convicted of second-degree intentional murder in 2003 and sentenced within the presumptive range to 313 months in prison. Nyangweso appealed his conviction, which this court affirmed in *State v. Nyangweso*, No. A03-928, 2004 WL 1725747, at *1 (Minn. App. Aug. 3, 2004), *review denied* (Minn. Oct. 19, 2004).

In that appeal, Nyangweso alleged several errors at trial, including the district court's refusal to instruct the jury on the lesser-included offense of first-degree heat-of-passion manslaughter. *Id.* at *5. The district court had rejected Nyangweso's argument that the victim's decision to end her relationship with him and to start a new relationship, coupled with his heavily intoxicated state at the time of her killing, caused him to have diminished self-control. *Id.* We affirmed the district court's decision, concluding that the evidence did not support a manslaughter instruction. *Id.* at *6.

Nyangweso later petitioned for postconviction relief, requesting an evidentiary hearing on claims of ineffective assistance of trial counsel, improper sentencing, and denial of a fair trial. The postconviction court denied Nyangweso's petition without a hearing, concluding that Nyangweso's claims were procedurally barred under *Knaffla* and lacked basis in law and fact. This appeal followed.

DECISION

A postconviction court is not required to conduct an evidentiary hearing on a petitioner's request for relief "if the petition, files, and record conclusively show that the petitioner is entitled to no relief." *Greer v. State*, 673 N.W.2d 151, 155 (Minn. 2004) (quotations omitted). On appeal from a decision by a postconviction court to deny relief, the reviewing court determines whether the court's findings are supported by sufficient evidence in the record and will not disturb the court's decision unless it constitutes an abuse of discretion. *Dukes v. State*, 621 N.W.2d 246, 251 (Minn. 2001). But this court will review issues of law relevant to such matters de novo. *Leake v. State*, 737 N.W.2d 531, 535 (Minn. 2007).

We decline to consider claims that Nyangweso made to the postconviction court but failed to raise on appeal, namely that he received ineffective assistance of trial counsel, who advised him to plead guilty before assessing his case, and that he did not receive a fair trial. Issues not briefed on appeal are waived. *State v. Butcher*, 563 N.W.2d 776, 780 (Minn. App. 1997), *review denied* (Minn. Aug. 5, 1997). We also decline to consider several claims Nyangweso raises for the first time on appeal. "It is well settled that a party may not raise issues for the first time on appeal from denial of postconviction relief." *Schleicher v. State*, 718 N.W.2d 440, 445 (Minn. 2006) (quotations omitted). Thus, Nyangweso's claims that he should have been charged by a grand-jury indictment and that he received ineffective assistance of trial counsel, who failed to hire an investigator or interview witnesses, and of appellate counsel, are not properly before this court.

In its order denying relief, the postconviction court found that Nyangweso's claims were merely "argumentative assertions" lacking factual support and "were known but not raised during his direct appeal." If a petitioner has directly appealed his conviction, "all matters raised therein, and all claims known but not raised, will not be considered upon subsequent petition for postconviction relief." *State v. Knaffla*, 309 Minn. 246, 252, 243 N.W.2d 737, 741 (1976). This procedural bar, known as the *Knaffla* rule, has two exceptions that, if satisfied, permit review: (1) if the claim is so novel that no legal basis for it existed at the time of direct appeal, or (2) if fairness requires consideration and petitioner did not deliberately or inexcusably fail to raise the issue on direct appeal. *Doppler v. State*, 660 N.W.2d 797, 801 (Minn. 2003).

Nyangweso raises various issues in his postconviction petition, all stemming from his trial and subsequent sentencing. As the postconviction court correctly ruled, all such issues were known at the time of appeal. The postconviction court found that Nyangweso failed to present any evidence or point to any facts "establish[ing] either exception of novelty or fairness." On appeal, Nyangweso asserts that any failure to raise known claims on direct appeal "must be attributed to[] the ineffectiveness of Appellate Counsel" and that fairness requires consideration of his claims for relief. But other than blaming his counsel on direct appeal, Nyangweso does not explain why the fairness exception should apply to remove his claims from the procedural bar, and he fails to provide any reason why his failure to raise these issues on appeal was not deliberate or inexcusable.

Moreover, a petitioner for postconviction relief has the burden of establishing the facts alleged in his petition by a fair preponderance of the evidence. Minn. Stat. § 590.04, subd. 3 (2006). It is not sufficient to present mere “argumentative assertions without factual support.” *Schleicher*, 718 N.W.2d at 444 (quotations omitted). As in his postconviction petition, Nyangweso fails on appeal to support his assertions with any explanation or reference to facts in the record. Thus, the postconviction court did not abuse its discretion in summarily denying Nyangweso’s petition for postconviction relief without holding an evidentiary hearing.

Affirmed.