**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1908**

Charles Edward Gist, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed September 22, 2009
Affirmed; motion denied
Peterson, Judge**

Hennepin County District Court
File No. 27-CR-99-040124

Charles E. Gist, OID #102468, MCF - Oak Park Heights, 5329 Osgood Avenue North, Stillwater, MN 55082 (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 Johnson, Presiding Judge; Peterson, Judge; and

Connolly, Judge.

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

PETERSON, Judge

In this pro se postconviction appeal, appellant seeks relief from his conviction of

and sentence for attempted second-degree intentional murder. He requests an evidentiary

hearing to disqualify the district court judge, and he asserts claims of judicial bias, prosecutorial misconduct, ineffective assistance of trial and appellate counsel, and unconstitutional sentencing. The postconviction court denied his petition as untimely under Minn. Stat. § 590.01, subd. 4 (2008), and denied individual claims as barred by *State v. Knaffla*, 309 Minn. 246, 243 N.W.2d 737 (1976), or as lacking in merit. We affirm, and we deny appellant's motion on appeal.

FACTS

In 1999, appellant Charles E. Gist was charged by complaint, as amended, with one count each of attempted second-degree intentional murder and first- and second-degree assault. The victim, who was an acquaintance of appellant, was injured when appellant struck him in the head with a glass bottle and slashed him in the neck with a broken piece of the bottle. The victim suffered a complete transection of the left carotid artery, internal jugular vein, and vagus nerve, resulting in brain damage.

Appellant waived his right to a jury trial, and the case was tried to the court, which found appellant guilty as charged. In March 2000, the district court sentenced appellant to 20 years in prison under Minn. Stat. § 609.1095, subd. 2 (1998) (violent offender statute). Appellant challenged his conviction, but not his sentence, on direct appeal, and this court affirmed. *State v. Gist*, No. C4-00-1012 (Minn. App. May 1, 2001), *review denied* (Minn. June 27, 2001).

In June 2008, appellant filed a petition for postconviction relief, claiming that the trial judge had a conflict of interest that disqualified him from presiding at appellant's trial; the prosecutor committed misconduct; the prosecutors, district court, and probation

officer committed misconduct by failing to disclose the trial judge's conflict of interest; appellant's sentence was unconstitutional under *Apprendi v. New Jersey*, 530 U.S. 466, 120 S. Ct. 2348 (2000), and *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531 (2004); and appellant was denied "access to the courts by the courts."

The district court determined that appellant's postconviction petition was barred by the statute of limitations in Minn. Stat. § 590.01, subd. 4(a) (2008). Notwithstanding that determination, the district court also addressed each of appellant's claims and denied relief on other grounds. This appeal followed.

D E C I S I O N

Minn. Stat. § 590.01, subd. 4(a), requires that a petition for postconviction relief be filed within "two years after the later of: (1) the entry of judgment of conviction or sentence if no direct appeal is filed; or (2) an appellate court's disposition of petitioner's direct appeal." A defendant whose conviction became final before this limitations period became effective on August 1, 2005, was granted two years from the effective date of the limitations period to file a postconviction petition. 2005 Minn. Laws ch. 136, art. 14, § 13. Consequently, appellant had until August 1, 2007, to file his postconviction petition, and the district court did not err when it determined that appellant's petition was barred by the statute of limitations.

Appellant argues for the first time on appeal that Minn. Stat. § 590.01, subd. 4(a), is unconstitutional. An appellate court usually will not decide issues that are not first addressed by the district court and are raised for the first time on appeal, even issues involving constitutional questions of criminal procedure. *State v. Sorenson*, 441 N.W.2d

455, 457 (Minn. 1989). We decline to address this issue because it was not litigated in the district court.

Because appellant's petition for postconviction relief is barred by the statute of limitations, we will not address the merits of the issues that appellant raises on appeal, except to state that *Blakely* does not apply retroactively to appellant's sentence. The Minnesota Supreme Court has held that while *Blakely* created a new rule of constitutional criminal procedure, it was not a watershed rule, and, therefore, *Blakely* will not be applied to cases that were final before *Blakely's* effective date. *State v. Houston*, 702 N.W.2d 268, 273-74 (Minn. 2005). Appellant's direct appeal was decided by this court on May 1, 2001. The Minnesota Supreme Court denied review on June 27, 2001. The time for petitioning the United States Supreme Court for review expired 90 days later, so appellant's conviction became final in September 2001. *See O'Meara v. State*, 679 N.W.2d 334, 340 (Minn. 2004) (noting that a conviction becomes final when a "judgment of conviction has been rendered, the availability of appeal exhausted, and the time for a petition for certiorari [has] elapsed"). The United States Supreme Court decided *Blakely* on June 24, 2004.

More than one month after this court held its nonoral conference on this case, appellant filed a motion to remove two judges from this panel. Because the rules and statutes that appellant cited in support of his motion do not apply on appeal, and because the motion is untimely and otherwise without merit, it is denied.

Affirmed; motion denied.