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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-60**

Jimmy Wade Hollins, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed November 17, 2009
Affirmed
Wright, Judge**

Dakota County District Court
File No. 19-K9-06-000444

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

James C. Backstrom, Dakota County Attorney, Debra E. Schmidt, Assistant County Attorney, Dakota County Judicial Center, 1560 Highway 55, Hastings, MN 55033 (for respondent)

Jimmy Hollins, MCF-Faribault, 1101 Linden Lane, Faribault, MN 55021 (pro se appellant)

Considered and decided by Wright, Presiding Judge; Kalitowski, Judge; and Stoneburner, Judge.

UNPUBLISHED OPINION

WRIGHT, Judge

Appellant challenges the summary denial of his petition for postconviction relief, arguing that (1) he was denied the right to an unbiased jury, as guaranteed by the Fourteenth Amendment to the United States Constitution; (2) the police seized evidence in violation of the Fourth Amendment to the United States Constitution and Article I, Section 10, of the Minnesota Constitution; and (3) the prosecutor committed prejudicial misconduct during closing arguments by relying on impeachment evidence as substantive evidence. We affirm.

FACTS

Appellant Jimmy Hollins was convicted of unlawful possession of a firearm, Minn. Stat. § 624.713, subd. 1(b) (2004), based on an incident that occurred in October 2005. Burnsville police officers responded to a 911 call from a gas-station attendant who reported that a woman, later identified as D.S.J., arrived at the station with a bleeding hand, asked the attendant to call the police, and then left in a van. Shortly thereafter, based on the attendant's description of the van, officers located the van and stopped it at a different gas station. The officers concluded that they did not have enough evidence to arrest Hollins, who was the driver. But after learning that he did not have a valid driver's license, they seized the van and had it impounded. Because D.J.S. lived with Hollins, officers went to the house and waited with her until her ride arrived. D.S.J. advised them that Hollins had a handgun concealed in the van on the front passenger's side. She also put on a jacket that she said belonged to Hollins, withdrew a small plastic bag containing

ammunition from its pocket, and turned it over to the police. Based on this information, an officer conducted a second search of the van and found a handgun in the location described. Hollins was subsequently convicted of unlawful possession of a firearm.¹

In February 2007, Hollins appealed his conviction, challenging the district court's denial of his motion to suppress the handgun seized from the van and the sufficiency of the evidence to support the jury's verdict. Hollins also argued pro se that an evidentiary hearing was warranted because he had obtained newly discovered evidence, he received ineffective assistance of trial counsel, and the Fourteenth Amendment right to an unbiased jury had been violated. We affirmed Hollins's conviction in an unpublished opinion. *State v. Hollins*, No. A07-0350, 2008 WL 2102616 (Minn. App. May 20, 2008), *review denied* (Minn. Aug. 5, 2008).

Hollins subsequently petitioned the district court for postconviction relief and submitted several supplemental requests for relief. The district court construed the supplemental submissions as amendments to the postconviction petition, found that Hollins's claims were barred under *State v. Knaffla*, 309 Minn. 246, 252, 243 N.W.2d 737, 741 (1976), and denied the petition without a hearing. This appeal followed.

D E C I S I O N

A petitioner seeking postconviction relief has the burden of establishing by "a fair preponderance of the evidence" the facts alleged in the petition. Minn. Stat. § 590.04,

¹ A detailed account of the facts leading to Hollins's conviction is set forth in his direct appeal. *State v. Hollins*, No. A07-0350, 2008 WL 2102616 (Minn. App. May 20, 2008), *review denied* (Minn. Aug. 5, 2008).

subd. 3 (2006). Postconviction relief may be available if the petitioner's conviction was obtained in violation of the petitioner's rights under the constitution or laws of the United States or the State of Minnesota. Minn. Stat. § 590.01, subd. 1 (2006). But when a direct appeal has been taken, all matters raised in the appeal and all claims that are known but not raised "will not be considered upon a subsequent petition for postconviction relief." *Knaffla*, 309 Minn. at 252, 243 N.W.2d at 741. The *Knaffla* rule applies "if the defendant knew or should have known about the issue at the time of appeal." *King v. State*, 649 N.W.2d 149, 156 (Minn. 2002); *see also* Minn. Stat. § 590.01, subd. 1 (barring postconviction relief for claims that petitioner "could have . . . raised on direct appeal"). "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." *Powers v. State*, 731 N.W.2d 499, 502 (Minn. 2007).

We review the district court's decision in a postconviction proceeding for an abuse of discretion. *Schleicher v. State*, 718 N.W.2d 440, 444-45 (Minn. 2006). Summary denial of a petition for postconviction relief does not constitute an abuse of discretion if the petition is procedurally barred by the *Knaffla* rule. *Id.* at 450.

The district court concluded that Hollins was not entitled to postconviction relief because his claims were either raised or could have been raised in the direct appeal of his conviction. We will address each claim in turn.² Hollins first argues that the

² Hollins initially sought postconviction relief on the ground that his counsel rendered ineffective assistance. He later moved to strike certain pages from the appendix of his appellate brief that pertained to this claim. We construed this motion as a withdrawal of the ineffective-assistance-of-counsel claim and granted the motion.

fundamental right to an unbiased jury guaranteed by the Fourteenth Amendment to the United States Constitution was violated because there were no African-American jurors on the panel and there was an underrepresentation of African Americans in the jury pool. Hollins first raised this issue on direct appeal, and we concluded that the failure to raise the claim at trial constituted waiver of the issue. *Hollins*, 2008 WL 2102616, at *5. Thus, this claim is now barred. *Knaffla*, 309 Minn. at 252, 243 N.W.2d at 741.

Hollins next argues that the evidence regarding the handgun should have been suppressed because the second search of his van violated the right to be free of unreasonable searches or seizures, which is guaranteed by the Fourth Amendment to the United States Constitution and Article I, Section 10, of the Minnesota Constitution. Specifically, Hollins contends that the search was unreasonable because the probable-cause determination was based on inadmissible unrecorded statements and ammunition found in a jacket that was neither photographed nor seized. Hollins made the same arguments in his direct appeal. *Hollins*, 2008 WL 2102616, at *2-3. Thus, this claim for postconviction relief also is barred. *Knaffla*, 309 Minn. at 252, 243 N.W.2d at 741.

Finally, Hollins maintains that the prosecutor committed prejudicial misconduct by relying on impeachment evidence as substantive evidence during closing argument. D.S.J.'s prior inconsistent statements to police were admitted at trial to impeach D.S.J.'s trial testimony. Prior inconsistent statements that were not made under oath are admissible only to challenge the witness's veracity by showing the witness's self-contradiction; they are not admissible to prove the truth of the matter asserted. *See State v. McDonough*, 631 N.W.2d 373, 388 (Minn. 2001) (holding that evidence of a witness's

prior inconsistent statements may be admissible to impeach a witness's testimony at trial); Minn. R. Evid. 801(c) (defining hearsay statements as out-of-court statements offered for the truth of the matter asserted).

At issue is the prosecutor's contention during closing argument that D.S.J.'s statements to police about the handgun and the ammunition from the jacket support a finding that Hollins possessed the handgun. Hollins did not object to the prosecutor's statements at trial, nor did he challenge the statements in his direct appeal. Because Hollins knew of the prosecutor's statements when he took his direct appeal and could have raised this issue at that time, the claim is now barred, unless an exception to the *Knaffla* rule applies. *Knaffla*, 309 Minn. at 252, 243 N.W.2d at 741.

Hollins's claim is not so novel that its legal basis was unavailable when he took his direct appeal. Moreover, the district court properly instructed the jury that “[e]vidence of any prior inconsistent statement should be considered only to test the believability and weight of the witness's testimony,” and that “[i]f an attorney's argument contains any statement of the law that differs from the law that [the district court] give[s] you, disregard the statement.” It is presumed that a jury follows the district court's instructions. *State v. Miller*, 573 N.W.2d 661, 675 (Minn. 1998). In light of these instructions, we must presume that the jury relied on D.S.J.'s prior inconsistent statements only to test her credibility as a witness. Consequently, the interests of justice do not require further consideration of this issue. Because the exceptions to the *Knaffla* rule do not apply here, this claim also is barred. *Knaffla*, 309 Minn. at 252, 243 N.W.2d at 741.

The district court did not err when it concluded that Hollins is not entitled to relief because each of his claims was either raised or was known but not raised when he directly appealed his conviction. Because the petition and record conclusively establish that Hollins is not entitled to post-conviction relief, the district court did not abuse its discretion by denying such relief without an evidentiary hearing.

Affirmed.