**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A09-754**

Robert Michael Mathison, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed January 12, 2010**
**Affirmed**
**Johnson, Judge**

Hennepin County District Court
File No. 27-CR-06-052936

Robert Michael Mathison, Faribault, Minnesota (pro se appellant)

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Mike Freeman, Hennepin County Attorney, Michael K. Walz, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Stoneburner, Presiding Judge; Lansing, Judge; and Johnson, Judge.

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

**JOHNSON**, Judge

In 2006, Robert Michael Mathison pleaded guilty to issuance of a dishonored check. On direct appeal, he challenged his sentence but not his conviction, and we affirmed. In 2009, Mathison petitioned for postconviction relief. He now challenges his

conviction, arguing that he should not have been found guilty because the dishonored check was postdated. We conclude that Mathison's claim is procedurally barred because he did not raise it on direct appeal, barred by his guilty plea, and without merit. Therefore, we affirm.

## FACTS

In June 2006, Robert Mathison obtained two paint sprayers from a Sherwin-Williams paint-supply store by presenting a personal check in the amount of $3,621. The check was written on Mathison's checking account but was returned because the account had been closed four months earlier. According to the criminal complaint, one of the paint sprayers was left at a pawn shop on the date of purchase in exchange for approximately $350.

In August 2006, the state charged Mathison with one count of issuance of a dishonored check in violation of Minn. Stat. § 609.535, subds. 2, 2a(a)(1) (2004), and one count of theft by swindle over $2,500 in violation of Minn. Stat. § 609.52, subds. 2(4) (Supp. 2005), 3(2) (2004). In November 2006, Mathison pleaded guilty to the charge of issuance of a dishonored check, and the state dismissed the charge of theft by swindle. Mathison waived his rights under *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531 (2004), to have a jury determine whether, for sentencing purposes, he is a career offender pursuant to Minn. Stat. § 609.1095, subd. 4 (Supp. 2005).

In May 2007, the district court sentenced Mathison to 50 months of imprisonment, which was an upward departure from the presumptive guidelines sentence, after finding that he is a career offender. On direct appeal, Mathison argued only that the district court

erred by not making findings of fact at the sentencing hearing to support the upward departure. We affirmed. *State v. Mathison*, No. 07-1543, 2008 WL 2106857 (Minn. App. May 20, 2008), *review denied* (Minn. July 15, 2008).

In January 2009, Mathison petitioned for postconviction relief. He alleged that his actions did not constitute a crime because the check he issued to the Sherwin-Williams store was postdated and that he received ineffective assistance of counsel. In March 2009, the district court denied the petition without an evidentiary hearing. Mathison appeals.

**D E C I S I O N**

Mathison argues that the district court erred by denying his postconviction petition. On appeal, he raises only one issue -- that he is not guilty of issuing a dishonored check because the check he issued to the Sherwin-Williams store was postdated. He does not seek review of the district court's ruling on his claim of ineffective assistance of counsel.

Mathison's postconviction claim fails for three independent reasons. First, his claim is barred because he did not raise it on direct appeal. In a postconviction action, "all matters" raised in a direct appeal and "all claims known but not raised, will not be considered upon a subsequent petition for postconviction relief." *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." *Powers v. State*, 731 N.W.2d 499, 501 (Minn. 2007). There are two exceptions to the *Knaffla* rule. The first

exception was announced in *Case v. State*, 364 N.W.2d 797 (Minn. 1985), in which the supreme court held that if a novel legal issue is presented, a petitioner is excused from the failure to raise it in a prior proceeding. *Id*. at 800. The second exception was fully articulated in *Fox v. State*, 474 N.W.2d 821 (Minn. 1991), in which the supreme court held that a district court may consider an issue otherwise barred by *Knaffla* when "fairness requires." *Id*. at 825. The second exception often is restated as one that applies when "the interests of justice require review." *Powers*, 731 N.W.2d at 502. When the facts are not in dispute, we apply a *de novo* standard of review to a district court's application of *Knaffla*. *See Sanchez-Diaz v. State*, 758 N.W.2d 843, 846 (Minn. 2008).

The district court concluded that Mathison's claim is barred by *Knaffla* because the claim was known by Mathison but not raised at the time of his direct appeal. Mathison does not challenge that premise. In fact, Mathison stated in his postconviction petition that he knew of the claim at the time of his direct appeal. On appeal, Mathison appears to argue that the claim should be reviewed in "the interests of justice." *Powers*, 731 N.W.2d at 502. To trigger this exception to the *Knaffla* bar, "a claim must have merit and must be asserted without deliberate or inexcusable delay." *Wright v. State*, 765 N.W.2d 85, 90 (Minn. 2009). Mathison cannot satisfy the first of these requirements for the reasons stated below, and he cannot satisfy the second requirement because he has no valid excuse for the delay in raising the issue.

Second, Mathison's claim is barred because he pleaded guilty. A guilty plea operates as a waiver of all nonjurisdictional defects that arose before the plea. *State v. Farnsworth*, 738 N.W.2d 364, 371 (Minn. 2007). Mathison's argument does not concern

the jurisdiction of the district court but, rather, the application of a criminal statute to the facts of his case. By admitting his guilt, Mathison waived his claim that he is not guilty because the check was postdated.

Third, Mathison's claim is, as the district court also concluded, without merit. The statute providing for the offense to which Mathison pleaded guilty provides, in relevant part: "Whoever issues a check which, at the time of issuance, the issuer intends shall not be paid, is guilty of issuing a dishonored check . . . ." Minn. Stat. § 609.535, subd. 2. Mathison relies on another subdivision of the same section, which states: "This section does not apply to a postdated check or to a check given for a past consideration, except a payroll check or a check issued to a fund for employee benefits." Minn. Stat. § 609.535, subd. 5 (2004). Mathison urges us to interpret the statute to provide that a person who presents a postdated check cannot be found guilty of the offense of issuance of a dishonored check, regardless whether the person intended the check to be paid.

The district court rejected Mathison's argument, reasoning that the purpose of subdivision 5 is to "protect the issuer of a check where the check is cashed prior to the agreed upon date of payment." Indeed, if a person issues a postdated check with the intent of honoring the check on the date shown, but the check is cashed prior to that date, the person would not have the intent required by subdivision 2. *See State v. Neuman*, 392 N.W.2d 706, 708 (Minn. App. 1986). It is necessary to interpret subdivision 5 in light of subdivision 2. *See State v. Johnson*, 775 N.W.2d 377, 380 (Minn. App. 2009) (noting that multiple sections of statute should be read together). When read in harmony, subdivision 5 merely describes one of the situations in which the evidence will not satisfy

the intent requirement of subdivision 2. Mathison's preferred interpretation of subdivision 5 -- that it essentially immunizes all postdated checks -- is unreasonable. It is not unlawful in Minnesota to write a postdated check. Minn. Stat. § 336.3-113 (2008). But it is unlawful to write a postdated check with the intent that it "shall not be paid." Minn. Stat. § 609.535, subd. 2.

In this case, Mathison's transaction with Sherwin-Williams took place on June 23, 2006. Mathison's check was dated June 25, 2006. At his plea hearing, Mathison admitted that he did not intend to honor the check. More specifically, he admitted that he knew that he did not have money in the account sufficient to cover the checks he was writing. Mathison stated, "I'm pleading guilty because I wrote a bad check." According to the criminal complaint, Mathison's checking account was closed four months before he wrote a check to Sherwin-Williams. There is no suggestion in the record that Mathison attempted to reopen and replenish the checking account between June 23 and 25, 2006. The fact that the check was postdated, by itself, does not negate Mathison's guilt.

Thus, the district court did not err by denying Mathison's postconviction petition.

**Affirmed.**