

*This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A09-1326**

Joshua Alan Sather, a/k/a Joshua Allan Sather, petitioner,  
Appellant,

vs.

State of Minnesota,  
Respondent.

**Filed February 2, 2010  
Affirmed  
Huspeni, Judge\***

Clay County District Court  
File No. 14-K4-06-000243

Joshua Allan Sather, Appleton, Minnesota (pro se appellant)

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

Brian J. Melton, Clay County Attorney, Moorhead, Minnesota (for respondent)

Considered and decided by Toussaint, Chief Judge; Hudson, Judge; and Huspeni, Judge.

**UNPUBLISHED OPINION**

**HUSPENI**, Judge

Pro se appellant Joshua Alan Sather challenges the district court's denial of his petition seeking postconviction relief. He argues that his claims are not barred by *Knaffla*

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\* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

because his trial attorney was ineffective and the interests of justice require that he be given an evidentiary hearing. Because the district court did not abuse its discretion in denying appellant's petition, we affirm.

## FACTS

Appellant was convicted by a jury of first- and second-degree criminal sexual conduct for sexually abusing an eight-year-old male relative. On direct appeal, this court rejected appellant's challenges to evidentiary rulings made during trial. *State v. Sather*, No. A06-2040, 2008 WL 224030 (Minn. App. Jan. 29, 2008), *review denied* (Minn. Apr. 29, 2008).

Appellant filed this petition for postconviction relief in April 2009. In his petition, he asserts that the admission, at trial, of "[i]nconsistent [t]estimony that is probative in nature, false in content, and damning in context is highly irregular and should be removed as evidence." He claims that he "did not commit these crimes, bottom line" and that he wants to "[i]mpeach witnesses [due] to inconsistent statements." As support for his petition, he cites to pages in the trial transcript that he claims contain inconsistencies in witness testimony. In its order denying appellant's petition, the district court concluded that these claims were raised by appellant on direct appeal and are procedurally barred by *Knaffla*.

In his brief on appeal, appellant rephrases his issues somewhat. He repeats his claim of innocence and repeats his claim that the "witnesses and alleged victim took an oath and yet, they made inconsistent statements." But he also claims that his "[c]ounsel was ineffective because he failed to impeach the witnesses and [he made] no motion for

dismissal.” Appellant further states that his counsel “did not produce [a] second medical opinion and did not ask me to produce any character witnesses.”

## D E C I S I O N

A postconviction court may summarily deny a petition “when the issues raised in it have previously been decided by the Court of Appeals or the Supreme Court in the same case.” Minn. Stat. § 590.04, subd. 3 (2008). In addition, once a direct appeal has been taken, all claims raised in that appeal, and all claims known or that should have been known at the time of appeal, are procedurally barred and will not be considered in a subsequent petition for postconviction relief. *State v. Knaffla*, 309 Minn. 246, 252, 243 N.W.2d 737, 741 (1976). There are two exceptions to *Knaffla*: (1) “a novel legal issue is presented”; or (2) “the interests of justice require review.” *Taylor v. State*, 691 N.W.2d 78, 79 (Minn. 2005). Under the second exception, appellate courts have held that a claim of ineffective assistance of counsel is not barred by *Knaffla* if the claim cannot be determined from the district court record and requires additional evidence or fact finding. *Id.*; see also *McKenzie v. State*, 754 N.W.2d 366, 369 (Minn. 2008).

In this case, appellant’s claims are based on alleged inconsistencies in the testimony of witnesses at trial. These claims were clearly known at the time of his direct appeal, in which he challenged the admissibility of certain testimony and in which this court specifically concluded that the credibility of the witnesses, particularly of the victim, involved questions for the jury to resolve. *Sather*, 2007 WL 224030, at \*2. Thus, the district court did not abuse its discretion in concluding that the claims raised by appellant in his postconviction petition are *Knaffla* barred.

With regard to appellant's challenge to the effectiveness of his trial attorney, we note that this court generally will not consider issues raised for the first time on appeal and not addressed by the district court. *Schleicher v. State*, 718 N.W.2d 440, 445 (Minn. 2006). In addition, appellant's claims of ineffective assistance of trial counsel require no additional fact finding and thus do not fall within any exception to *Knaffla*. Moreover, appellant's claims relate to trial strategy, which generally is not subject to review for competence. *See Schleicher*, 718 N.W.2d at 448. Finally, a review of the trial transcript shows that appellant's trial attorney did challenge the consistency of the statements made by the various witnesses and that he pointed out those inconsistencies to the jury in his closing argument. Nothing in the record or in the allegations made in appellant's postconviction petition establish that the performance of appellant's trial attorney was unreasonable or defective.

The district court's order denying appellant's petition for postconviction relief is affirmed.

**Affirmed.**