STATE OF MINNESOTA
IN COURT OF APPEALS
A10-98

Randall Arthur Radunz, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed September 7, 2010
Affirmed
Peterson, Judge

Ramsey County District Court
File No. 62-K1-04-4681

Randall A. Radunz, Prescott, Wisconsin (pro se appellant)

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

Susan Gaertner, Ramsey County Attorney, Mark N. Lystig, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Considered and decided by Stauber, Presiding Judge; Lansing, Judge; and Peterson, 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 argues that the district court erred in denying his request for jail credit based on newly discovered evidence. We affirm.

FACTS

In the early morning hours of May 10, 2003, appellant and two other men brought a woman to a hospital in St. Paul, claiming that she had overdosed on drugs. The woman died the next day, and investigators obtained a search warrant for appellant's property in Wisconsin, where the woman had been before she was taken to the hospital. The warrant was executed on May 15, 2003, and drugs and ammunition were found on the property. Appellant, who was on probation in Wisconsin for a 2002 firearm-possession conviction, was arrested at the direction of his probation agent and taken into custody in Wisconsin. In September 2003, appellant's probation was revoked, and he was sentenced to two years in prison from the date of his arrest on May 15, 2003.

In December 2004, appellant was indicted in Minnesota on second-degree-murder and first- and second-degree-manslaughter charges stemming from the woman's death. In August 2005, he pleaded guilty to second-degree manslaughter, culpable negligence. During the plea hearing, appellant acknowledged that he struggled with the woman, who he claimed was high on drugs and had become violent; that he and others decided to bring her to the hospital after she had a seizure; that during the van ride to the hospital, he immobilized her by holding her chin in the upper-neck area; and that his actions "caused her death through culpable negligence."

At the sentencing hearing, the attorneys made detailed arguments on the issue of jail credit: defense counsel argued that appellant was entitled to credit from May 15, 2003, when he was first detained in Wisconsin following the seizure of drugs and ammunition on his property; the prosecutor argued that appellant was only entitled to

credit from April 26, 2005, when he was released in Wisconsin after serving his two-year sentence and transferred to Minnesota. The district court agreed with the prosecutor and granted appellant 158 days of jail credit. On direct appeal, this court affirmed the district court's decision. *State v. Radunz*, No. A05-2564, 2007 WL 968438 (Minn. App. Apr. 3, 2007), *review denied* (Minn. June 19, 2007).

Appellant has filed two previous postconviction petitions related to this conviction. In his first petition, appellant challenged the requirement that he pay restitution; no appeal was taken from the district court's denial of the first petition. In his second petition, appellant raised a number of issues, including a challenge to the validity of his plea and to the effectiveness of his counsel's assistance; the district court denied the second petition, and this court dismissed appellant's appeal as untimely. *Radunz v. State*, No. A07-2398 (Minn. App. Jan. 9, 2008) (order).

In this third petition, which appellant characterized as a motion for sentence review under Minn. R. Crim. P. 27.03, subd. 9, appellant argues that due to newly discovered evidence, the issue of jail credit should be reconsidered and reviewed for error. The district court construed the motion as a petition for postconviction relief and summarily denied the petition. This appeal followed.

D E C I S I O N

A district court "may summarily deny a petition when the issues raised in it have previously been decided by [this court] in the same case." Minn. Stat. § 590.04, subd. 3 (2008). When a direct appeal has been taken, "all matters raised therein, 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). Two exceptions to *Knaffla* permit review: (1) if a novel legal issue is presented; or (2) if the interests of justice require review. *Taylor v. State*, 691 N.W.2d 78, 79 (Minn. 2005).

In this case, the issue of jail credit was specifically addressed and rejected by this court on direct appeal, and appellant does not claim that either exception to *Knaffla* applies. Therefore, the district court's summary denial of the petition was proper. *See id.* (holding that postconviction court properly denied petition under section 590.04, subdivision 3, and under *Knaffla*, when defendant raised same issue on direct appeal and neither exception to *Knaffla* applied).

Appellant nevertheless argues that due to newly discovered evidence, the issue of jail credit should be reconsidered and reviewed for error.[1] In his appendix, appellant includes documents from his Wisconsin probation file that he recently received. Of particular importance, he claims, are the original detention warrant and a later request to extend his detention. Both of these documents indicate that the reasons for his detention

[1] While appellant frames his jail-credit issue as based on newly discovered evidence, the analysis is similar, but not identical, to a claim that he is entitled to review under an exception to *Knaffla*. But neither exception applies here. The legal bases for appellant's jail-credit claim were known at the time of his direct appeal and do not present novel legal issues. His claim also does not satisfy the *Knaffla* interests-of-justice exception, which requires that the claim have substantive merit and that the petitioner has not "deliberately and inexcusably" failed to raise the issue on direct appeal. *Fox v. State*, 474 N.W.2d 821, 825 (Minn. 1991). Appellant's claim was raised and rejected on direct appeal. And, as will be discussed, his jail-credit claim continues to lack merit, even when the allegedly newly discovered evidence is considered.

in Wisconsin were "[a]llegations of homicide and possession of a [c]ontrolled [s]ubstance."

To establish that newly discovered evidence supports a claim for relief, a petitioner must show (1) the newly discovered evidence was not within his or his counsel's knowledge before trial; (2) the evidence could not have been discovered through due diligence before trial; (3) the evidence is not cumulative, impeaching, or doubtful; and (4) the evidence would probably produce a different or more favorable result. *Doppler v. State*, 771 N.W.2d 867, 871-72 (Minn. 2009) (*citing Rainer v. State*, 566 N.W.2d 692, 695 (Minn. 1997)).

Appellant has not met any of these requirements. The information that appellant claims is newly discovered, that the homicide allegations were part of the reason for his detention in Wisconsin, was within his knowledge as early as May 15, 2003, when the search warrant was executed. The warrant was obtained to investigate the woman's death as a homicide, and appellant was arrested and held after execution of the warrant for violating the terms of his probation by possessing drugs and ammunition. In addition, the documents appellant claims are newly discovered pre-date appellant's sentencing, were part of appellant's Wisconsin probation file, and could have been discovered through due diligence. Also, the information contained in these documents is largely cumulative of information that was already within appellant's possession.

Finally, evidence that appellant's detention in Wisconsin was due in part to the homicide investigation would not have changed the district court's decision to deny his

request for jail credit or this court's decision to affirm that decision on direct appeal.[2] Under inter-jurisdictional rules, jail credit is awarded if the incarceration in the other state was "*solely* in connection with" the Minnesota offense in which credit is sought. *State v. Willis*, 376 N.W.2d 427, 428 (Minn. 1985) (emphasis added); *State v. Parr*, 414 N.W.2d 776, 779 (Minn. App. 1987), *review denied* (Minn. Jan. 15, 1988).

Appellant's arguments on this jail-credit issue and the cases he cited all involve intra-jurisdictional situations; in those types of cases, a defendant is entitled to jail credit for time spent in custody "in connection with the offense" for which sentence is imposed under Minn. R. Crim. P. 27.03, subd. 4(B). At different points in time, appellant's incarceration in Wisconsin may have been related to the murder investigation in Minnesota. But his detention in Wisconsin was never solely dependent on the homicide investigation, and was always partly related to his violations of the terms of his Wisconsin probation by possessing drugs and firearms. Appellant has not shown that consideration of his allegedly newly discovered evidence would have produced a different or more favorable result.

[2] Appellant points to what he claims is a misstatement of fact in this court's unpublished opinion: "Indeed, after the drug-related contraband was discovered in his constructive possession, appellant was taken into custody that night on an apprehension warrant issued by his probation officer, *without reference to the nascent death investigation*." *Radunz*, 2007 WL 968438, at *2 (emphasis added). Even though this statement appears to be inaccurate, it was not crucial to this court's decision to affirm the district court's denial of credit for time spent in Wisconsin since May 15, 2003. Correcting the statement to reflect, as stated in the apprehension request, that the detention in Wisconsin was based on "[a]llegations of homicide and possession of a [c]ontrolled [s]ubstance" would not have changed the result reached by this court on direct appeal.

We, therefore, affirm the district court's summary denial of appellant's petition for postconviction relief. [3]

Affirmed.

[3] The state also argues that the district court could have dismissed appellant's petition as untimely under Minn. Stat. § 590.01, subd. 4 (2008). The state acknowledges that it did not make this argument to the district court but claims that it never received a copy of appellant's petition and thus did not have an opportunity to respond to his motion to modify his sentence in district court. While this may be true, we decline to address whether appellant's petition was untimely because the issue was not considered by the district court and is not necessary to our decision here.