

*This opinion will be unpublished and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
A09-1639**

Leon Henry Carter, III, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed April 27, 2010
Affirmed
Toussaint, Chief Judge**

Hennepin County District Court
File No. 27-CR-95-040246

Leon Henry Carter, III, Rush City, Minnesota (pro se appellant)

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

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

Considered and decided by Toussaint, Chief Judge; Klaphake, Judge; and Collins,
Judge.*

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

UNPUBLISHED OPINION

TOUSSAINT, Chief Judge

Pro se appellant Leon Henry Carter, III, challenges the district court's denial of his fourth postconviction petition, which seeks relief from his 1995 conviction of two counts of second-degree murder for a drive-by shooting. Because appellant's claims are clearly barred by *Knaffla* and he has not established that any exception to *Knaffla* applies, we affirm.

DECISION

On direct appeal, appellant raised a number of issues, including challenges to the sufficiency of the evidence, to the district court's decision to allow an inmate to testify that appellant had confessed to the crime while awaiting trial, and to the effectiveness of his trial counsel, who appellant claimed failed to put defense witnesses on the stand. This court affirmed appellant's conviction and sentence in his direct appeal. *State v. Carter*, No. C6-96-51, 1996 WL 495027 (Minn. App. Sept. 3, 1996), *review denied* (Minn. Oct. 29, 1996).

Since then, appellant has filed three petitions for postconviction relief, several habeas petitions in both state and federal court, and one petition for mandamus. *See, e.g., Carter v. State*, No. A09-27 (Minn. App. Jan. 29, 2009) (dismissing appeal from district court's order denying appellant's motion to reconsider order denying third postconviction petition, as taken from nonappealable order); *Carter v. State*, No. A08-2040 (Minn. App. Jan. 6, 2009) (dismissing appeal from district court's order denying appellant's third postconviction petition, which raised various challenges to his sentence, as untimely);

Carter v. State, No. A06-2412 (Minn. App. Jan. 14, 2008) (affirming denial of second postconviction petition, which alleged that complaint was not valid means of charging offense and that district court had no jurisdiction to adjudge him guilty, as *Knaffla* barred); *Carter v. State*, No. C4-00-1849, 2001 WL 682790 (Minn. App. June 19, 2001) (affirming district court's order denying first postconviction petition, which alleged ineffective assistance of trial and appellate counsel, sought discovery of ballistic reports, and requested authorization for investigative expenditures). In this court's most recent order in A09-27, we noted: "Appellant's multiple, overlapping filings in the district court and in this court represent an abuse of the postconviction process."

Due to appellant's stream of filings, the district court apparently lost track of this postconviction petition, which was filed in July 2007. Prompted by a letter from appellant inquiring about the status of this petition, the district court issued an order on August 19, 2009, denying it as appellant's fourth postconviction petition.

In this appeal from the fourth petition, appellant alleges that he is entitled to postconviction relief due to an involuntary confession, because witnesses lied in their trial testimony, and based on due process violations and ineffective assistance of counsel. He asserts that his trial attorney failed to present relevant, admissible, material and exculpatory evidence on his behalf. In particular, appellant alleges that this attorney failed to (1) establish that the eyewitness identified another person as the shooter; (2) investigate and interview any of the defense or prosecution witnesses; (3) investigate the ballistics or recovered bullets and fragments; (4) present the testimony of appellant's girlfriend, who would have negated the state's theory that the motive for the shooting

involved a dispute over another woman; and (5) present the testimony of an alibi witness, who would have testified that appellant was with him on the other side of town at the time of the shooting. Appellant claims that he is actually innocent of all the charges of which he was convicted and sentenced.

The district court summarily denied this petition, concluding that the claims were barred by *Knaffla*, because they were either raised previously or were known by appellant but not raised. The district court further concluded that the petition presented no novel legal issue and that fairness does not require further review. We agree with the district court's description and assessment of appellant's claims.

If a petitioner has already taken a direct appeal of his or her conviction, all claims raised in that appeal, and all claims known at the time of that appeal but not raised, 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). In addition, "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).

All the claims now raised by appellant were raised on either direct appeal or in one of appellant's previous petitions for postconviction relief. Even if not raised, all the claims now raised by appellant were known at the time of his direct appeal or at the time of his previous petitions for postconviction relief. Finally, appellant has failed to establish an exception that would require this court to review his claims on the merits: none of his claims are so novel that the legal bases were not available on direct appeal,

nor has he shown that fairness requires review and that he did not deliberately and inexcusably fail to raise the issue on direct appeal. *See Doppler v. State*, 771 N.W.2d 867, 873 (Minn. 2009) (setting out exceptions to *Knaffla*). Thus, the district court did not abuse its discretion in summarily denying appellant's fourth petition for postconviction relief.

The state also argues that appellant's petition is untimely under Minn. Stat. § 590.01, subd. 4 (2008), and *Nestell v. State*, 758 N.W.2d 610 (Minn. App. 2008), which require postconviction petitioners whose convictions became final prior to August 1, 2005, to have filed his or her petition prior to August 1, 2007. But this argument is incorrect, as appellant notes in his reply brief. Appellant's petition was timely filed in July 2007, but it was not ruled on by the district court until August 2009.

In his reply brief, appellant also points out an error in the district court's order, which refers to a "fifth" postconviction petition. That "petition," however, is actually a memorandum that appellant filed in support of this fourth postconviction petition. Thus, the district court was incorrect in finding that appellant had filed a fifth petition for postconviction relief. This incorrect finding, however, is similar to a clerical error and does not affect the district court's decision to summarily deny appellant's fourth petition for postconviction relief as *Knaffla*-barred.

We therefore affirm the district court's order denying appellant's petition for postconviction relief.

Affirmed.