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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1823**

Casey Roland Jones, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

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

Isanti County District Court
File Nos. CR-06-1315, CR-06-1317

Casey Roland Jones, Stillwater, Minnesota (pro se appellant)

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

Jeffrey R. Edblad, Isanti County Attorney, Cambridge, Minnesota (for respondent)

Considered and decided by Toussaint, Chief Judge; Minge, Judge; and Harten, Judge.*

UNPUBLISHED OPINION

TOUSSAINT, Chief Judge

Appellant Casey Roland Jones challenges the district court's denial of his petition for postconviction relief, his motion to withdraw his guilty plea, and his motion to correct

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

his sentence. Because appellant's claims are *Knaffla* barred and are otherwise unsupported under Minnesota law, we affirm.

D E C I S I O N

When, as here, a direct appeal has been taken, all claims that were raised or could have been raised will not be considered in a 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) when a claim is so novel that its legal basis was not reasonably available when direct appeal was taken, a petitioner is excused from failing to raise it in an earlier proceeding; and (2) a claim may be considered in the interests of justice when fairness so requires and when the petitioner did not deliberately and inexcusably fail to raise the issue on direct appeal. *Doppler v. State*, 771 N.W.2d 867, 873 (Minn. 2009); *see also Fox v. State*, 474 N.W.2d 821, 824 (Minn. 1991). *Knaffla* and its exceptions are generally codified in Minn. Stat. § 590.01, subd. 1 (2008).

In August 2006, appellant was charged in two separate files with theft by check and issuing dishonored checks and with check forgery. He pleaded guilty in 2007, and was sentenced to 60 months for check forgery and 90 months for theft by check, based on the district court's findings that appellant met the requirements for sentencing as a career offender under Minn. Stat. § 609.1095 (2006). On direct appeal, this court rejected appellant's claim that his sentences were excessive and unauthorized. *State v. Jones*, No. A07-1333 (Minn. App. June 17, 2008), *review denied* (Minn. Aug. 5, 2008).

In these postconviction proceedings, appellant again challenges his sentences and seeks to withdraw his guilty plea. The district court summarily denied appellant's

postconviction petition and motions, finding that his claims could have been raised on direct appeal and that his claims were otherwise without merit and not in the interests of justice.

In his brief on appeal, appellant raises five separate issues: (1) 2007 changes to the sentencing guidelines should be retroactively applied to his case; (2) his criminal history does not meet the sequencing requirement to sentence him as a career offender; (3) his *Blakely* waiver was inadequate and therefore insufficient to allow him to be sentenced as a career offender; (4) the factual basis for the offense of theft by check over \$2,500 is insufficient to support his conviction of that offense, thus creating a manifest injustice that should allow him to withdraw his guilty plea; and (5) the district court abused its discretion in denying his postconviction petition and motions, without holding an evidentiary hearing and without appellant being present.

None of these claims was specifically raised on direct appeal, but the claims are still barred by *Knaffla* because they were known and could have been raised. *See Ashby v. State*, 752 N.W.2d 76, 78-79 (Minn. 2008). While appellant asserts that he did not know of the possible challenges to his guilty plea until he obtained a copy of his file in March 2009, he was present at the plea hearing and was on notice of those proceedings. Thus, unless appellant can show that his claims fall under an exception to *Knaffla*, they are procedurally barred.

Appellant does not argue that his claims are “novel,” but he asserts that his claims should be considered in the “interests of justice.” Appellant asserts that he did not “deliberately and inexcusably” fail to raise these issues, primarily because his direct

appeal focused only on the excessive duration of his two career offender sentences and because he was unaware of the details in his transcripts and file, which he received only earlier this year. Even if this is true, the interests-of-justice exception also requires that a claim have merit. When appellant's claims are examined more closely, we must conclude that they lack substantive merit.

I.

Appellant notes that, shortly after he filed his direct appeal, the sentencing guidelines changed substantially. He claims that his 90-month sentence for theft by check should be reduced to 60 months, which is the statutory maximum under the current guidelines for a theft-related offense in which the aggregate amount is between \$2,500 and \$5,000. But a defendant is sentenced according to the guidelines in effect at the time the crime was committed. *See* Minn. Sent. Guidelines III.F. The current guidelines thus do not apply to this case.

II.

Appellant claims that he is entitled to postconviction relief because he does not meet the sequencing requirement of the offense/conviction in order to qualify as a career offender. He cites *State v. Huston*, 616 N.W.2d 282 (Minn. App. 2000), for the proposition that there must be five separate and sequential offense/convictions in order to satisfy Minn. Stat. § 609.1095, subd. 4. Appellant asserts that it is “quite clear” that, according to his presentence investigation report, “nowhere at any time in [his] criminal history are there ever ‘5 separate and sequential’ offenses/convictions” and that his criminal history is “repeatedly interrupted” by his commission of another offense.

The presentence investigation reports prepared for the two files involved in this case list appellant's extensive history of felony offenses dating back to 1981. Some of these offenses overlap and admittedly cannot be counted to meet the "separate and sequential" requirement. But there is no question that appellant has five or more "separate and sequential" convictions within his 24 felony convictions; appellant mistakenly assumes that, when he committed another felony offense before he was fully discharged from the previous conviction, calculation of the five offenses would have to "start over." This is not an accurate understanding of the career offender statute.

III.

Appellant asserts that his *Blakely* waiver was inadequate because it did not include a specific waiver of his right to testify, his right to have witnesses testify in open court in his presence, the right to cross-examine the witnesses, and the right to require any favorable witnesses to testify on his behalf. He cites *State v. Zulu*, 706 N.W.2d 919, 926 (Minn. App. 2005), which relies in part on a decision from this court that was reversed by the supreme court, *State v. Thompson*, 694 N.W.2d 117 (Minn. App. 2005), *rev'd*, 720 N.W.2d 820 (Minn. 2006).

In *Thompson*, the supreme court concluded that a *Blakely* waiver following a valid guilty plea need not include waivers of the individual rights forfeited by the defendant when agreeing to a bench trial on sentencing issues. *See* 720 N.W.2d at 826-28. In this case, as in *Thompson*, appellant submitted a written petition to enter a plea of guilty that addressed the waiver of each of his individual rights. At the plea hearing, he pleaded guilty to each of the offenses and specifically waived his right to a *Blakely* trial and

admitted facts to support sentencing under the career offender statute. Appellant's waiver of his *Blakely* rights was sufficient under *Thompson*.

IV.

Appellant claims that no factual basis was presented to support his guilty plea to the offense of theft by check with a value of over \$2,500. He asserts that, without a sufficient factual basis, his guilty plea was not accurate. *See Perkins v. State*, 559 N.W.2d 678, 685 (Minn. 1997); *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). But the plea transcript shows that appellant admitted that he wrote checks on a closed account knowing that he did not have a right to draw funds from the account, that he purchased a car with one check in the amount of \$2,340, that he wrote several other checks, and that the aggregate amount of the checks totaled \$2,559.70. While appellant asserts that the other checks used to aggregate over \$2,500 included dishonored checks considered in the count that was dismissed under the terms of the plea agreement, the two counts covered some of the same checks. The factual basis for appellant's guilty plea to theft by check was adequate.

V.

Appellant argues that the district court abused its discretion by denying his postconviction petition and various motions without holding an evidentiary hearing. He claims that his pleadings have placed material facts in dispute. An evidentiary hearing is required “[u]nless the petition and the files and records of the proceeding conclusively show that the petitioner is entitled to no relief.” Minn. Stat. § 590.04, subd. 1. An evidentiary hearing was not required in this case.

Because appellant's claims are barred by *Knaffla* and because he is not entitled to review under any exception to *Knaffla*, the district court did not abuse its discretion in denying his petition for postconviction relief.

Affirmed.