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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1557**

Lorn Laverne Runge, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed May 5, 2009
Affirmed
Bjorkman, Judge**

Stearns County District Court
File No. K4-00-74

Lorn Laverne Runge, MCF Rush City, OID 144743, 7600 525th Street, Rush City, MN 55069 (pro se appellant)

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101; and

Janelle P. Kendall, Stearns County Attorney, Michael J. Lieberg, Assistant County Attorney, Administration Center, Room 448, 705 Courthouse Square, St. Cloud, MN 56303 (for respondent)

Considered and decided by Bjorkman, Presiding Judge; Klaphake, Judge; and Randall, Judge.*

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

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant Lorn Runge seeks correction of his 2000 sentence, arguing that he is entitled to relief under *State v. Shattuck*, 704 N.W.2d 131 (Minn. 2005). We affirm the district court's denial of postconviction relief.

FACTS

Appellant was convicted of first-degree criminal sexual conduct and sentenced on June 13, 2000. The sentence represented a double upward departure from the presumptive sentence. Appellant appealed his conviction in September 2000, but did not raise any issues relating to his sentencing or the Supreme Court's June 26, 2000 decision in *Apprendi v. New Jersey*, 530 U.S. 466, 120 S. Ct. 2348 (2000). See *State v. Runge (Runge I)*, No. C1-00-1596 (Minn. App. Aug. 7, 2001), *review denied* (Minn. Oct. 16, 2001). This court affirmed appellant's conviction.

In September 2002, appellant petitioned the district court for postconviction relief, citing *Apprendi*. The district court denied the petition, concluding that (1) *State v. Knaffla*, 309 Minn. 246, 243 N.W.2d 737 (1976), barred appellant from raising *Apprendi* because he did not timely raise it on direct appeal and (2) appellant's sentence did not violate the *Apprendi* rule. Appellant did not appeal the denial of his postconviction petition.

In July 2004, appellant moved the district court to correct or reduce his sentence under Minn. R. Crim. P. 27.03. The district court denied the motion and appellant's subsequent motion for reconsideration, in which appellant asserted an *Apprendi*

argument. We affirmed the district court, concluding that appellant's *Apprendi* claim was procedurally barred and that he could not obtain relief based on retroactive application of *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531 (2004). *State v. Runge (Runge II)*, No. A04-2408 (Minn. App. July 12, 2005) (order op.), *review denied* (Minn. Sept. 28, 2005).

In May 2008, appellant again moved the district court for resentencing pursuant to rule 27.03, citing primarily *Apprendi* and *Shattuck*. The district court denied the motion and appellant's motion for rehearing. This appeal follows.

D E C I S I O N

Appellant argues as a preliminary matter that the district court erred in treating his rule 27.03 motion as a postconviction petition. We disagree. A motion to correct a sentence filed pursuant to the first sentence of rule 27.03, subdivision 9, is a proceeding within the scope of the postconviction statute. *Powers v. State*, 731 N.W.2d 499, 501 n.2 (Minn. 2007). The district court did not err in treating the motion as a postconviction petition.

A person seeking postconviction relief bears the burden of establishing facts that warrant relief. Minn. Stat. § 590.04, subd. 3 (2006). We review issues of law de novo, but we examine the postconviction court's findings to determine if they are supported by sufficient evidence. *Leake v. State*, 737 N.W.2d 531, 535 (Minn. 2007). We reverse the denial of postconviction relief only if there has been an abuse of discretion. *Id.*

Appellant argues that his sentence should be reduced because he was entitled to have the jury, rather than the district court, determine whether aggravating factors existed

warranting the upward sentencing departure. This is the same argument he advanced in *Runge II*. And while appellant cites *Shattuck*, which the supreme court decided after *Runge II*, we find appellant's argument no more persuasive now.

Under *Knaffla*, all claims known but not raised in a direct appeal are procedurally barred from consideration with respect to a later postconviction petition. 309 Minn. at 252, 243 N.W.2d at 741. The *Knaffla* bar is subject to two exceptions: (1) if "a claim is so novel that the legal basis was not available on direct appeal" or (2) if the interests of justice require review and the petitioner's failure to raise the issue on direct appeal was not deliberate or inexcusable. *Perry v. State*, 731 N.W.2d 143, 146 (Minn. 2007). Neither exception applies here.

First, appellant's argument was available on his direct appeal. In *Shattuck*, the Minnesota Supreme Court struck down provisions of the sentencing guidelines permitting judges, rather than juries, to make findings regarding the existence of aggravating factors, to enhance sentences beyond the presumptive term. 704 N.W.2d at 143. The decision was based on a line of cases that began with *Apprendi* and includes *Blakely*. *Id.* at 135, 142. Appellant's attempt to clothe his argument in the mantle of a new case does not make it novel.

Second, appellant has not shown that his failure to raise an *Apprendi* argument on direct appeal was not deliberate or should be excused. He has merely asserted that he and his counsel were unaware of *Apprendi*—a significant and relevant Supreme Court decision announced almost three months before he filed his direct appeal. The interests of justice do not require review on these facts. *See Perry*, 731 N.W.2d at 147 (stating

“fairness does not require that we review a claim when [appellant] has not presented a colorable explanation of why he failed to raise these claims previously”). The district court did not abuse its discretion in denying appellant’s postconviction petition.

Affirmed.