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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0094**

Lance Phillip Wickner, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed March 25, 2008
Affirmed
Peterson, Judge**

Beltrami County District Court
File No. K3-00-1998

Lance Phillip Wickner, OID #204147, 5329 Osgood Avenue North, Stillwater, MN 55082 (pro se appellant)

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Timothy Faver, Beltrami County Attorney, Randall R. Burg, Assistant County Attorney, 600 Minnesota Avenue, Suite 400, Bemidji, MN 56601 (for respondent)

Considered and decided by Stoneburner, Presiding Judge; Peterson, Judge; and Wright, Judge.

UNPUBLISHED OPINION

PETERSON, Judge

In this pro se appeal from an order denying his second petition for postconviction relief, appellant argues that the postconviction court erred by concluding that his claims

for ineffective assistance of trial and appellate counsel are procedurally barred. Because appellant's ineffective-assistance-of-counsel claims were addressed in his first postconviction proceeding, we agree that the claims are procedurally barred, and we affirm.

FACTS

Following a jury trial, appellant Lance Phillip Wickner was convicted of criminal vehicular homicide and theft of a motor vehicle. On appeal, his conviction for criminal vehicular homicide was reversed and remanded for a new trial. *State v. Wickner*, No. C0-01-1020, 2002 WL 977313, at *7. (Minn. App. May 14, 2002).

In December 2002, appellant was convicted and sentenced after a jury found him guilty of two counts of criminal vehicular homicide, gross negligence and leaving the scene of an accident resulting in death. The jury found him not guilty of a third charge of criminal vehicular homicide, negligent driving while under the influence of alcohol. In a direct appeal, appellant raised issues regarding the admission of *Spreigl* evidence, prosecutorial misconduct, and the duration and consecutive nature of his sentence, and this court affirmed. *State v. Wickner*, No. C8-03-363, 2004 WL 77896, at *2-*7 (Minn. App. Jan. 20, 2004), *review denied* (Minn. Mar. 30, 2004).

Appellant filed his first petition for postconviction relief on July 14, 2005, and in the petition, he asserted that he received ineffective assistance of trial and appellate counsel. His petition was denied on August 18, 2005, and appellant sought review of the denial of that petition. On May 5, 2006, while his appeal was pending, appellant filed his

second petition for postconviction relief and again asserted that he received ineffective assistance of trial and appellate counsel.

On September 12, 2006, this court affirmed the denial of appellant's first petition for postconviction relief, holding that his claim of ineffective assistance of trial counsel was procedurally barred and that he failed to show that his appellate counsel's conduct fell below the standard of reasonableness. *Wickner v. State*, No. A05-1900, 2006 WL 2598040, at *1-*2 (Minn. App. Sept. 12, 2006).

On September 25, 2006, appellant filed an amended second petition for postconviction relief, raising issues of ineffective assistance of trial and appellate counsel. The postconviction court found that appellant's ineffective-assistance claims were procedurally barred because the claims had already been litigated. The postconviction court also found that appellant's ineffective-assistance-of-trial-counsel claim was meritless because the strategy employed by trial counsel was reasonable. The postconviction court denied appellant's second postconviction petition, and this appeal followed.

DECISION

When reviewing a postconviction decision, an appellate court will determine whether there was sufficient evidence to support the findings. *Pippitt v. State*, 737 N.W.2d 221, 226 (Minn. 2007). The postconviction court's factual findings will not be set aside unless clearly erroneous, but its legal determinations are reviewed de novo. *Id.* The postconviction court's decision will not be overturned unless the court abused its discretion. *Id.*

“It is well settled that when . . . ‘direct appeal has once been taken, all matters raised therein, and all claims known but not raised, will not be considered upon a subsequent petition for postconviction relief.’” *Powers v. State*, 731 N.W.2d 499, 501 (Minn. 2007) (quoting *State v. Knaffla*, 309 Minn. 246, 252, 243 N.W.2d 737, 741 (1976)). “Additionally, 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.” *Id.* “There are two exceptions to the *Knaffla* rule: (1) if a novel legal issue is presented, or (2) if the interests of justice require review.” *Id.* at 502. When postconviction relief is denied as procedurally barred under *Knaffla*, this court reviews that denial for an abuse of discretion. *Powers v. State*, 695 N.W.2d 371, 373-74 (Minn. 2005).

A claim of ineffective assistance of trial counsel should generally be raised on direct appeal, but may be brought in the first postconviction petition if the claim cannot be reviewed on the basis of the trial court record. *Townsend v. State*, 723 N.W.2d 14, 19 (Minn. 2006) (citing *Torres v. State*, 688 N.W.2d 569, 572-73 (Minn. 2004)). A claim of ineffective assistance of appellate counsel need not be brought in the proceeding in which the counsel is representing the petitioner, but is waived unless raised in the next postconviction petition. *Id.*

Appellant has received review of his conviction on direct appeal and in one prior postconviction proceeding. His claims that he received ineffective assistance of trial and appellate counsel were raised and addressed in his first postconviction proceeding. Also, when reviewing the denial of appellant’s first postconviction petition, this court

concluded that appellant's ineffective-assistance-of-trial-counsel claim was barred under *Knaffla* at that time. *Wickner v. State*, No. A05-1900, 2006 WL 2598040, at *2 (Minn. App. Sept. 12, 2006). Appellant does not argue that he is presenting a novel legal issue.

Because appellant's claims that he received ineffective assistance of trial and appellate counsel were addressed in his first postconviction proceeding, and he has failed to show that his current claims meet the requirements for one of the exceptions to the *Knaffla* rule, the postconviction court did not abuse its discretion in concluding that appellant is procedurally barred from raising the claims.

Affirmed.