STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1373

Lardell Wesley, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed June 17, 2008
Affirmed
Halbrooks, Judge

Hennepin County District Court
File No. 04024061

Lardell Wesley, MCF Moose Lake, OID #216307, 1000 Lake Shore Drive, Moose Lake, MN 55767 (pro se appellant)

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

Michael O. Freeman, Hennepin County Attorney, Donna J. Wolfson, Assistant County Attorney, C-2000 Government Center, Minneapolis, MN 55487 (for respondent)

Considered and decided by Schellhas, Presiding Judge; Klaphake, Judge; and Halbrooks, Judge.

U N P U B L I S H E D O P I N I O N

HALBROOKS, Judge

Following the district court's denial of his postconviction petition, appellant, pro se, challenges his three convictions of second-degree criminal sexual conduct on

multiple grounds. Because we conclude that appellant's claims are barred based on his earlier direct appeal and/or do not merit relief, we affirm.

FACTS

After a December 2004 jury trial, appellant Lardell Wesley was convicted of three counts of second-degree criminal sexual conduct. These convictions were based on multiple acts of abuse perpetrated on a single victim over several years. The district court imposed one sentence of 48 months for the most serious of the three convictions under Minn. Stat. § 609.343, subd. 1(h)(iii) (2004).

We affirmed all three convictions on direct review in *State v. Wesley*, No. A05-0784 (Minn. App. Mar. 21, 2006), *review denied* (Minn. July 19, 2006). Appellant filed a pro se petition for postconviction relief in February 2007. The district court denied appellant's petition in its entirety, finding that all of his claims were barred under *State v. Knaffla*, 309 Minn. 246, 252, 243 N.W.2d 737, 741 (1976), or had no merit. This appeal follows.

D E C I S I O N

When reviewing a denial of postconviction relief, appellate courts examine whether the district court's findings are supported by sufficient evidence. *Leake v. State*, 737 N.W.2d 531, 535 (Minn. 2007). Only if the postconviction court abused its discretion in granting or denying the petition will we reverse such a decision, *Russell v. State*, 562 N.W.2d 670, 672 (Minn. 1997), but we review de novo issues of law relevant to such matters. *Schleicher v. State*, 718 N.W.2d 440, 445 (Minn. 2006).

"Once a direct appeal has been taken, all claims raised in that appeal, all claims known at the time of that appeal, and all claims that should have been known at the time of that appeal will not be considered in a subsequent petition for postconviction relief." *Leake*, 737 N.W.2d at 535 (citing *State v. Knaffla*, 309 Minn. 246, 252, 243 N.W.2d 737, 741 (1976)). There are two exceptions to this general rule. First, a claim may be considered if it is so novel that its underlying legal basis was not available during the direct appeal. *Perry v. State*, 731 N.W.2d 143, 146 (Minn. 2007). Second, a court may consider a *Knaffla*-barred claim if the interests of justice require it to be addressed. *Blom v. State*, 744 N.W.2d 16, 18 (Minn. 2007).

Appellant argues that the evidence produced at his trial was not sufficient to sustain his convictions because "the prosecution never proved [he] touched the alleged victim in a sexual manner." This claim is duplicative of one that appellant asserted in his direct appeal. There, appellant claimed that the prosecution failed to prove that his touching of the victim's chest, buttocks, and inner thigh was done with sexual intent. *State v. Wesley*, No. A05-0784, 2006 WL 696322, at *2 (Minn. App. Mar. 21, 2006), *review denied* (Minn. July 19, 2006). We rejected this argument in appellant's direct appeal, concluding that the record supported a reasonable inference that sexual intent was present, based on appellant's repeated acts of abuse. *Id*. at 3. Accordingly, *Knaffla* bars this claim.

Appellant contends that the district court erroneously prevented his trial counsel from cross-examining the victim about unsubstantiated allegations that her brother had sexually abused a third party in the past. Although appellant now frames this argument

as a deprivation of his constitutional right to present a complete defense, *see State v. Penkaty*, 708 N.W.2d 185, 201 (Minn. 2006) (stating that, subject to certain restrictions, the accused has a constitutional right to present a complete defense), he raised the same issue in his direct appeal under the theory that this restriction of his cross-examination was prejudicial error under the Minnesota Rules of Evidence. *Wesley*, 2006 WL 696322, at *4. Regardless of whether this claim is characterized as a repetitive one or as a "new" claim due to its asserted constitutional underpinnings, we conclude that it is *Knaffla*-barred. Appellant could have asserted this theory when he challenged the same restriction of his counsel's cross-examination of the victim on the ground that it was improper under the Minnesota Rules of Evidence. Recasting the same claim in a different form does not overcome the procedural bar of *Knaffla*. *See White v. State*, 711 N.W.2d 106, 109 (Minn. 2006).

Appellant next contends that Minn. Stat. § 609.035 (2004), which restricts imposition of multiple sentences in certain circumstances, precludes convicting him of more than one count of second-degree criminal sexual conduct. Appellant's argument lacks merit because it confuses the statute's general preclusion of multiple sentences with the concept of multiple convictions. As this court concluded in the direct appeal, there was no sentencing error by the district court. Further, assertion of this claim is precluded by *Knaffla*.

Appellant asserts that the district court violated his Sixth Amendment right to a jury determination of his sentence. Appellant challenged his sentence on direct appeal on the basis that the district court abused its discretion by denying his motion for a

downward departure. We affirmed the district court's imposition of 48 months—the presumptive sentence for the most severe offense that appellant was convicted of. There is no merit to appellant's current claim, and it is procedurally barred by *Knaffla*.

Appellant's final claim is that the prosecutor committed misconduct in closing argument by misstating the victim's testimony that appellant kissed her on the neck in the course of the sexual abuse.

The district court stated in its order denying postconviction relief that

> [i]n her pre-recorded CornerHouse interview, the Victim stated that [appellant] kissed her neck during at least one of the instances of inappropriate sexual touching. . . . The Cornerhouse tape was played in its entirety for the jury before hearing closing arguments and again in its entirety during jury deliberations.
>
> Thus, it was not prosecutorial misconduct because the closing statements referred only to statements and facts already admitted into evidence. It was one line and [appellant] did have an opportunity to respond and the remarks did not prejudice [appellant] or affect the outcome of his case.

This same claim was previously asserted by appellant in his direct appeal in the context of his claim of ineffective assistance of counsel. We rejected it then and it is no more meritorious recast in this theory.

Based on our review of appellant's claims and in light of this court's opinion in his direct appeal, the district court acted within its proper discretion in denying appellant's postconviction petition.

Affirmed.