STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0366

William Richard Iverson, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed January 6, 2009
Affirmed
Peterson, Judge

Ramsey County District Court
File No. K3-97-2703

William R. Iverson, #127136 MCF-OPH, 5329 Osgood Avenue North, Stillwater, MN 55082-1117 (pro se appellant)

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

Susan Gaertner, Ramsey County Attorney, Mark N. Lystig, Assistant County Attorney, 50 West Kellogg Boulevard, Suite 315, St. Paul, MN 55102

Considered and decided by Peterson, Presiding Judge; Stauber, Judge; and Huspeni, Judge.*

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

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

PETERSON, Judge

In this pro se appeal from the summary denial of his postconviction petition seeking to correct his sentence under Minn. R. Crim. P. 27.03, subd. 9, appellant argues that (1) his forced treatment with neuroleptic medications constitutes cruel and unusual punishment; (2) his "memory loss" defense warrants reducing his sentence to the presumptive sentence; and (3) when departing from the presumptive sentence, the district court should have considered the fact that stalking charges against appellant were dismissed. We affirm.

FACTS

In 1997, appellant William Richard Iverson was convicted of first-degree assault, in violation of Minn. Stat. § 609.221 (Supp. 1997), and first-degree burglary, in violation of Minn. Stat. § 609.582, subd. 1(c) (1996).

Appellant pleaded guilty and received a 200-month executed sentence for the assault and a concurrent 68-month sentence for the burglary. *State v. Iverson*, No. C6-98-992, 1998 WL 799183 (Minn. App. Nov. 17 1998) (*Iverson I*), *review denied (*Minn. Jan. 21, 1999). The 200-month sentence was a departure from the presumptive 110-month sentence and was based in part on appellant's history of stalking the victim. Appellant filed a direct appeal, arguing that the facts did not warrant the upward departure, and this court affirmed his sentence. *Id.*

Following his conviction, appellant was diagnosed with paranoid schizophrenia; he was involuntarily committed, and neuroleptic medications were administered. *In re*

William Iverson, No. C2-00-2000, 2001 WL 477239 (Minn. App. May 8, 2001) (*Iverson II*).

Appellant filed three petitions for postconviction relief before filing the current petition. In the first, he argued that the upward departure was unjustified because of his mental illness. Appellant claimed that he was incompetent to stand trial because of memory loss that he suffered after an alleged assault by the arresting officers. *Iverson v. State*, No. CX-01-1137, 2001 WL 1402557 (Minn. App. Nov. 13, 2001) (*Iverson III*), *review denied* (Minn. Jan. 15, 2002). Based on medical evaluations, the court concluded that appellant was competent to stand trial. *Id.* In the second, he argued that he was unable to understand his guilty plea and *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531 (2004) rendered his sentence unconstitutional. *Iverson v. State*, No. A06-0111, 2006 WL 2406017 (Minn. App. Aug. 22, 2006) (*Iverson IV*). In the third, he again raised the issue of his mental illness and the lawfulness of the sentencing departure and also raised new claims of ineffective assistance of counsel and prosecutorial misconduct. *Iverson v. State*, A07-0816, 2008 WL 1748249 (Minn. App. Apr. 15, 2008) (*Iverson V*), *review denied* (Minn. May 28, 2008). In each case, his petition was denied, and this court affirmed.

In his fourth petition for postconviction relief, appellant argued that his sentence should be reduced to the presumptive sentence because of his mental illness and memory loss and because he learned that stalking charges against him had been dismissed. The district court summarily denied appellant's fourth petition, and this appeal followed.

D E C I S I O N

"[W]here 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." *State v. Knaffla*, 243 N.W.2d 737, 741 (Minn. 1976). A district court may "summarily deny a second or successive petition for similar relief on behalf of the same petitioner and may summarily deny a petition when the issues raised in it have previously been decided by the Court of Appeals or the Supreme Court in the same case." Minn. Stat. § 590.04, subd. 3 (2008). The district court need not hold an evidentiary hearing "unless there are material facts in dispute which must be resolved to determine the postconviction claim on its merits." *Hale v. State*, 566 N.W.2d 923, 926 (Minn. App. 1997). We review a summary denial of a postconviction petition for abuse of discretion. *Powers v. State*, 695 N.W.2d 371, 374 (Minn. 2005).

I.

Appellant argues that the district court erred because his mental condition justifies reducing his sentence for first-degree assault to the presumptive sentence. This court has addressed appellant's mental illness in two previous postconviction appeals. In the first, this court held that appellant's "state of mental health is severe and unfortunate, but it is not relevant to the district court's 1998 sentencing." *Iverson III*, 2001 WL 1402557, at *2. In the second, this court refused to address appellant's argument on its merits because appellant had "raised his mental-illness claim in his first petition and on subsequent appeal to this court in 2001." *Iverson IV*, 2006 WL 2406017, at *1. Because

appellant's claims based on his mental illness were raised in his earlier petitions, he is not entitled to further review of the claims.

II.

Appellant argues that his memory-loss defense, which is based on a loss of memory caused by an alleged beating by arresting officers that rendered him incompetent to stand trial, has been sufficiently documented to justify postconviction relief. But a claim known at the time of a direct appeal and not raised at that time will not be considered in postconviction proceedings. *Knaffla*, 243 N.W.2d at 741. Appellant knew of his memory-loss claim at the time of his direct appeal, but he did not raise it in that appeal. Therefore, he is not now entitled to postconviction review of the claim.

III.

Appellant argues that his sentence should be reduced because he recently discovered that stalking charges that were filed against him in Ramsey and Washington counties have been dropped. Newly discovered evidence warrants postconviction relief only if the evidence was not available at the time of a direct appeal. *Gustafson v. State*, 754 N.W.2d 343, 348 (Minn. 2008). Appellant has not explained when the charges were dismissed or why evidence of the dismissals was not available at the time of his direct appeal.

Furthermore, the sentencing court based the upward departure on a "four-week pattern of harassment and stalking of the victim prior to the assault." The departure was not based on the fact that appellant was charged with stalking. Consequently, even if the alleged dismissal of stalking charges constitutes "newly discovered evidence," the

dismissal is not relevant to appellant's sentence. Appellant argues that because the state was aware that the stalking charges had been dismissed, it must have known, but failed to present, the true facts about the dismissed charges. But the fact that stalking charges have been dismissed does not, by itself, demonstrate that no stalking occurred. The district court did not abuse its discretion by summarily denying appellant's petition for postconviction relief.

Affirmed.