STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1164

Douglas Michael Edling, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed May 19, 2009
Affirmed
Poritsky, Judge[*]

St. Louis County District Court
File No. 69-K3-00-600928

Douglas Michael Edling, OID #206574, 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

Melanie S. Ford, St. Louis County Attorney, Leslie E. Beiers, Assistant County Attorney, 100 North Fifth Avenue West #501, Duluth, MN 55802 (for respondent)

Considered and decided by Schellhas, Presiding Judge; Lansing, Judge; and Poritsky, Judge.

[*] Retired judge of the district court, serving as judge of the Minnesota Court of Appeals 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

PORITSKY, Judge

This proceeding involves the third postconviction petition of pro se appellant Douglas Michael Edling, which was summarily denied by the district court based on the rule set forth in *State v. Knaffla*, 309 Minn. 246, 252, 243 N.W.2d 737, 741 (1976). On appeal Edling argues that (1) he was prejudiced by his plea agreement, and (2) his sentence is unfair when compared with sentences imposed on similar offenders. We affirm.

FACTS

Edling was charged with second-degree murder. Pursuant to a plea agreement, the state agreed not to seek a grand-jury indictment for first-degree murder and Edling pleaded guilty to second-degree murder. The plea agreement called for a sentence one-and-a-half times greater than the presumptive second-degree murder sentence. Shortly after entering his plea, Edling moved to withdraw his guilty plea, arguing, among other things, that defense counsel coerced and intimidated him into pleading guilty, that the incarceration was excessive, and that he did not understand the plea agreement. The district court made 31 specific findings of fact regarding Edling's motion and concluded that he had not met his burden to withdraw his guilty plea. The court imposed a 480-month sentence, which was an upward departure of 154 months but nine months less than the 489-month sentence agreed to under the plea agreement. The court filed a departure report detailing the reasons for its upward departure.

Direct Appeal

On direct appeal to this court, Edling argued that the district court erred in requiring him to represent himself at a Rule 20 competency hearing. *State v. Edling* (*Edling I*), No. C0-01-949, 2002 WL 798268, at *1 (Minn. App. Apr. 30, 2002), *review denied* (Minn. July 16, 2002). Among other grounds, Edling sought relief on the ground that his guilty plea was inaccurate, unintelligent, and involuntary. Edling also argued that the district court erred in denying his motion to withdraw his guilty plea. *Id.* This court affirmed Edling's conviction in 2002. *Id.* at *4.

Postconviction Petition #1

In May 2004, Edling filed a pro se petition for postconviction relief. Based on its determination that the claims in the petition were procedurally barred by *Knaffla* because Edling either raised them or could have raised them in his direct appeal in 2002, the district court summarily denied the petition.

Postconviction Petition #2

Edling filed a second postconviction petition in July 2006. The district court denied this postconviction petition based on a determination that the claims asserted were procedurally barred by *Knaffla*. Edling appealed the denial of his second postconviction petition, arguing that the upward durational departure in his sentence was improper and that the district court erred in ruling that the claims in his petition were procedurally barred by *Knaffla* because he raised them or could have raised them in his direct appeal. *Edling v. State* (*Edling II*), No. A06-2469, 2008 WL 170589, at *1 (Minn. App. Jan. 22,

2008), *review denied* (Minn. Apr. 15, 2008). This court affirmed the district court's denial of postconviction relief in January 2008. *Id.* at *3.

Postconviction Petition #3

In July 2007, while the appeal on his second postconviction petition was pending, Edling filed his third petition for postconviction relief. In this petition, Edling argued that (1) the plea agreement was not fully disclosed on the record, and (2) he was prejudiced by the plea agreement because under its terms he was required to plead guilty to something he did not do. The district court denied this petition in its entirety on *Knaffla* grounds and incorporated the same memorandum of law that it issued in its denial of Edling's second postconviction petition. This appeal followed.

D E C I S I O N

I.

Edling first argues that the upward departure he received should be reduced from 154 months to 54 months because the district court erred when it made the upward departure on a factually insufficient basis. Specifically, Edling contends that the 154-month upward departure was not warranted because he was not engaged in a course of domestic abuse against the victim prior to her death.

Appellate courts review the district court's application of the *Knaffla* procedural bar for an abuse of discretion. *Quick v. State*, 692 N.W.2d 438, 439 (Minn. 2005). Furthermore, we review the district court's findings to determine whether they are supported by sufficient evidence. *Pippitt v. State*, 737 N.W.2d 221, 226 (Minn. 2007).

When direct appellate relief is not available to a person who has been convicted of an offense, that person may petition the district court for relief upon a claim that "the conviction obtained . . . violated the person's rights under the Constitution or laws of the United States or of the state." Minn. Stat. § 590.01 subd. 1 (2008). 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." *Knaffla*, 309 Minn. at 252, 243 N.W.2d at 741. "Similarly, a postconviction court will generally not consider claims that were raised or were known and could have been raised in an earlier petition for postconviction relief." *Spears v. State*, 725 N.W.2d 696, 700 (Minn. 2006). 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.*

Edling argues that the district court had a factually insufficient basis to impose an upward durational departure on his sentence because he "was not beating [the victim] up." But previously on direct appeal, Edling challenged the district court's refusal to allow him to withdraw his guilty plea, arguing that plea withdrawal was justified by an unresolved factual discrepancy about the manner of the victim's death. *Edling I*, 2002 WL 798268, at *3. This court noted that at the plea hearing, Edling admitted to strangling the victim with his bare hands and beating her to death. *Id.* Further, at the plea hearing, Edling also agreed that he believed that his continued strangling of the victim until she lost consciousness implied the requisite intent to satisfy the entry of the guilty plea. *Id.* Because this court has already considered and rejected Edling's challenge to the factual basis upon which the district court imposed an upward departure,

this claim does not present a novel legal issue, nor does it require a review in the interests of justice.

We conclude that because Edling raised the issue of the factual sufficiency of his plea agreement on direct appeal, his claim that he was prejudiced by the plea agreement is barred by *Knaffla*. *See Knaffla*, 309 Minn. at 252, 243 N.W.2d at 741. Thus, we will not consider this claim.

II.

In connection with his argument that the sentencing court should not have used domestic abuse as a ground for an upward departure, Edling makes a general claim that "just a 36-42 mo. upward departure is consistent with caselaw." But he did not make a specific claim to the district court that his sentence was excessive and unjustifiably disparate when compared with durational departures that have been imposed upon other defendants who were sentenced for second-degree murder. Edling now makes that argument to this court.

Edling made the same argument to this court when he appealed from the district court's denial of his second postconviction petition in 2006. But in that proceeding, Edling did not present the issue to the district court, and because he did not raise the issue in district court, this court refused to consider the claim. *Edling II*, 2008 WL 170589, at *3 (citing *State v. Roby*, 547 N.W.2d 354, 357 (Minn. 1996) (holding that appellate courts generally will not decide issues that were not raised before the district court)). However, this court did "note that it is not apparent why this claim could not have been raised in either Edling's first appeal or his first postconviction petition." *Id.*

As in his petition in *Edling II*, in the present proceeding Edling did not argue to the district court that the upward departure he received was unfair when compared with sentences of other defendants who were sentenced for second-degree murder. And as in *Edling II*, we decline to consider the issue because it was not presented to the district court. *See Roby*, 547 N.W.2d at 357.

Affirmed.

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Judge Bertrand Poritsky