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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1191**

Richard Andrew Christy, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent

**Filed July 7, 2009
Affirmed
Toussaint, Chief Judge**

Wilkin County District Court
File No. 84-K6-04-000059

Richard Andrew Christy, OID #215892, Prairie Correctional Facility, P.O. Box 500/AB 20, Appleton, MN 56208 (pro se appellant)

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

Timothy E. J. Fox, Wilkin County Attorney, Box 214, Breckenridge, MN 56520 (for respondent)

Considered and decided by Toussaint, Chief Judge; Stoneburner, Judge; and Willis, Judge.*

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

UNPUBLISHED OPINION

TOUSSAINT, Chief Judge

Appellant Richard Andrew Christy challenges the district court's order denying his second postconviction petition without an evidentiary hearing. Because we conclude that the district court did not abuse its discretion by denying the petition when appellant failed to raise the issue of his right to confront witnesses in his direct appeal and first postconviction petition, we affirm.

DECISION

In a postconviction proceeding, the petitioner has the burden of proving the facts alleged in the petition by a preponderance of the evidence. Minn. Stat. § 590.04, subd. 3 (2008). The postconviction court need not hold an evidentiary hearing if the petition, files, and record of the proceeding conclusively show that petitioner is not entitled to relief. Minn. Stat. § 590.04, subd. 1 (2008). We review the district court's decision to determine if there is sufficient evidence to support its findings, and we will not disturb the decision absent an abuse of discretion. *Perry v. State*, 731 N.W.2d 143, 146 (Minn. 2007).

Appellant raises issues related to his right to confront witnesses under the Sixth Amendment to the United States Constitution and Article I, Section 6, of the Minnesota Constitution. Appellant argues that he was deprived of his confrontation rights because his attorney stipulated that BCA lab reports could be admitted without calling the chemist who performed the analysis and because the court permitted his probation officer to testify to out-of-court statements made by his girlfriend. Relying on *Crawford v.*

Washington, 541 U.S. 36, 124 S. Ct. 1354 (2004), and *State v. Caulfield*, 722 N.W.2d 304 (Minn. 2006), appellant asserts that his right to confront witnesses is a fundamental right that requires a personal waiver and that his attorney could not waive that right for him.

Once a defendant has made a direct appeal or petitioned for postconviction review, all claims that were known or should have been known, but were not raised, cannot be considered in a subsequent petition for postconviction review. *White v. State*, 711 N.W.2d 106, 109 (Minn. 2006); see *State v. Knaffla*, 309 Minn. 246, 252, 243 N.W.2d 737, 741 (1976). The so-called *Knaffla* rule has two exceptions: (1) the postconviction court may consider a novel legal issue; or (2) the postconviction court may review a claim in the interests of justice. *White*, 711 N.W.2d at 109. The second exception applies only if the petitioner did not deliberately and inexcusably fail to raise the issue on direct appeal. *Id.*

Appellant was found guilty in September 2004 and sentenced in November 2004. *Crawford* was decided by the United States Supreme Court on March 8, 2004, and therefore appellant's claims do not present a novel legal issue. See 541 U.S. at 36, 124 S. Ct. at 1354. Appellant did not raise the issue of his confrontation rights in his direct appeal, which was filed in February 2005. Appellant's first petition for postconviction relief was filed in December 2007; he did not raise confrontation claims in that petition. Because appellant's claims relate to matters known at the time of the direct appeal and the first postconviction petition, they are procedurally barred by the *Knaffla* rule. Therefore, the district court did not abuse its discretion by denying appellant's petition.

Affirmed.