

*This opinion will be unpublished and  
may not be cited except as provided by  
Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A09-0022**

Scott Richard Seelye, petitioner,  
Appellant,

vs.

State of Minnesota,  
Respondent.

**Filed August 18, 2009  
Affirmed  
Collins, Judge\***

Cass County District Court  
File No. 11-K9-02-000493

Scott Seelye, MCF-Stillwater, 5329 Osgood Avenue North, Stillwater, MN 55082 (pro se appellant)

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

Christopher Strandlie, Cass County Attorney, 300 Minnesota Avenue, Walker, MN 56484 (for respondent)

Considered and decided by Worke, Presiding Judge; Minge, Judge; and Collins, 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.

## UNPUBLISHED OPINION

**COLLINS**, Judge

Scott Seelye challenges the denial of his pro se petition for postconviction relief, arguing that the postconviction court misconstrued the first-degree-burglary statute and imposed an invalid sentence. We affirm.

### DECISION

Our review of a challenge to denial of postconviction relief “is limited to determining whether there is sufficient evidence to sustain the postconviction court’s findings[.]” *Perry v. State*, 595 N.W.2d 197, 200 (Minn. 1999). We will not disturb the court’s decision absent an abuse of discretion. *Id.*

In his handwritten pro se brief, Seelye purports to raise 12 discrete issues. He first challenges the postconviction court’s construction of Minn. Stat. § 609.582, subd. 1(b) (2000), the first-degree burglary statute under which he was convicted, which required proof that Seelye possessed “any of the following: a dangerous weapon, any article used or fashioned in a manner to lead the victim to reasonably believe it to be a dangerous weapon, or an explosive[.]” Seelye asserts that the postconviction court misconstrued the statute because “it was established that no ‘victim’ was ever present.”

First, Seelye’s claim is barred by *State v. Knaffla*, 309 Minn. 246, 243 N.W.2d 737 (1976). Under *Knaffla*, issues that could have been raised on the petitioner’s direct appeal will not be considered on a subsequent petition for postconviction relief. *Lee v. State*, 717 N.W.2d 896, 897 (Minn. 2006). Here, any challenge to the construction of

section 609.582, subdivision 1(b), was known to Seelye when he was convicted of violating it.<sup>1</sup> And as the postconviction court correctly observed, Seelye’s statutory-construction issue was something that “could and should have been addressed on [Seelye’s] direct appeal from his conviction.” And although Seelye raised a statutory-construction argument on his direct appeal, it pertained to a different degree of burglary for which he was also convicted. *State v. Seelye*, No. A03-1200, 2004 WL 2219663, at \*1 (Minn. App. Oct. 5, 2004), *review denied* (Minn. Jan. 26, 2005).

Moreover, Seelye’s claim lacks substantive merit because the “victim” provision cited by Seelye is irrelevant to his conviction. A person can commit first-degree burglary by possessing “any of” the items listed in section 609.582, subdivision 1(b). One such item is an article that is not of itself a dangerous weapon but that is “used or fashioned in a manner to lead the victim to reasonably believe it to be a dangerous weapon[.]” Minn. Stat. § 609.582, subd. 1(b). But Seelye was convicted of first-degree burglary based on possessing a “dangerous weapon,” which section 609.582, subdivision 1(b), prohibits *per se*. *Seelye*, 2004 WL 2219663, at \*1-\*3 (affirming first-degree burglary conviction because lighter fluid was of itself a “dangerous weapon”). Thus, the presence of a victim was not an element essential to Seelye’s conviction.

The other 11 issues raised in Seelye’s brief all challenge the validity of his sentence. Several of these are dependent on reversal of Seelye’s burglary conviction

---

<sup>1</sup> Although Seelye cites several documents in his appendix that he claims to have had no knowledge of on direct appeal, he does not explain how those documents are relevant to his conviction.

based on his statutory-construction argument. Because we conclude that the statutory-construction argument is both *Knaffla*-barred and meritless, we need not address these issues.

In several other issues Seelye appears to contend that his sentence was unfairly disproportional because all previous burglaries of the building were charged as third-degree burglaries. But a conviction of first-degree burglary by definition implies substantially greater culpability for Seelye than any third-degree predecessors. And selecting offenses to charge is an exercise of prosecutorial discretion with which we ordinarily will not interfere. *State v. Foss*, 556 N.W.2d 540, 540 (Minn. 1996). Moreover, because Seelye could have challenged the prosecutor's charging decision on his direct appeal, these issues are also *Knaffla*-barred.

The remaining issues are insufficiently developed in Seelye's brief to invite appellate attention. We will not address errors that are merely asserted and are not supported by actual argument, unless prejudicial error is obvious on mere inspection. *See State v. Bartylla*, 755 N.W.2d 8, 22-23 (Minn. 2008) ("We will not consider pro se claims on appeal that are unsupported by either arguments or citations to legal authority."). As to these purported issues, it is not clear what Seelye is intending to claim as error. He appears to challenge the postconviction court's refusal to consider "compelling circumstances" warranting a downward departure from the sentencing guidelines, but he fails to identify those circumstances. He also identifies several documents in his appendix that he claims are inconsistent with his sentence but does not explain how those

documents are relevant to sentencing. Because as to these issues we see no obvious error on the part of the postconviction court, it is unnecessary for us to further address them.

**Affirmed.**