STATE OF MINNESOTA
IN COURT OF APPEALS
A09-0344

Tony Dejuan Jackson, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed August 25, 2009
Affirmed
Johnson, Judge

Ramsey County District Court
File No. 62-K0-97-001881

Tony Dejuan Jackson, OID 197562, MCF – Stillwater, 970 Pickett Street North, Bayport, MN 55003-1490 (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 Nathan Lystig, Assistant County Attorney, 50 West Kellogg Boulevard, Suite 315, St. Paul, MN 55102 (for respondent)

Considered and decided by Halbrooks, Presiding Judge; Johnson, Judge; and Larkin, Judge.

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

JOHNSON, Judge

Tony Dejuan Jackson appeals from the district court's denial of his fourth request for postconviction relief. We conclude that Jackson's arguments are procedurally barred and, therefore, affirm.

FACTS

In May 1998, a Ramsey County jury found Jackson guilty of first-degree criminal sexual conduct, first-degree burglary with assault, and first-degree burglary with a dangerous weapon. The conviction was based on evidence that, in May 1997, in the city of St. Paul, Jackson invaded a woman's home and bedroom while she was sleeping, bound her mouth with duct tape and her arms with a rope, and sexually penetrated her vaginally, anally, and orally. Jackson was arrested 11 days after the incident while in possession of, among other items, duct tape and a rope. His victim identified him in a line-up, and DNA testing revealed that it was his semen on the victim's bed sheets. *State v. Jackson*, No. CX-98-1837, 1999 WL 688674, at *1 (Minn. App. Sept. 7, 1999), *review denied* (Minn. Nov. 17, 1999).

The district court sentenced Jackson as a repeat sex offender to life in prison on the conviction of first-degree criminal sexual conduct. The district court also sentenced him to 96 months of imprisonment on the conviction of first-degree burglary with assault, which was an upward departure from the 48-month presumptive sentence. The district court ordered the sentences to be served consecutively and dismissed the conviction of first-degree burglary with a dangerous weapon. On direct appeal, this court affirmed the

conviction and sentences, rejecting Jackson's arguments concerning a pre-trial identification, *Spreigl* evidence, DNA evidence, and allegations of prosecutorial misconduct. *Jackson*, No. CX-98-1837, 1999 WL 688674, at *2-4.

In January 2001, Jackson filed a petition for postconviction relief. He alleged that his life sentence is unconstitutional under *Apprendi v. New Jersey*, 530 U.S. 466, 120 S. Ct. 2348 (2000). The district court denied the petition. This court affirmed, holding that *Apprendi* did not apply retroactively. *Jackson v. State*, No. C6-01-1667, 2002 WL 766609, at *3 (Minn. App. Apr. 30, 2002), *review denied* (Minn. July 16, 2002). We also rejected an ineffective-assistance-of-counsel argument on the ground that it was not presented to the postconviction court, and we rejected additional arguments concerning the length of his sentence, the impartiality of the jury, and the sentencing procedures on the ground that they are barred by *State v. Knaffla*, 309 Minn. 246, 252, 243 N.W.2d 737, 741 (1976). *Jackson*, 2002 WL 766609, at *3.

In June 2005, Jackson filed a second petition for postconviction relief. He again alleged that his sentence is unconstitutional under *Apprendi* and also alleged that the district court erred by sentencing him as a repeat sex offender. The district court denied the petition. This court affirmed. *Jackson v. State*, No. A05-2034 (Minn. App. July 27, 2006) (order op.), *review denied* (Minn. Oct. 17, 2006), *cert. denied* 549 U.S. 1216 (2007). We reasoned that Jackson's *Apprendi* argument had already been decided and that his sentence is justified by aggravating factors. We also rejected, on *Knaffla* grounds, arguments concerning peremptory challenges of jurors, evidence of other crimes, and the applicability of Minn. Stat. § 244.10, subd. 5 (Supp. 2005), which

codified the rule of *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531 (2004). *Jackson v. State*, No. A05-2034.

In June 2007, Jackson filed a motion to correct his sentence pursuant to Minn. R. Crim. P. 27.03, subd. 9. He again alleged that his sentence is unconstitutional under *Apprendi* and *Blakely*. The district court treated the motion as a postconviction petition and denied relief. This court affirmed. *Jackson v. State*, No. A07-1929 (Minn. App. July 31, 2008) (order op.), *review denied* (Minn. Oct. 21, 2008), *cert. denied* 129 S. Ct. 2007 (2009). We declined to reconsider Jackson's arguments concerning *Apprendi* and *Blakely*. We also rejected, on *Knaffla* grounds, arguments concerning evidence of other crimes, sentencing as a repeat sex offender, and allegations of prosecutorial misconduct. *Id*.

In November 2008, Jackson filed another motion to correct his sentence pursuant to Minn. R. Crim. P. 27.03, subd. 9. He again made a *Blakely* argument and also alleged that his sentence was imposed in violation of *State v. Jackson*, 749 N.W.2d 353 (Minn. 2008). The district court treated the motion as a petition for postconviction relief. The district court denied relief on the ground that the request is untimely, *see* Minn. Stat. § 590.01, subd. 4 (2008), and that his arguments are procedurally barred by *Knaffla*. Jackson appeals.

D E C I S I O N

Jackson's primary argument is that the district court erred because the *Knaffla* procedural bar does not apply to a motion to correct sentence filed pursuant to Minn. R. Crim. P. 27.03, subd. 9. But a motion to correct sentence filed pursuant to the first

sentence of rule 27.03, subdivision 9, may be treated as a postconviction proceeding brought pursuant to chapter 590 of the Minnesota Statutes. *Powers v. State*, 731 N.W.2d 499, 501 n.2 (Minn. 2007) (stating that section 590.01 "is broad enough to encompass a motion pursuant to [rule] 27.03"); *see also Bonga v. State*, 765 N.W.2d 639, 642-43 (Minn. 2009) (noting same). In fact, Jackson's motion refers to several provisions of chapter 590. Thus, the district court did not err by applying *Knaffla* to Jackson's request for relief.

Jackson relies on *State v. Stutelberg*, 435 N.W.2d 632 (Minn. App. 1989), in arguing that the *Knaffla* bar does not apply to a motion to correct sentence filed pursuant to rule 27.03, subdivision 9. The *Stutelberg* opinion, however, did not so hold. The decision in *Stutelberg* was based on what is now commonly recognized as the second exception to the *Knaffla* bar. *Compare Stutelberg*, 435 N.W.2d at 636 ("We believe . . . review is required in the interests of justice."), *with Powers*, 731 N.W.2d at 502 (stating that second exception applies "if the interests of justice require review."). In *Stutelberg*, this court invoked the interests-of-justice exception because the merits of Stutelberg's postconviction claim had not been considered in the prior postconviction proceeding. *Id*. at 636. *Stutelberg* is readily distinguishable on this basis. Jackson's current claims were considered and decided in his three previous postconviction proceedings. Jackson has not identified any other feature of his motion that makes it deserving of application of the second exception to the *Knaffla* bar. And even if we were inclined to interpret *Stutelberg* as having held that the *Knaffla* bar does not apply to a motion to correct sentence under rule 27.03, subdivision 9, as Jackson urges, that holding

now would be obsolete in light of the supreme court's opinion in *Powers*, which applied the *Knaffla* bar to such a motion. *See* 731 N.W.2d at 501-02.

In a postconviction proceeding, "all matters" raised in a direct appeal 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. "Additionally, matters raised or known but not raised in an earlier petition for postconviction relief will generally not be considered in subsequent petitions for postconviction relief." *Powers*, 731 N.W.2d at 501. There are two exceptions to the *Knaffla* rule. The first exception was announced in *Case v. State*, 364 N.W.2d 797 (Minn. 1985), in which the supreme court held that if a novel legal issue is presented, a petitioner is excused from the failure to raise it in a prior proceeding. *Id*. at 800. The second exception was fully articulated in *Fox v. State*, 474 N.W.2d 821 (Minn. 1991), in which the supreme court held that a district court may consider an issue otherwise barred by *Knaffla* when "fairness requires." *Id*. at 825. The second exception often is restated as one that applies when "the interests of justice require review." *Powers*, 731 N.W.2d at 502.

The district court concluded that Jackson's *Blakely* argument is procedurally barred because "he has already raised the same issue in a prior petition and was denied relief." The propriety of the district court's reasoning is confirmed by *Powers*, a case that is very similar to this case. Powers moved to correct his sentence pursuant to rule 27.03, subdivision 9, arguing that *Blakely* retroactively applied to his sentence. 731 N.W.2d at 500-01. The district court denied the motion without a hearing on the ground that it was barred by *Knaffla* because Powers had raised an almost identical argument under

Apprendi in his first postconviction action. *Id*. The supreme court affirmed by applying the *Knaffla* procedural bar:

> Powers raised his sentencing argument based on *Apprendi* in his first postconviction petition. Powers' current claim is essentially the same claim, but he cites *Blakely* in support of his argument as well as *Apprendi*. Powers does not explain how *Blakely* has changed his sentencing argument. Moreover, to the extent that the sentencing claim is different based on *Blakely*, it is *Knaffla*-barred because Powers could have raised it in his second petition for postconviction relief.

Id. at 501-02. Similarly, Jackson's *Blakely* claim is barred because his *Apprendi* claim was decided on the merits in 2001 and 2002, *Jackson*, 2002 WL 766609, at *2-3, and rejected on procedural grounds in 2005 and 2006, *Jackson*, No. A05-2034, and his *Apprendi-Blakely* claim was rejected on procedural grounds in 2007 and 2008, *Jackson*, No. A07-1929.

The district court also concluded that the procedural bar applies to Jackson's argument based on the supreme court's recent decision in *Jackson*, 749 N.W.2d 353. The district court is correct because that claim was "known but not raised" at the time of Jackson's direct appeal and the times of his previous postconviction actions and, thus, "will not be considered upon a subsequent petition for postconviction relief." *Knaffla*, 309 Minn. at 252, 243 N.W.2d at 741. This is true despite the fact that the supreme court's *Jackson* opinion was issued in 2008 because the opinion did not state a new rule. *See Danforth v. State*, 761 N.W.2d 493, 496 (Minn. 2009) (establishing general principles of nonretroactivity).

Thus, the district court did not err by denying Jackson's fourth request for postconviction relief on the ground that his arguments are procedurally barred. In light of this conclusion, we need not consider the district court's other basis for denying relief, that Jackson's motion is untimely.

Affirmed.