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STATE OF MINNESOTA
IN COURT OF APPEALS
A09-249

David Theodore Clos, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed December 1, 2009
Affirmed in part and reversed in part
Kalitowski, Judge

Wright County District Court
File No. 86-K8-03-000572

Jay E. Carey, Carey Law Firm, LLC, 701 Fourth Avenue South, Suite 500, Minneapolis, MN 55415 (for appellant)

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

Thomas N. Kelly, Wright County Attorney, Shane Edward Simonds, Assistant County Attorney, 10 Second Street Northwest, Buffalo, MN 55313 (for respondent)

Considered and decided by Wright, Presiding Judge; Kalitowski, Judge; and Stoneburner, Judge.

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

KALITOWSKI, Judge

In this postconviction appeal, appellant David Theodore Clos challenges the district court's summary denial of his postconviction petition. Appellant argues that the

district court erred in summarily denying his request to withdraw his guilty plea as not intelligent and in not vacating a no-contact order that was illegally included with his executed sentence. We affirm the denial of appellant's plea-withdrawal request but reverse the denial of appellant's request to vacate the no-contact order.

D E C I S I O N

On appeal, the decision of the postconviction court is reviewed only to determine whether there is sufficient evidence to support the postconviction court's findings, and the postconviction court's decision will not be disturbed absent an abuse of discretion. *Leake v. State*, 737 N.W.2d 531, 535 (Minn. 2007). However, this court reviews issues of law de novo. *Id.*

The district court did not err in summarily rejecting appellant's postconviction plea-withdrawal request.

Appellant argues that he should be permitted to withdraw his plea because he was not provided with a sign-language interpreter to assist him at his guilty-plea hearing and therefore his plea was not intelligent. The district court properly rejected this argument without an evidentiary hearing because appellant had "set[] forth no evidence suggesting why his claims are not procedurally barred."

State v. Knaffla bars reconsideration in a postconviction proceeding of issues raised on direct appeal and issues that were known or should have been known by the defendant and were not raised on direct appeal. 309 Minn. 246, 252, 243 N.W.2d 737, 741 (1976). The Minnesota Supreme Court has recognized three exceptions to the *Knaffla* rule: (1) if additional fact-finding is required to fairly address a claim of

ineffective assistance of counsel; (2) if a novel legal issue is presented; or (3) if the interests of justice require relief. *Sessions v. State*, 666 N.W.2d 718, 721 (Minn. 2003). If a postconviction petition is procedurally barred under the *Knaffla* rule, the district court may deny the petition without an evidentiary hearing. *See Greer v. State*, 673 N.W.2d 151, 155 (Minn. 2004). We will not reverse the district court's denial of postconviction relief based on the *Knaffla* procedural bar absent an abuse of discretion. *Quick v. State*, 692 N.W.2d 438, 439 (Minn. 2005).

Knaffla bars appellant's postconviction challenge to his guilty plea because he knew of the claim and failed to assert it earlier. Appellant knew of his hearing impairment at the time of his guilty plea and of the potential availability of a sign-language interpreter. But appellant did not request that a sign-language interpreter be present to assist with his plea or object to proceeding without one. And appellant did not raise this issue in either of his two previous requests to withdraw his guilty plea or in his direct appeal. *See State v. Clos*¸ No. A05-2201, 2006 WL 2599345 (Minn. App. Sept. 12, 2006) (opinion in direct appeal). Because appellant knew through all of these proceedings the grounds for the challenge he now asserts, *Knaffla* bars that claim.

Appellant contends that his claim should nonetheless be reviewed in the interests of justice. We disagree. "To be reviewed in the interests of justice, a claim must have merit and must be asserted without deliberate or inexcusable delay." *Wright v. State*, 765 N.W.2d 85, 90 (Minn. 2009). Appellant's claim that his plea was not intelligent lacks merit. *See Alanis v. State*, 583 N.W.2d 573, 577 (Minn. 1998) (stating that a guilty plea is intelligent when the defendant understands the charges, his or her rights under the law,

and the consequences of pleading guilty). At his plea hearing, the district court repeatedly asked appellant to indicate if he was having difficulty hearing or understanding; appellant said that he would do so. Appellant subsequently told the district court that he wished to plead guilty. Appellant indicated that he understood the charge to which he was pleading guilty, the terms of the plea agreement, the maximum possible sentence, the mandatory minimum sentence, and that "in normal circumstances it would be very rare for a person to get probation on a case like this." Appellant never indicated that he had difficulty hearing or understanding any of this information. And the written plea petition also set forth much of this information, indicating that a dispositional departure was possible but not guaranteed.

Because there is no support in the record for appellant's claim that his hearing disorder impaired his ability to understand the charge against him and the consequences of pleading guilty, his claim that his plea was not intelligent lacks merit and, therefore, does not warrant review in the interests of justice.

The no-contact order in appellant's sentence is unlawful.

Whether a sentence is contrary to Minnesota's sentencing statutes and, therefore, warrants correction is a question of law, which we review de novo. *State v. Gilbert*, 634 N.W.2d 439, 441 (Minn. App. 2001), *review denied* (Minn. Dec. 11, 2001). Appellant argues, and the state agrees, that the district court lacked the authority to impose a no-contact order as part of his executed sentence. *See State v. Pugh*, 753 N.W.2d 308, 311 (Minn. App. 2008) (holding that a district court lacks the authority to impose a no-contact

order as part of an executed sentence for first-degree criminal sexual conduct), *review denied* (Minn. Sept. 23, 2008). Accordingly, we vacate the no-contact order.

Affirmed in part and reversed in part.