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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-439**

Keith Eugene Washington, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed December 15, 2009
Affirmed
Toussaint, Chief Judge**

Chisago County District Court
File No. 13-CR-04-137

Keith Eugene Washington, OID# 205461, 970 Pickett Street North, Bayport, MN 55003
(pro se appellant)

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

Janet Reiter, Chisago County Attorney, Beth A. Beaman, Assistant County Attorney, 313
North Main Street, Suite 373, Center City, MN 55012 (for respondent)

Considered and decided by Toussaint Chief Judge; Bjorkman, Judge; and Crippen,
Judge.*

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

UNPUBLISHED OPINION

TOUSSAINT, Chief Judge

In this pro se postconviction appeal, appellant Keith Eugene Washington raises sufficiency of the evidence and sentencing issues and argues that he received ineffective assistance of counsel. Because appellant's claims are without merit, lack factual support, or are procedurally barred by *Knaffla*, we affirm the district court's order denying appellant's petition for postconviction relief.

DECISION

If a petitioner has already taken a direct appeal of his or her conviction, all claims raised in that appeal, and all claims known or that should have been known at the time of appeal, are procedurally barred and will not be considered in a subsequent petition for postconviction relief. *State v. Knaffla*, 309 Minn. 246, 252, 243 N.W.2d 737, 741 (1976). There are three exceptions to *Knaffla*: (1) "additional fact-finding is required to fairly address a claim of ineffective assistance of counsel"; (2) "a novel legal issue is presented"; or (3) "the interests of justice require relief." *Sessions v. State*, 666 N.W.2d 718, 721 (Minn. 2003).

Appellant's claims challenging both the sufficiency of the evidence to support his conviction and his sentence were specifically raised in his direct appeal and rejected by this court. *See State v. Washington*, No. A06-932, 2007 WL 2416867 (Minn. App. Aug. 28, 2007), *review denied* (Minn. Nov. 13, 2007). These claims are thus barred by *Knaffla*.

Appellant's claims of ineffective assistance of counsel lack factual support. In his postconviction petition, appellant alleged that his counsel was ineffective because he was appointed immediately prior to trial and he remarked at sentencing that assaults against correction officers should be aggressively prosecuted. On appeal, appellant argues that his counsel was ineffective because he failed to demand a jury trial and to call a psychiatrist to testify regarding mitigating factors at sentencing.

None of these claims has factual support. *See Leake v. State*, 737 N.W.2d 531, 535 (Minn. 2007) (stating that allegations in postconviction petition must be more than argumentative assertions without factual support). Appellant does not explain how counsel's statement at sentencing affected the outcome of his case. Nor does appellant provide any facts or argument to support his claim that, because counsel was appointed right before trial, his lack of preparation adversely affected the outcome of appellant's case. We therefore reject the claims made by appellant in his postconviction petition.

As to his claims on appeal, the record establishes that appellant understood the rights he was giving up by waiving a jury trial on sentencing issues. In particular, the record establishes that appellant was advised that a jury trial consists of 12 jurors who would have to reach a unanimous decision and that the judge in a bench trial makes the determination of whether the defendant is guilty. Appellant acknowledged that he understood this information, that his attorney had discussed his options with him, and that he wanted to waive his right to a jury trial and have the judge make the decision. This on-the-record discussion establishes a knowing, intelligent, and voluntary waiver of appellant's right to a sentencing jury trial. *See Minn. R. Crim. P. 26.01, subd. 1(2)(b)*;

State v. Ross, 472 N.W.2d 651, 654 (Minn. 1991) (concluding that waiver of jury trial was valid when defendant was informed of basic elements of jury trial).

The record also establishes that, although counsel did not call the psychiatrist to testify at sentencing, counsel argued for mitigation based on the results of the psychiatrist's evaluation under Minn. R. Crim. P. 20.01. Appellant has not shown that counsel's representation was unreasonable or that, but for counsel's errors, the result of the proceeding would have been different.

Affirmed.