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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-852**

Michael Dwayne Stigler, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed February 9, 2010
Affirmed
Toussaint, Chief Judge**

Hennepin County District Court
File No. 27-CR-05-060285

Michael Dwayne Stigler, Bayport, Minnesota (pro se appellant)

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Linda M. Freyer, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Toussaint, Chief Judge; Halbrooks, Judge; and
Huspeni, 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UNPUBLISHED OPINION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 Michael Dwayne Stigler challenges the district court's denial of his petition for postconviction relief without an evidentiary hearing. Because the district court did not abuse its discretion or otherwise err in its decision, we affirm.

DECISION

Once a direct appeal has been taken from a conviction, all claims raised in that appeal and all claims known but not raised 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 several exceptions to *Knaffla*, including when (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 petition raises five claims: (1) the district court abused its discretion when it ruled that appellant could be impeached with his prior conviction; (2) the evidence was insufficient to prove that appellant used a dangerous weapon; (3) appellant's sentence must be reduced to the presumptive sentence or remanded for resentencing because the court instructed the jury that it would be assisting in deciding appellant's punishment and because the prosecutor committed misconduct during closing argument; (4) appellant received ineffective assistance of trial counsel; and (5) appellant received ineffective assistance of appellate counsel.

The first three claims were specifically raised, addressed, and rejected by this court on direct appeal. *See State v. Stigler*, No. A06-1247, 2007 WL 3152768, at *2-*5 (Minn. App. Oct. 30, 2007), *review denied* (Minn. Dec. 11, 2007). Appellant does not assert that any exception to *Knaffla* applies here. Thus, these claims are barred by *Knaffla*.

A claim of ineffective assistance of trial counsel is barred by *Knaffla* if the record on direct appeal would have been adequate to address the claim and additional fact finding is not required. *See Sessions*, 666 N.W.2d at 721. Here, appellant claims that his trial counsel was ineffective because he (1) failed to investigate appellant's assertion that he suffered from a brain injury and other problems that affected his competence and ability to fully understand and contribute to his own defense; (2) failed to investigate appellant's life history and prior criminal record for mitigating evidence and to present this evidence at the sentencing hearing; (3) failed to challenge the constitutionality of Minn. Stat. § 609.1095; (4) waived appellant's speedy trial right; (5) failed to ask the victim on cross-examination if she could identify knives presented by the state as evidence; (6) failed to challenge the DNA evidence as non-probative despite appellant's request; (7) failed to challenge the DNA evidence as lacking a firm foundation in modern science despite appellant's request; (8) failed to file motions with the district court when asked to do so by appellant; and (9) refused to challenge the constitutionality of the Antiterrorism and Effective Death Penalty Act on grounds suggested by appellant.

Appellant's own description of his trial counsel's claimed deficiencies confirms that he was aware of them at the time of trial. Indeed, appellant appears to view his trial

counsel as ineffective because counsel did not take direction from appellant or conduct the case as appellant wished with respect to motions, challenges to evidence, investigation, legal arguments, and cross-examination of witnesses. Because appellant clearly knew of these alleged deficiencies at the time of his direct appeal and could have raised them at that time in his pro se supplemental brief, his claims of ineffective assistance of trial counsel are barred by *Knaffla*.

Even if not *Knaffla* barred, appellant's claims of ineffective assistance of trial counsel lack substantive merit. His complaints involving his counsel's failure to ask the victim certain questions, file unspecified motions, or challenge DNA evidence are generally matters of trial strategy that are not reviewed for competency. *See State v. Jones*, 392 N.W.2d 224, 236 (Minn. 1986). Appellant's claim that he suffers from a brain injury is somewhat supported by 2001 medical records, but he fails to point to any place in the record of his trial or sentencing where his competence was affected or where he was unable to understand the proceedings. While appellant suggests that there are mitigating circumstances that could have affected his sentencing, he fails to describe what those circumstances might have been.

In any event, appellant's trial counsel did raise several arguments at sentencing that might be construed as assertions that mitigating circumstances exist: counsel argued that most of appellant's prior convictions were not for violent offenses and attempted to minimize his prior convictions that involved less serious offenses. Trial counsel did challenge the constitutionality of Minn. Stat. § 609.1095 on vagueness grounds. With respect to the DNA evidence, a firm foundation was established for its admission.

Contrary to appellant's characterization of the evidence, the expert testified concerning samples taken from the victim's body and clothing that contained DNA that matched appellant's profile. Thus, even if appellant's claims of ineffective assistance of trial counsel are not *Knaffla* barred, they either lack merit or are so undeveloped by appellant here that they cannot be adequately analyzed on the merits. *See Leake v. State*, 737 N.W.2d 531, 535 (Minn. 2007) (postconviction petitioner must allege more than mere "argumentative assertions without factual support").

Appellant also alleges that his appellate counsel was ineffective because she (1) failed to challenge the admission of appellant's pretrial statement to police; (2) refused to raise the issue of the constitutionality of Minn. Stat. § 609.1095; (3) failed to raise all issues that could have been raised to challenge the sentence imposed; (4) failed to investigate appellant's claim of a brain injury; and (5) failed to raise a claim of ineffective assistance of trial counsel. As the district court noted, appellant "wanted his appellate counsel to raise every possible issue on his appeal."

But an appellate counsel is not obligated to raise every issue suggested by his or her client and has no duty to include claims that would detract from other more meritorious issues. *Case v. State*, 364 N.W.2d 797, 800 (Minn. 1985); *Garasaha v. State*, 393 N.W.2d 20, 22 (Minn. App. 1986). Moreover, appellant offers no explanation as to why he did not include these claims in his pro se supplemental brief that he filed on direct appeal. *See Black v. State*, 560 N.W.2d 83, 85-86 (Minn. 1997).

Appellant has not demonstrated any prejudice or that there is a reasonable probability that the outcome on direct appeal would have been different had appellate

counsel raised any or all of these issues. *See Gates v. State*, 398 N.W.2d 558, 562-63 (Minn. 1987) (petitioner must establish both deficient performance and prejudice to establish ineffective-assistance-of-counsel claim). His claim that appellate counsel failed to challenge the district court's pretrial ruling is without merit. While the district court ruled that the two challenged statements were admissible, the officer to whom those statements were made was not asked about the statements and did not testify to them; thus, the statements did not come into evidence. With respect to appellant's claim that appellate counsel failed to raise all possible challenges to the sentencing proceeding, he fails to identify what those challenges might be. Without more, appellant's challenges to the effectiveness of his appellate counsel lack a factual basis.

Affirmed.