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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2309**

Stephen Claude Porter, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed October 5, 2010
Affirmed
Peterson, Judge**

Stearns County District Court
File No. 73-K1-07-170

Stephen C. Porter, Moose Lake, Minnesota (pro se appellant)

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

Janelle P. Kendall, Stearns County Attorney, Michael Jevon Lieberg, Assistant County Attorney, St. Cloud, Minnesota (for respondent)

Considered and decided by Peterson, Presiding Judge; Hudson, Judge; and Larkin,
Judge.

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

PETERSON, Judge

In this pro se postconviction appeal, appellant Stephen Claude Porter seeks relief from his 2007 conviction of and sentence for first-degree controlled-substance offense. The district court summarily denied appellant's petition for postconviction relief and his

motion to correct and/or modify or vacate his sentence, concluding that the issues that appellant raised either were, or could have been, raised on direct appeal. Because appellant's claims are *Knaffla* barred, we affirm.

FACTS

On January 10, 2007, members of the St. Cloud metro gang strike force set up a controlled buy with a confidential informant (CI). The officers dropped the CI off at a mobile-home park at approximately 5:40 p.m. and parked a short distance away, where they could see the mobile home and a Chevrolet Suburban parked outside.

The officers monitored the conversation inside the home, during which the CI purchased crack cocaine and then left. At approximately 5:45 p.m., the officers searched the CI and found nothing but the crack cocaine. The CI reported that there were four to six black males and a number of weapons inside the home and that appellant was the person who sold him the crack cocaine.

At 7:00 p.m., one of the officers saw four black men leave the mobile home and get into the Suburban. The officer believed that he recognized one of the men as appellant from a photograph that he saw during a briefing before the controlled buy. The vehicle was stopped, and appellant was in the back seat. No drugs or weapons were found in the vehicle, but appellant was arrested for the controlled buy. The officer who transported appellant to headquarters discovered a plastic bag with crack cocaine in his squad car after appellant was removed; appellant later admitted that the cocaine was his and that he had concealed it in his buttocks.

Appellant was charged with two counts of first-degree controlled-substance crime. Following an omnibus hearing, the district court denied appellant's motion to suppress. The court ruled that even though officers found no weapons or guns in the vehicle after it was stopped, the stop of the vehicle and the arrest of appellant were supported by appellant's sale of drugs to the CI during the controlled buy, which was a felony.

Appellant waived his right to a jury trial and submitted the matter to the district court for a trial on stipulated evidence. See Minn. R. Crim. P. 26.01, subd. 4 (setting out procedures to be followed). The prosecutor agreed that he would not seek an upward sentencing departure and would recommend the presumptive 161-month term and that the prosecutor in another county had agreed to dismiss other charges that had been filed against appellant. The district court found appellant guilty as charged.

At sentencing, defense counsel requested that the district court consider a departure, based on appellant's poor health. The court denied appellant's request and sentenced him to the presumptive 161-month term.

On direct appeal, this court rejected appellant's arguments and affirmed his conviction. *State v. Porter*, No. A07-2444, 2008 WL 5147803 (Minn. App. Dec. 9, 2008), *review denied* (Minn. Feb. 17, 2009).

In 2009, appellant filed this pro se petition for postconviction relief and a separate motion to correct his sentence. The district court summarily denied appellant's petition and motion, concluding that the issues appellant raised were barred because they either were, or could have been, raised on direct appeal.

DECISION

On appeal from a district court's postconviction order, "we review questions of law de novo and findings of fact for an abuse of discretion." *Francis v. State*, 781 N.W.2d 892, 896 (Minn. 2010). A summary denial of a postconviction petition is reviewed for an abuse of discretion. *Powers v. State*, 695 N.W.2d 371, 374 (Minn. 2005).

When a direct appeal has been taken, all claims that were raised or could have been raised will not be considered in a petition for postconviction relief. *State v. Knaffla*, 309 Minn. 246, 252, 243 N.W.2d 737, 741 (1976). A district court may "summarily deny a petition when the issues raised in it have previously been decided by the Court of Appeals or the Supreme Court in the same case." Minn. Stat. § 590.04, subd. 3 (2008). There are two exceptions to *Knaffla*: "(1) if a novel legal issue is presented, or (2) if the interests of justice require review." *Perry v. State*, 705 N.W.2d 572, 574 (Minn. 2005) (quotation omitted).

In this postconviction appeal, appellant generally raises four issues: (1) the stop of the vehicle in which he was riding was illegal under the Fourth Amendment; (2) his arrest and continued detention were not supported by probable cause; (3) the district court failed to make findings to support his guilt, as required by Minn. R. Crim. P. 26.01, subd. 4; and (4) his sentence was not authorized. All of these issues were known at the time of appellant's direct appeal. Also, the first three issues were specifically raised by appellant on direct appeal and addressed by this court.

This court specifically concluded that the stop of appellant's vehicle was supported by a "sufficiently particularized and objective basis" to suspect that he was engaged in criminal activity. *Porter*, 2008 WL 5147803, at *2. This court ruled that the stop was legal.

This court acknowledged that appellant "challenges the lawfulness of his arrest and continued detention without a warrant." But this court concluded that because the issue was not raised before the district court, "it must be deemed to be waived." *Id.* (citing *Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996)). Even if this court did not address the merits of appellant's challenge to his arrest and continued detention, the facts recited by this court support both the warrantless stop of the vehicle and the warrantless arrest of appellant. The CI's report that appellant sold him the drugs gave police probable cause to believe that appellant had committed a felony. And police had reason to believe, based on officer observations, that appellant was an occupant of the vehicle when it was stopped. Because police had probable cause to believe that appellant had committed a felony, appellant's arrest and continued detention were lawful.

This court concluded that although the district court failed to make findings to support a guilty verdict, as required by rule 26.01, subdivision 4, reversal was not required because the rule is directory rather than mandatory, and because appellant was not prejudiced. *Id.* (citing *State v. Thomas*, 467 N.W.2d 324, 326 (Minn. App. 1991)). Further review was denied, and this court's decision is now the law of the case and is not subject to collateral attack. *See Lynch v. State*, 749 N.W.2d 318, 321 (Minn. 2008) (concluding that postconviction claim that was specifically considered, addressed, and

decided on direct appeal is barred by *Knaffla* and by doctrine of law of the case). Furthermore, appellant still has not explained how he was prejudiced by the lack of findings.

Finally, appellant did not challenge his sentence on direct appeal. In his postconviction filings, appellant fails to provide any factual or legal basis to support his claim that his sentence is not authorized. And a review of the record reveals no obvious flaws in the district court's sentencing decision.

Appellant's 161-month sentence is the presumptive sentence for a severity-level-IX offense and an offender with a criminal-history score of seven. At sentencing, defense counsel noted that appellant had written a letter to the district court indicating his concern that he has health problems and "feels that a 161-month sentence will be a death sentence." Counsel requested that the district court "at least consider not sentencing [appellant] to a greater sentence than the bottom of the box, in this case [138] months, so that it would not have to be a departure." The district court denied that request and sentenced appellant to 161 months, which was the recommendation made in the presentence investigation, noting that appellant had "some medical issues that are pretty serious, but believe it or not, I think the medical care that most people receive in prison is a lot better than most of the people in this room are ever going to expect." Because the district court's sentencing decision was within the presumptive range, it was not a departure and is generally not subject to appellate review. *See State v. Delk*, 781 N.W.2d 426, 428-29 (Minn. App. 2010) (concluding that any sentence within presumptive range

of months in box on guidelines grid is presumptive sentence), *review denied* (Minn. July 20, 2010).

Affirmed.