STATE OF MINNESOTA
IN COURT OF APPEALS
A11-28

John Joseph Kotowski, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed August 1, 2011
Affirmed
Stauber, Judge

Dakota County District Court
File No. 19K497002352

John Joseph Kotowski, Bayport, Minnesota (pro se appellant)

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

James C. Backstrom, Dakota County Attorney, Tricia A. Loehr, Assistant County Attorney, Hastings, Minnesota (for respondent)

Considered and decided by Ross, Presiding Judge; Stoneburner, Judge; and Stauber, Judge.

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

STAUBER, Judge

In this pro se postconviction appeal, appellant argues that (1) the ten-year conditional-release period imposed as a part of his sentence was not authorized by law

and (2) he is entitled to have clerical errors corrected at any time under Minn. R. Crim. P. 27.03. We affirm.

FACTS

Appellant John Kotowski was found guilty of two counts of first-degree criminal sexual conduct and one count of kidnapping and sentenced to 292 months in prison followed by ten years of conditional release. On direct appeal, this court affirmed. *State v. Kotowski*, No. C6-98-1494 (Minn. App. May 4, 1999), *review denied* (Minn. June 29, 1999). Thereafter, appellant filed a postconviction petition that was summarily denied by the district court. By order opinion, this court affirmed the district court's order. *Kotowski v. State*, A09-1939 (Minn. App. June 23, 2010), *review denied* (Minn. Oct. 19, 2010). Appellant then filed a second postconviction petition that was also summarily denied by the district court. The district court concluded that appellant's claims were barred by *State v. Knaffla*, 309 Minn. 246, 243 N.W.2d 737 (1976), because appellant "knew or should have known of these claims at the time of direct appeal." This appeal followed.

D E C I S I O N

A person seeking postconviction relief bears the burden of establishing facts that warrant relief. Minn. Stat. § 590.04, subd. 3 (2010). This court reviews issues of law de novo but examines the postconviction court's findings to determine if they are supported by sufficient evidence. *Leake v. State*, 737 N.W.2d 531, 535 (Minn. 2007). The denial of postconviction relief will be reversed on appeal only if there has been an abuse of discretion. *Id.*

Appellant argues that the district court erred by denying his petition for postconviction relief because (1) his ten-year conditional release is unauthorized by law and he is entitled to the correction of his sentence under Minn. R. Crim. P. 27.03, subd. 9, and (2) he is entitled to have clerical errors in the court record corrected pursuant to Minn. R. Crim. P. 27.03, subd. 10.

I. Conditional-release period

Minn. Stat. § 609.346, subd. 5(a) (1996), provides that a district court sentencing an individual for first-degree criminal sexual conduct must impose a mandatory ten-year conditional-release period if that individual has a prior sexual-offense conviction. Here, appellant had a previous conviction of fourth-degree criminal sexual conduct from 1987. Therefore, under section 609.346, subdivision 5(a), the district court imposed a ten-year conditional-release period.

Appellant argues that his 1987 conviction "cannot be used to enhance the current term of [a] conditional release due to the fact that [the] statute in question was not given retroactive application when it was changed in 1993." Thus, appellant claims that his sentence is not authorized by law.

The state contends that appellant's claim is barred by *Knaffla*. Under *Knaffla*, "where direct appeal has once been taken, all matters raised therein, and all claims known but not raised, will not be considered upon a subsequent petition for postconviction relief." 309 Minn. at 252, 243 N.W.2d at 741. The *Knaffla* rule also bars all claims that could have been brought as part of a prior postconviction petition. *Wayne v. State*, 601 N.W.2d 440, 441 (Minn. 1999). There are two exceptions to *Knaffla*: (1) when "a claim

is so novel that the legal basis was not available on direct appeal or (2) [when] fairness requires [that the claim be heard] and the petitioner did not deliberately and inexcusably fail to raise the issue on appeal." *Mckenzie v. State*, 707 N.W.2d 643, 644 (Minn. 2005) (quotation omitted).

Appellant argues that *Knaffla* does not apply because his claim was brought as a motion to correct his sentence under Minn. R. Crim. P. 27.03, subd. 9. This rule provides that a "court may at any time correct a sentence not authorized by law." Minn. R. Crim. P. 27.03, subd. 9.

Without deciding whether appellant's claim is barred by *Knaffla*, we conclude that appellant's claim that his sentence is contrary to law is without merit. Minn. Stat. § 609.346, subd. 5(a), unambiguously states that a person convicted of first-degree criminal sexual conduct "shall" be placed on conditional release for ten years if the person has a prior sexual-offense conviction. Because appellant had a prior sexual-offense conviction, the district court was required to impose a ten-year conditional-release period. *See* Minn. Stat. § 645.44, subd. 16 (2010) ("'Shall' is mandatory."). And despite appellant's claim to the contrary, the statute mandating imposition of the ten-year conditional-release period was not applied retroactively. The statute was in effect at the time appellant committed the first-degree criminal sexual conduct, and the use of his 1987 conviction as a basis to impose the ten-year conditional-release period does not constitute retroactive application of the statute. Therefore, the district court's imposition of the ten-year conditional-release period was appropriate.

II. Clerical errors

Appellant argues that the district court erred by denying his request to correct clerical errors in the district court file. The rules of criminal procedure provide that "[c]lerical mistakes in a judgment, order, or in the record arising from oversight or omission may be corrected by the court at any time, or after notice if ordered by the court." Minn. R. Crim. P. 27.03, subd. 10. A clerical mistake is defined as a mistake that is ordinarily

> apparent upon the face of the record and capable of being corrected by reference to the record only. It is usually a mistake in the clerical work of transcribing the particular record . . . [and] . . . cannot reasonably be attributed to the exercise of judicial consideration or discretion.

State v. Walsh, 456 N.W.2d 442, 443 (Minn. App. 1990) (quoting *Wilson v. City of Fergus Falls*, 181 Minn. 329, 332, 232 N.W. 322, 323 (1930)).

Here, appellant claims that there are numerous "clerical" errors in the presentence investigation report. But the claimed mistakes are not "mistake[s] in the clerical work of transcribing the . . . record." *See id.*, 456 N.W.2d at 443. Rather, appellant's claims involve substantive challenges to the report. Thus, Minn. R. Crim. P. 27.03, subd. 10, is not applicable to appellant's claim. Moreover, appellant offers no support for his challenges to the report other than his own bald assertions that the report is erroneous. The district court did not err by denying appellant's request to correct the alleged clerical errors.

Affirmed.