STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0671

Tony Terrell Robinson, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed February 3, 2014
Affirmed
Toussaint, Judge[*]

Ramsey County District Court
File No. 62-CR-08-4669

Tony Terrell Robinson, St. Paul, Minnesota (pro se appellant)

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

John J. Choi, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Considered and decided by Kirk, Presiding Judge; Johnson, Judge; and Toussaint, Judge.[*]

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

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

TOUSSAINT, Judge

Appellant challenges the district court's denial of his second petition for postconviction relief. Because appellant raises the same issues previously rejected by this court, we affirm.

FACTS

Pursuant to an *Alford* plea,[1] appellant Tony Terrell Robinson was convicted in 2008 for first-degree criminal sexual conduct, and the district court sentenced him to 91 months' incarceration. In December 2010, he petitioned for postconviction relief, arguing that he should be allowed to withdraw his plea because his defense counsel was ineffective and that he was misled during plea bargaining about the period of sex-offender registration that would be required. The district court denied his petition. He appealed, raising claims of unintelligent plea, involuntary plea (ineffective assistance of counsel), inaccurate and coerced plea, failure of the district court to grant an evidentiary hearing, and prosecutorial misconduct. *Robinson v. State*, No. A11-550, 2012 WL 118259, at *2-3, 5-6 (Minn. App. Jan. 17, 2012), *review denied* (Minn. Mar. 28, 2012). This court affirmed the district court's denial of his petition. *Id.* at *7.

On January 4, 2013, Robinson filed a second petition for postconviction relief, arguing that the imposed conditional release period increased his sentence beyond the statutory maximum sentence. The district court again denied his petition, ruling that

[1] *See North Carolina v. Alford*, 400 U.S. 25, 37, 91 S. Ct. 160, 167 (1970) (allowing defendants to plead guilty while maintaining innocence); *State v. Goulette*, 258 N.W.2d 758, 760-61 (Minn. 1977) (allowing use of *Alford* pleas in Minnesota).

Robinson's claims were barred by Minnesota Statutes section 590.01, subdivision 4 (2008), and by *State v. Knaffla*, 309 Minn. 246, 243 N.W.2d 737 (1976).

D E C I S I O N

A motion to correct an unlawful sentence may be treated as a motion for postconviction relief. *See Powers v. State*, 731 N.W.2d 499, 501 n.2 (Minn. 2007). "[A] postconviction court 'may summarily deny a second or successive petition for similar relief on behalf of the same petitioner and may summarily deny a petition when the issues raised in it have previously been decided by the Court of Appeals.'" *Id.* at 501 (quoting Minn. Stat. § 590.04, subd. 3 (2006)). Also, "[i]t is well settled that when . . . 'direct appeal has once been taken, all matters raised therein . . . will not be considered upon a subsequent petition for postconviction relief.'" *Id.* (quoting *Knaffla*, 309 Minn. at 252, 243 N.W.2d at 741).

Robinson reasserts his earlier postconviction argument that he should have been allowed to withdraw his guilty plea because he was misled about the conditional-release period. Because this court previously rejected this argument, the district court did not err by denying Robinson's second petition for relief.

Robinson also argues, that his appointed appellate counsel was ineffective for failing to raise "issues of [Robinson] not knowing his true and correct sentence." But these issues were in fact raised—and rejected—in Robinson's first appeal. *See Robsinson*, 2012 WL 118259, at *2-4, 6. Therefore, his new claim of ineffective assistance of appellate counsel fails on the facts. To the extent that Robinson's claim amounts to an allegation that his appellate counsel was ineffective for failing to

sufficiently raise an ineffective-assistance-of-trial-counsel claim, it also fails because "[w]hen an ineffective assistance of appellate counsel claim is based on appellate counsel's failure to raise an ineffective assistance of trial counsel claim, the appellant must first show that trial counsel was ineffective," *Fields v. State*, 733 N.W.2d 465, 468 (Minn. 2007), and this court has already rejected that underlying claim, *see Robinson*, 2012 WL 118259, at *3-4. Accordingly, we affirm the district court's denial of Robinson's postconviction petition.

Affirmed.