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Minn. Stat. § 480A.08, subd. 3 (2014).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A14-0956**

Danny Aleck Bowie, Jr., petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed February 17, 2015
Affirmed
Rodenberg, Judge**

Hennepin County District Court
File Nos. 27-CR-06-053819, 27-CR-06-005391

Danny A. Bowie, Jr., Bayport, Minnesota (pro se appellant)

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

Michael O. Freeman, Hennepin County Attorney, Mark V. Griffin, Assistant County
Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Kirk, Presiding Judge; Rodenberg, Judge; and Hooten,
Judge.

UNPUBLISHED OPINION

RODENBERG, Judge

Appellant challenges the validity of his guilty plea and the district court's
sentence, an upward durational departure. We affirm.

FACTS

On August 15, 2006, appellant Danny Aleck Bowie, Jr. pleaded guilty to aggravated robbery and second-degree intentional murder of P.W. Appellant also admitted that the murder was committed within the victim's zone of privacy and with particular cruelty, permitting the district court to impose an upward durational departure. The district court committed appellant to the commissioner of corrections for 456 months, imposing consecutive sentences for the robbery and the murder, with the latter sentence including an agreed-upon 41-month upward durational departure based on the aggravating circumstances.¹

In 2009, appellant petitioned for postconviction relief. He argued that the 41-month durational departure and the consecutive sentencing unfairly exaggerated the criminality of his conduct. The district court denied his petition and we affirmed. *Bowie v. State*, No. A0-9-2057, 2010 WL 3306916, at *2-3 (Minn. App. Aug. 24, 2010), *review denied* (Minn. Nov. 16, 2010).

On January 29, 2014, appellant again petitioned for postconviction relief, arguing that he pleaded guilty to *unintentional* second-degree murder, and not *intentional* second-degree murder, and he again challenged the upward durational departure and consecutive sentencing. The district court denied the petition, holding that appellant “knowingly pled guilty to *Intentional* Second Degree Murder” and that his arguments regarding the

¹ Although not directly relevant to this appeal, the parties agreed to a 480-month sentence at the time of the plea. At sentencing, it was determined that the initial agreement was based on a mistaken calculation of appellant's criminal history score. Upon discovery of the mistake, the parties agreed to a reduced overall sentence of 456 months.

durational departure and consecutive sentencing were “previously raised . . . in his initial post-conviction petition” and that appellant “[did] not raise any new challenge, and . . . is not entitled to any relief.” This appeal followed.

DECISION

“No petition for postconviction relief may be filed more than two years after the later of the entry of judgment . . . if no direct appeal is filed . . . or an appellate court’s disposition of petitioner’s direct appeal.” Minn. Stat. § 590.01, subd. 4(a) (2014). This petition was filed eight years after the district court entered judgment, from which no direct appeal was taken.² This appeal might have been time-barred pursuant to Minn. Stat. § 590.01, subd. 4(a) had the state raised this issue in their brief, but it did not. *See Hooper v. State*, 838 N.W.2d 775, 782 (Minn. 2013) (concluding that expiration of the limitations period under Minn. Stat. § 590.01, subd. 4(a) does not deprive the postconviction court of subject matter jurisdiction). By not raising the issue, the state has waived it and we proceed to the merits. *See id.*

Appellant first challenges his plea to second-degree intentional murder, arguing that he actually pleaded guilty to second-degree *unintentional* murder. In support of his argument, appellant claims that at no time during the plea hearing or in the written plea petition was it mentioned that appellant was pleading guilty to an intentional murder. Appellant claims, therefore, that he had “no idea” that he was pleading guilty to second-degree intentional murder and that he did not understand “the nature and elements of the offenses charged and the consequences of the [guilty] plea.”

² Judgment was entered on appellant’s guilty plea on September 5, 2006.

Appellant's contention that he was mistaken about the offense to which he was pleading guilty is without merit and wholly unsupported by the record. He was indicted for first-degree murder and second-degree *intentional* murder, and he pleaded guilty to the latter count as charged in the complaint. Further, on questioning at the plea hearing, appellant agreed that he "had the intent to kill [P.W.] under the law." And it is clear from the record that appellant had extensive conversations with counsel about the evidence against him and the charges he was facing. Appellant's counsel characterized the time spent talking with appellant concerning the plea as "countless hours." And this characterization is consistent with the transcript of the plea hearing. The district court and appellant's counsel questioned appellant carefully and extensively.

Appellant further challenges the district court's imposition of a sentence amounting to an upward durational departure for second-degree murder due to aggravating circumstances and the district court's consecutive sentencing. This issue was fully addressed, and disposed of, in our 2010 opinion. *Bowie*, 2010 WL 3306916, at *2-3. We will not address it again here as the law has not changed and we see no reasons in appellant's brief or in the record which would suggest that fairness requires a second review of this issue. *See McKenzie v. State*, 754 N.W.2d 366, 369 (Minn. 2008) (holding that issues that have been raised in a previous postconviction petition are barred unless the legal basis for the underlying issue was not available at the time of direct appeal or fairness requires review).

Affirmed.