

STATE OF MINNESOTA
IN COURT OF APPEALS

A24-0499



Freddie Louis Dillard, petitioner,

Appellant,

vs.

State of Minnesota,

Respondent.

ORDER OPINION

Ramsey County District Court
File No. 62-K4-00-001040

Considered and decided by Connolly, Presiding Judge; Cochran, Judge; and Frisch, Judge.

BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND BECAUSE:

1. In 2000, following a jury trial, appellant Freddie Louis Dillard was convicted of solicitation to practice prostitution, engaging in prostitution, and kidnapping. The district court sentenced Dillard to concurrent terms of imprisonment: 158 months for solicitation to practice prostitution, 48 months for engaging in prostitution, and 108 months for kidnapping.

2. On direct appeal, we vacated his sentence for engaging in prostitution because his sentences for solicitation to practice prostitution and engaging in prostitution were based on the same conduct in violation of Minn. Stat. § 609.035, subd. 1 (1996). *State v. Dillard*, No. C7-00-2168, 2001 WL 1491295, at *4 (Minn. App. Nov. 27, 2001), *rev. denied* (Minn. Jan. 29, 2002).

3. Since 2004, Dillard has filed many petitions for postconviction and other forms of relief in district court, this court, and the supreme court, as well as other motions seeking other forms of relief.

4. In December 2023, Dillard petitioned for postconviction relief, seemingly asserting that the district court failed to instruct the jury that engaging in prostitution was a lesser-included offense pursuant to Minn. Stat. §§ 609.035, subd. 1, .04, subd. 1(4) (2022), and thus created a presumption which permitted the jury to find him guilty of engaging in prostitution, solicitation to practice prostitution, and kidnapping in violation of his Fourteenth Amendment due-process and equal-protection rights. Dillard also asserted that “*Knaffla* tends to toll section 609.035, and 609.04.” In January 2024, Dillard moved to correct, set aside, and vacate his sentence, seemingly asserting again that Minn. Stat. § 609.035 (2022) creates a “presumption,” and that the district court improperly imposed an aggravated durational departure to his sentence for kidnapping.

5. The postconviction court summarily denied Dillard’s petition for postconviction relief and his motion to correct his sentence. The postconviction court reasoned that Dillard’s postconviction petition was procedurally barred without exception. And the postconviction court reasoned that Dillard’s motion to correct his sentence was meritless if considered under Minn. R. Crim. P. 27.03, subd. 9, and procedurally barred without exception if construed as a petition for postconviction relief. Dillard appeals.

6. Dillard first challenges the denial of his December 2023 petition for postconviction relief. “[W]here a 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.” *State v. Knaffla*, 243 N.W.2d 737, 741 (1976). And “matters raised or known but not raised in an earlier petition for postconviction relief will generally not be considered in subsequent petitions for postconviction relief.” *Powers v. State*, 731 N.W.2d 499, 501 (Minn. 2007). We review the denial of a petition for postconviction relief for an abuse of discretion. *Id.*

7. The record reflects that Dillard either raised or could have raised his current arguments in an earlier filing, and he therefore cannot raise them now. *Id.* at 501-02 (reasoning that, to the extent the petitioner’s claim in his third petition for postconviction relief was different from a claim raised in his first petition for postconviction relief, “[he] could have raised it in his second petition for postconviction relief”). Even if Dillard’s current arguments are not identical to his prior arguments, we are not persuaded, and Dillard does not argue, that his current claims are based on information that he did not know at any point over the nearly 20 years that he has filed petitions for relief in district court, this court, or the supreme court. Dillard also does not argue that an exception to the procedural bar applies. *Id.* at 502 (explaining that a petition for postconviction relief is not procedurally barred if “(1) if a novel legal issue is presented, or (2) if the interests of justice require review”). We discern no abuse of discretion by the district court in summarily denying Dillard’s petition for postconviction relief.

8. Dillard next challenges the denial of his motion to correct his sentence. “The court may at any time correct a sentence not authorized by law.” Minn. R. Crim. P. 27.03, subd. 9. “Rule 27.03, subdivision 9, is limited to sentences, and the court’s authority under the rule is restricted to modifying a sentence.” *Munt v. State*, 920 N.W.2d 410, 414 (Minn.

2018) (quotation omitted). “[I]f the motion implicates more than simply the sentence, the motion is properly treated as a petition for postconviction relief” *Id.* at 415 (quotation omitted). We review a postconviction court’s denial of a motion to correct a sentence for an abuse of discretion. *Id.* at 414.

9. Arguments challenging sentences pursuant to Minn. Stat. § 609.035, which generally prohibits multiple punishments for the same conduct, fall “within the scope” of Minn. R. Crim. P. 27.03, subd. 9, when they implicate only a sentence. *Id.* at 416. But claims challenging convictions pursuant to Minn. Stat. § 609.04 (2022), which provides that a person may not be convicted of both a crime and an included offense, fall outside the scope of Minn. R. Crim. P. 27.03, subd. 9, and therefore “must be considered within the confines of the postconviction statute.” *Id.* at 415-16. Although Dillard cited Minn. Stat. § 609.035, subd. 1, in support of his motion to correct his sentence and in his appellate filings, the substance of his arguments appear to challenge his “formal adjudication” for multiple offenses. Because Dillard is challenging his convictions for multiple offenses, the district court did not abuse its discretion by construing Dillard’s January 2024 motion as a petition for postconviction relief. And because Dillard either has or could have raised this argument in earlier filings, the district court did not abuse its discretion by concluding this filing was procedurally barred. *Powers*, 731 N.W.2d at 501-02.

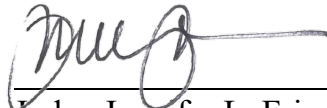
IT IS HEREBY ORDERED:

1. The district court’s order is affirmed.

2. Pursuant to Minn. R. Civ. App. P. 136.01, subd. 1(c), this order opinion is nonprecedential, except as law of the case, res judicata, or collateral estoppel.

Dated: 8/28/24

BY THE COURT

A handwritten signature in black ink, appearing to read "J. Frisch", with a long horizontal line extending to the right.

Judge Jennifer L. Frisch