

STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1862



Mang Yang, petitioner,

Appellant,

vs.

State of Minnesota,

Respondent.

ORDER OPINION

Ramsey County District Court
File No. 62-CR-12-2359

Considered and decided by Larson, Presiding Judge; Connolly, Judge; and Smith, John, Judge.*

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

1. In 2012, a jury found appellant Mang Yang guilty of aiding and abetting first-degree criminal sexual conduct, aiding and abetting conspiracy to commit first-degree criminal sexual conduct, aiding and abetting kidnapping, and aiding and abetting one of these crimes for the benefit of a gang.

2. The jury also found two aggravating factors: the victim was particularly vulnerable due to a reduced capacity that was known to appellant, and the offense was committed as part of a group of three or more persons.

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

3. In 2013, appellant was sentenced to 300 months in prison, which was an upward departure of 35 months based on the aggravating factors found by the jury.

4. Appellant challenged the aggravated sentence, which was affirmed in *State v. Yang*, No. A13-1125, 2014 WL 3396246, at *1 (Minn. App. Jul. 14, 2014), *rev. denied* (Minn. Sept. 24, 2014).

5. In 2023, appellant filed a motion to correct his sentence. The district court declined to address the issue of the victim's particular vulnerability because this court had already reviewed it in *Yang*, 2014 WL 3396246, at *3, and denied the motion. Appellant, acting pro se, filed a notice of appeal challenging the district court's denial.¹

6. However, appellant's brief does not refer to the denial of his motion to correct his sentence; he has therefore waived that issue, and we do not address it. *See State v. Tracy*, 667 N.W.2d 141, 145 (Minn. App. 2003) (“[I]ssues not briefed on appeal are waived.”).

7. Appellant's brief raises two other issues for the first time: the sufficiency of the evidence that appellant penetrated the victim, and the ineffective assistance of counsel.

8. “[O]nce a petitioner directly appeals a conviction, all matters raised in that appeal or known at the time of the appeal will not be considered by a postconviction court in a subsequent petition for relief.” *Sutherlin v. State*, 574 N.W.2d 428, 432 (Minn. 1998) (citing *State v. Knaffla*, 243 N.W.2d 737, 741 (Minn. 1976)).

¹ Respondent State of Minnesota did not file a brief or move for an extension. Therefore, the matter proceeded under Minn. R. Civ. App. P. 142.03 and was decided on the merits.

9. When appellant first appealed in 2013, he would have known of the state's alleged failure to prove an element of the crime and of the ineffective assistance of his counsel. Therefore, these issues would not be considered by a postconviction district court on a petition for postconviction relief, and they will not now be considered by this court.

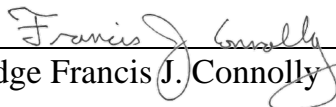
10. Moreover, appellant waited more than ten years to seek the postconviction relief he seeks in his brief. "A lengthy delay in filing a petition for postconviction relief may in itself provide a sufficient basis for affirming the dismissal of the petition when there has already been a direct appeal." *Sutherlin*, 574 N.W.2d at 432-33.

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: 7/16/24

BY THE COURT



Judge Francis J. Connolly