

Udoh v. State

Decided Feb 1, 2021

A20-0633

02-01-2021

Emem Ufot Udoh, petitioner, Appellant, v. State of Minnesota, Respondent.

Judge Randall Slieter

ORDER OPINION

Hennepin County District Court

File No. 27-CR-13-8979 Considered and decided by Cochran, Presiding Judge; Jesson, Judge; and Slieter, Judge.

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

1. Appellant Emem Ufot Udoh appeals the district court's dismissal of his second petition for postconviction relief. Because appellant's claims were properly dismissed as barred by *State v. Knaffla*, 243 N.W.2d 737 (Minn. 1976), we affirm.
2. In August 2014, appellant was found guilty of one count of first-degree criminal sexual conduct and two counts of second-degree criminal sexual conduct. On direct appeal, we affirmed regarding (1) the admissibility of certain expert testimony, (2) the district court's limitation of victim cross-examination, (3) admission of certain other evidence, (4) alleged prosecutorial misconduct, and (5) denial of a motion for a judgment of acquittal, but reversed appellant's conviction on one of the two second-degree criminal sexual conduct charges, finding it to be a lesser-included offense of the first-degree *2 conviction. *State v.*

Udoh, No. A14-2181, 2016 WL 687328 (Minn. App. Feb. 22, 2016), *review denied* (Minn. Apr. 27, 2016).

3. Appellant subsequently filed a first petition for postconviction relief, seeking relief on ten separate legal grounds. The district court issued an order dismissing all but one of appellant's claims. The district court summarily ruled against appellant on six of the ten claims as *Knaffla* barred and dismissed three of the claims on their merits without a hearing. A hearing was set on the one remaining claim regarding a request for a new trial based on alleged victim recantation, which was ultimately denied. This court dismissed appellant's appeal of this denial due to appellant's repeated failure to file a timely brief. *State v. Udoh*, No. A19-1129 (Minn. App. Mar. 23, 2020) (order).
4. During the evidentiary hearing involving the one remaining claim in the first petition, appellant filed a second petition for postconviction relief, seeking relief on six grounds. With one exception, the grounds for relief in this second postconviction petition were restatements of the claims found in appellant's first postconviction petition. The district court dismissed this second petition in its entirety which is the subject of this current appeal.
5. Pursuant to *Knaffla*, a petition for postconviction relief raising claims that were raised on direct appeal or in an earlier petition for postconviction relief, or that were known or should have been known but were not raised at the time of direct appeal or postconviction petition, is procedurally barred. *Powers v. State*, 731 N.W.2d 499, 501 (Minn. 2007). *3

6. All but one claim made in appellant's second petition for postconviction relief were restatements of the claims raised by appellant in his first postconviction petition, and are, therefore, barred. *Id.* The one claim not raised in those prior proceedings involves appellant's purported right to "consular assistance" pursuant to Article 36 of the Vienna Convention and *Sanchez-Llamas v. Oregon*, 548 U.S. 331, 126 S. Ct. 2669 (2006). However, this claim is also barred because appellant either knew of or should have known of this claim and failed to raise it in those prior proceedings. *Powers*, 731 N.W.2d at 501. Furthermore, while there exist exceptions to the *Knaffla* rule, such as when (1) a novel legal issue is presented, or (2) the interests of justice so require, *Powers*, 731 N.W.2d at 502, no such exceptions apply here. The district court was

correct in dismissing appellant's second postconviction petition because the claims set forth therein were procedurally barred.

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: February 1, 2021

BY THE COURT

/s/

Judge Randall Slieter



FILED

March 30, 2021

**OFFICE OF
APPELLATE COURTS**

STATE OF MINNESOTA

IN SUPREME COURT

A20-0633

Emem Ufot Udoh,

Petitioner,

vs.

State of Minnesota,

Respondent.

ORDER

Based upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED that the petition of Emem Ufot Udoh for further review be, and the same is, denied.

Dated: March 30, 2021

BY THE COURT:



Lorie S. Gildea
Chief Justice