

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1441**

Bunny Annette Byington, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed June 14, 2021
Affirmed
Bjorkman, Judge**

Clay County District Court
File No. 14-CR-09-2932

Cathryn Middlebrook, Chief Appellate Public Defender, Michael McLaughlin, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Brian J. Melton, Clay County Attorney, Michael D. Leeser, Assistant County Attorney, Moorhead, Minnesota (for respondent)

Considered and decided by Larkin, Presiding Judge; Bjorkman, Judge; and Reyes, Judge.

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant challenges the denial of her request for a refund of restitution she paid to victims related to a conviction that was vacated. Because the relief appellant seeks is not available under the postconviction statute, we affirm.

FACTS

Appellant Bunny Annette Byington was charged in 2009 with three counts of coercion arising from her extra-marital relationship with a Moorhead pastor. The state alleged that she obtained money from the victim under the threat of revealing their relationship to his wife and local church leadership. She received \$7,000 from the victim by the summer of 2009.

During the same time period, Clay County Social Services conducted a fraud investigation, which revealed that Byington received public-assistance benefits but did not report the money she received from the victim as income. The county determined Byington received \$5,831.44 in “fraudulent overpayments.”

Byington pleaded guilty to one count of coercion in exchange for dismissal of the remaining charges and an agreement that the county would not pursue fraud charges against her. Both the victim and the county submitted affidavits of loss and requests for restitution. As part of her sentence, the district court ordered Byington to pay \$585 in fines, \$7,000 in restitution to the victim, and \$5,831.44 in restitution to the county. She made periodic restitution payments and satisfied her fines with community service.

Byington was discharged from probation in October 2019. That same month, this court held that the provision of the coercion statute under which Byington was convicted is unconstitutional. *State v. Jorgenson*, 934 N.W.2d 362, 376 (Minn. App. 2019), *aff'd*, 946 N.W.2d 596 (Minn. 2020). Byington then filed a pro se postconviction petition seeking vacation of her conviction and sentence under Minn. Stat. § 590.01 (2018).

Through counsel, she filed an amended petition requesting a refund of the restitution she paid.

The district court vacated Byington’s conviction and sentence, including the 2009 restitution order and any civil judgment based on it. And the court ordered the state to refund the fines and fees Byington paid, and directed the return of “monies paid by her that the court is holding and has not forwarded on, if any.” But the district court determined that it lacked “authority in the context of this criminal case to make [Byington] whole related to monies paid toward restitution and forwarded to the victims in this matter.” Byington appeals.

DECISION

We review a district court’s postconviction decision for an abuse of discretion. *Pearson v. State*, 891 N.W.2d 590, 596 (Minn. 2017). A district court abuses its discretion if it “based its ruling on an erroneous view of the law, or made clearly erroneous factual findings.” *Id.* Whether a district court is authorized to grant the requested relief is a legal question that we review de novo. *State v. DeLaCruz*, 884 N.W.2d 878, 883 (Minn. App. 2016).

This case presents a legal issue—whether a person whose conviction has been vacated may recover under Minn. Stat. § 590.01 for payments she made as restitution. The statute permits a person convicted of a crime to petition the district court “to vacate and set aside the judgment and to discharge the petitioner or to resentence the petitioner or grant a new trial or correct the sentence or make other disposition as may be appropriate.” Minn. Stat. § 590.01, subd. 1. Postconviction relief is the exclusive remedy “for challenging the

validity of a conviction, sentence, or other disposition.” *Id.*, subd. 2. Postconviction proceedings are governed by Minn. Stat. §§ 590.01-.06 (2018). Nothing in these sections authorizes courts to refund fines, fees, or restitution.¹

Byington contends that *Nelson v. Colorado*, 137 S. Ct. 1249 (2017), unequivocally grants a district court the authority to do so. *Nelson* involved two petitioners from Colorado whose criminal convictions had been overturned or vacated. 137 S. Ct. at 1253. They moved the Colorado courts to order the return of monies extracted from them as a result of the now-invalidated convictions. *Id.* The Colorado Supreme Court determined that the petitioners were not entitled to relief because they did not file their claims under Colorado’s then-existing exoneration-compensation statute. *Id.* at 1254. The *Nelson* Court took up the case to answer the question of whether criminal defendants with vacated convictions are entitled to the return of “fees, court costs, and restitution exacted . . . as a consequence of the[ir] conviction[s].” *Id.* at 1252.

The *Nelson* Court answered the question in the affirmative. *Id.* at 1252, 1257-58. But its conclusion was premised on the determination that Colorado’s exoneration-compensation statute imposed too many procedural hurdles to comport with due process. *Id.* at 1255. The Court explained that exonerated persons are entitled to the presumption of innocence and that “[t]o comport with due process, a State may not impose anything

¹ We note that the state does not challenge the district court’s order to reimburse Byington for the fines and fees she paid in connection with her sentence. Accordingly, the state forfeited any argument regarding the court’s authority to do so. *See McKenzie v. State*, 583 N.W.2d 744, 746 n.1 (Minn. 1998) (applying the general rule that arguments not briefed are forfeited).

more than *minimal procedures* on the refund of exactions dependent upon a conviction subsequently invalidated.” *Id.* at 1258 (emphasis added). Because *Nelson* did not establish a broad substantive right to the automatic refund of restitution payments made pursuant to an invalidated conviction, it is not an independent source of authority upon which a district court may order the return of restitution paid pursuant to a vacated conviction.

In Minnesota, the source of a court’s authority to return restitution is the Minnesota Incarceration and Exoneration Remedies Act (the act), Minn. Stat. §§ 611.362-.368 (2020). The act provides, among other relief, that an exonerated person is entitled to “reimbursement for all restitution, assessments, fees, court costs, and other sums paid . . . as required by the judgment and sentence.” Minn. Stat. § 611.365, subd. 2(a). But the act only applies to persons who obtain an order under Minn. Stat. § 590.11 (2020) determining that they are eligible for compensation based on exoneration. Minn. Stat. § 611.362, subd. 1. Such orders are issued after a timely petition is brought and the proceedings establish that the petitioner’s conviction was vacated “on grounds consistent with innocence.” Minn. Stat. § 590.11, subd. 1(b)(1)(i); *see also Kingbird v. State*, 949 N.W.2d 744, 750-51 (Minn. App. 2020) (holding that “grounds consistent with innocence” is not satisfied when “the conduct did violate the criminal law” at the time of conviction), *review granted* (Minn. Nov. 17, 2020). Only when such an order is issued is a person able to seek a compensation award under the act by filing a claim with the supreme court. Minn. Stat. §§ 590.11, subd. 2, 611.362, subd. 2, 611.363, 611.367.

Byington did not obtain or even seek an order that she is eligible for compensation based on exoneration. That is the avenue available to her if she wants to recover damages,

including a return of restitution. Her suggestion that we should apply *Nelson*'s analysis and conclude that the act violates procedural due process is unavailing. The district court did not have the opportunity to consider her eligibility under the act, or to consider any arguments as to whether the act passes constitutional muster. We decline to consider the constitutionality of a statute that was neither invoked by Byington nor ruled on by the district court. Because nothing in the postconviction statute governing this matter authorizes a court to refund restitution, we see no error by the district court in denying Byington's request.²

Affirmed.

² We also share the district court's concern that it lacks jurisdiction to impose legal obligations on third-party victims.