STATE OF MINNESOTA
IN COURT OF APPEALS
A11-217

Robert David Storberg, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed October 3, 2011
Affirmed; motion denied
Stauber, Judge

Chisago County District Court
File No. 13VB102720

Robert D. Storberg, Arden Hills, Minnesota (pro se appellant)

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

Janet Reiter, Chisago County Attorney, Nicholas A. Hydukovich, Assistant County Attorney, Center City, Minnesota (for respondent)

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

U N P U B L I S H E D O P I N I O N

STAUBER, Judge

In this postconviction appeal, appellant argues that the district court abused its discretion by allowing the state to submit a late and prejudicial response in direct violation of the court's own deadline; and that the district court erred by dismissing

appellant's postconviction petition because the relief sought from a petty misdemeanor conviction is not available under the Postconviction Remedy Act. Appellant also moved to strike portions of the state's brief and appendix. We affirm and deny appellant's motion to strike.

FACTS

On May 5, 2010, appellant Robert David Storberg received a citation for failing to wear a seat belt in violation of Minn. Stat. § 169.686, subd. 1(a) (Supp. 2009). Following a bench trial, appellant was found guilty of the charged offense, a petty misdemeanor. Appellant was ordered to pay $105, which included a $25 fine for the offense, and surcharges and library fees of $80.

On December 15, appellant filed a petition for postconviction relief under Minn. Stat. § 590.01 (2010). The district court subsequently issued an order giving the state until January 17, 2011, to respond to appellant's petition. The state claims that appellant's petition was "placed incorrectly within the [county attorney's] office," and that it was not reviewed until January 24. The state then contacted appellant, who did not object to the state's request for an extension to respond to appellant's petition.

The state filed its response to appellant's petition on January 26, arguing that the district court lacked jurisdiction to hear appellant's petition and that the petition failed to state a claim upon which relief could be granted. The court held that because a petty misdemeanor is not a crime, appellant is not entitled to relief under section 590.01 and granted the state's motion to dismiss, concluding that it did not have "jurisdiction" to hear appellant's petition. This appeal followed.

After this appeal was filed, appellant moved to strike portions of the state's brief and appendix. By order, appellant's motion was deferred to the panel.

D E C I S I O N

I.

Appellant argues that the district court abused its discretion by considering the state's response to his petition for postconviction relief because the state failed to submit its response in a timely fashion as required by Minn. Stat. § 590.03 (2010). This statute provides:

> Within 20 days after the filing of the petition pursuant to section 590.01 or within such time as the judge to whom the matter has been assigned may fix, the county attorney, or the attorney general, on behalf of the state, shall respond to the petition by answer or motion which shall be filed with the court administrator of district court and served on the petitioner if unrepresented or on the petitioner's attorney.

Minn. Stat. § 590.03.

In *Dhaemers v. State*, the state's response was filed 43 days after the petition for postconviction relief. 286 Minn. 250, 252, 175 N.W.2d 457, 459 (1970). In addressing the petitioner's claim that the state's delay in filing a response to the petition for postconviction relief was a violation of section 590.03, and an admission that the petitioner was entitled to the relief prayed for, the supreme court stated:

> Under the plain wording of § 590.03, the 20-day limit is not absolute and the state may be granted an extension of the time for filing a responsive pleading. Since section 590.03 allows the postconviction court in its own discretion to "fix" the time period within which the state must file a responsive pleading, that court clearly did not abuse its discretion in denying the petition because the state had not

> filed an answer earlier. Furthermore, the petitioner failed to show prejudice from the delay on the part of the state in filing its responsive pleading.

Id, at 255-56, 175 N.W.2d at 461; *see also Wertheimer v. State*, 294 Minn. 293, 299-300, 201 N.W.2d 383, 387 (1972) (following *Dhaemers*).

Here, the district court set a specific date for the state to respond to appellant's petition for postconviction relief. Although the state failed to meet this deadline, the state offered an excuse for its failure to act in a timely fashion. And, more importantly, appellant admits that when the state contacted him and requested additional time to respond to the petition, appellant did not object to the state's request. Further, appellant is unable to demonstrate prejudice by the state's delay in filing its responsive pleading. The district court did not abuse its discretion by accepting the state's untimely response to appellant's petition for postconviction relief.

II.

This court reviews decisions of a postconviction court for an abuse of discretion. *Hale v. State*, 566 N.W.2d 923, 926 (Minn. 1997). A reviewing court will sustain the postconviction court's factual findings if they are supported by sufficient evidence in the record. *Cuypers v. State*, 711 N.W.2d 100, 103 (Minn. 2006). But statutory interpretation is a question of law subject to de novo review. *State v. Coauette*, 601 N.W.2d 443, 445 (Minn. App. 1999), *review denied* (Minn. Dec. 14, 1999).

Appellant argues that the district court erred by concluding that it did not have jurisdiction under Minn. Stat. § 590.01, to hear appellant's petition for postconviction relief. But as an initial matter, we note that the United States Supreme Court has

cautioned against the misuse of the word "jurisdictional." *Kontrick v. Ryan*, 540 U.S. 443, 454, 124 S. Ct. 906, 915 (2004). In *Kontrick*, the Court noted that "[c]ourts, including this Court . . . have more than occasionally [mis]used the term 'jurisdictional[.]' . . . Clarity would be facilitated if courts and litigants used the label 'jurisdictional' . . . only for prescriptions delineating the classes of cases (subject-matter jurisdiction) and the persons (personal jurisdiction) falling within a court's adjudicatory authority." *Id* at 454–55, 124 S. Ct. at 915. Here, the issue is whether the Postconviction Remedy Act applies to individuals who were found guilty of a petty misdemeanor. Because the issue does not describe the classes of cases or the persons within the district court's adjudicatory authority, the issue is not one of jurisdiction.

The state argues that because a petty misdemeanor is not a "crime," and the Postconviction Remedy Act applies only to individuals convicted of a crime, the district court properly dismissed appellant's petition for postconviction relief. We agree. The object of statutory interpretation is to determine and give effect to the legislature's intent. Minn. Stat. § 645.16 (2010). When the legislature's intent is clearly discernible from a statute's plain and unambiguous language, the court interprets the language according to its plain meaning without resorting to other principles of statutory construction. *State v. Kelbel*, 648 N.W.2d 690, 701 (Minn. 2002).

The Postconviction Remedy Act provides that:

> Except at a time when direct appellate relief is available, a person *convicted of a crime* . . . may commence a proceeding to secure relief by filing a petition in the district court in the county in which the conviction was had 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 (emphasis added). A "crime" is defined as "conduct which is prohibited by statute and for which the actor may be sentenced to imprisonment, with or without a fine." Minn. Stat. § 609.02, subd. 1 (2008). A "petty misdemeanor" is defined as an "offense which is prohibited by statute, which *does not constitute a crime* and for which a sentence of a fine of not more than $300 may be imposed." Minn. Stat. § 609.02, subd. 4a (2008) (emphasis added).

Recently, this court considered the question of whether postconviction relief is available to an individual convicted of a petty misdemeanor. *Freeman v. State*, __ N.W.2d __, __, No. A11-215, slip op. at 3 (Minn. App. Sept. 26, 2011). In *Freeman*, the appellant was found guilty of speeding, a petty misdemeanor. *Id*. The appellant subsequently moved for postconviction relief, which was denied. *Id.* On appeal, this court affirmed, concluding that postconviction relief is "not be available to an individual convicted of a petty-misdemeanor offense, because such an offense is explicitly defined as not constituting a crime." *Id.* at *4–5; *see also Morris v. State*, 765 N.W.2d 78, 82 n.1 (Minn. 2009) (noting that a petty misdemeanor "does not constitute a crime").

Here, appellant was found guilty of not wearing a seat belt in violation of Minn. Stat. § 169.686, subd. 1(a). A seat-belt violation is a petty misdemeanor because it is "subject to a fine of $25," and no jail time may be imposed. *See* Minn. Stat. § 169.686, subd. 1(b) (Supp. 2009); *see also* Minn. Stat. § 609.02, subd. 4a. Because Minn. Stat. § 609.02 subd. 4a unambiguously states that a petty misdemeanor "does not constitute a

crime," and Minn. Stat. § 590.01, subd. 1 specifically applies to individuals "convicted of a crime," we conclude that the Postconviction Remedy Act does not apply to appellant.

Appellant argues that the Postconviction Remedy Act applies to him because "other district courts have heard postconviction petitions after petty misdemeanor convictions," and this court has heard appeals arising out of these postconviction petitions. But the case on which appellant relies is unpublished, and therefore is not binding authority. *See* Minn. Stat. § 480A.08, subd. 3(c) (2010) (stating that unpublished opinions of the court of appeals are not precedent). Moreover, in *O'Neal v. State*, A05-2330 (Minn. App. Oct. 17, 2006), the unpublished case cited by appellant, the issue of whether the Postconviction Remedy Act applies to individuals found guilty of petty misdemeanors was neither raised nor decided. Accordingly, *O'Neal*, has no persuasive or precedential value with respect to the argument raised by appellant. *See Chapman v. Dorsey*, 230 Minn. 279, 288, 41 N.W.2d 438, 443 (1950) (holding that an appeal that decides a case on the merits but does not address appellate jurisdiction is not precedential authority on the jurisdictional issue); *see also State v. Verschelde*, 585 N.W.2d 429, 431 (Minn. App. 1998).

Finally, we note that appellant was not denied the right to appeal his conviction. *See State v. Tessema*, 515 N.W.2d 626, 626 (Minn. App. 1994) (stating that a petty misdemeanor is treated as a misdemeanor for purposes of appeal); Minn. R. Crim. P. 28.02, subd. 4(b) (stating that in misdemeanor cases, an appeal must be filed within 10 days after final judgment or after entry of the order being appealed). He simply failed to

timely appeal his conviction. Therefore, we conclude that the district court did not err by denying appellant's petition for postconviction relief.

III.

A motion to strike may be denied as moot if this court's decision and analysis does not rely on the contested documents. *See Drewitz v. Motorwerks, Inc.*, 728 N.W.2d 231, 233 n.2 (Minn. 2007) (denying motion to strike as moot when appellate court did not rely on contested documents in reaching decision). Because the challenged material here does not affect our decision, we deny the motion to strike.

Affirmed; motion denied.