STATE OF MINNESOTA
IN COURT OF APPEALS
A11-25

Jerry Dean Duffney, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed September 6, 2011
Reversed and remanded
Ross, Judge

Washington County District Court
File No. 82-CR-08-620

David W. Merchant, Chief Appellant Public Defender, Melissa V. Sheridan, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Peter J. Orput, Washington County Attorney, Michael C. Hutchinson, Assistant County Attorney, Stillwater, Minnesota (for respondent)

Considered and decided by Stauber, Presiding Judge; Stoneburner, Judge; and Ross, Judge.

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

ROSS, Judge

Jerry Dean Duffney's public defender filed Duffney's postconviction petition in the wrong county on the last day of the two-year statute-of-limitations period for filing

for postconviction relief. The district court held that Duffney's petition to withdraw his guilty plea was time barred. Duffney challenges the summary dismissal of his petition, arguing that the two-year statute of limitations for filing a postconviction petition is unconstitutional when it deprives him of the right to one review under the Minnesota Constitution. He argues alternatively that his case should be remanded for consideration of the interests-of-justice exception to the statute of limitations. Because Duffney properly invoked the interests-of-justice exception and because the district court erroneously interpreted the statutory time limit for application of the exceptions, we reverse and remand.

FACTS

Jerry Duffney must register with the state as a predatory offender. In December 2007, police investigating a burglary arrived at the address where Duffney was registered. A resident informed them that Duffney did not live there and had recently entered an in-patient chemical dependency treatment program. On January 17, 2008, the state charged Duffney in Washington County with failing to register in violation of Minnesota Statutes section 243.166 (2006). The criminal complaint did not list the specific statutory subdivision that Duffney allegedly violated, but its description of the offense mirrored the registration requirements for offenders having no primary address. *See* Minn. Stat. § 243.166, subd. 3a (2006). Duffney pleaded guilty. He was sentenced on August 6, 2008, and did not appeal.

The district court later revoked Duffney's probation, and he requested appointed counsel from the state public defender's office to file a postconviction petition alleging that his guilty plea was invalid. Duffney's attorney prepared a petition for relief challenging Duffney's conviction and sentence. He mailed it to the Dakota County District Court on August 5, 2010. But Duffney had been convicted in Washington County. Dakota County informed Duffney's counsel of the filing mistake, and he filed the petition in Washington County on August 17, 2010. Because Minnesota Statutes section 590.01, subdivision 4(a) imposes a two-year time limit from the sentencing for filing a postconviction petition when there is no direct appeal, Duffney's August 17 petition was 11 days late.

The district court therefore dismissed the postconviction petition as untimely. Duffney appeals.

D E C I S I O N

Duffney challenges the district court's summary dismissal of his postconviction petition. This court reviews de novo legal decisions of the postconviction court. *Arredondo v. State*, 754 N.W.2d 566, 570 (Minn. 2008). And we rely on the postconviction court's factual findings if they are supported by sufficient evidence. *Leake v. State*, 737 N.W.2d 531, 535 (Minn. 2007).

Duffney argues primarily that the two-year statute of limitations for filing a postconviction petition is unconstitutional when it deprives defendants of their right to one review under the Minnesota Constitution. Generally, a party must raise a constitutional challenge in the district court to preserve it for appeal. *See C.O. v. Doe*, 757

N.W.2d 343, 349 n.8 (Minn. 2008) (refusing to consider constitutional challenge to statute when argument was not raised before the district court). We decline to address Duffney's constitutional challenge because he did not raise the issue before the district court.

Duffney alternatively contends that he qualifies for an exception to the time bar. "No petition for postconviction relief may be filed more than two years after . . . entry of judgment of conviction or sentence if no direct appeal is filed." Minn. Stat. § 590.01, subd. 4(a)(1) (2010). Duffney was sentenced on August 6, 2008. His petition for postconviction relief was filed two years and eleven days later, on August 17, 2010. A postconviction court may hear a petition that is otherwise time-barred if "the petitioner establishes to the satisfaction of the court that the petition is not frivolous and is in the interests of justice." Minn. Stat. § 590.01, subd. 4(b)(5) (2010). If a petitioner broadly invokes an exception to the two-year statute of limitations, the district court must exercise its discretion to consider application of the exception. *Roby v. State*, 787 N.W.2d 186, 191 (Minn. 2010). Duffney expressly raised the interests-of-justice exception in his reply to the state's answer to his petition for relief, emphasizing that his petition was untimely only due to his lawyer's actions. In doing so, he sufficiently invoked the exception.

The district court properly recognized that there are exceptions to the time bar. But it erroneously calculated the time limit to invoke those exceptions. A petition may fall within an exception to the limitations period if it is filed within two years of the date that the petitioner's claim arose. Minn. Stat. § 590.01, subd. 4(c) (2010). "Claim" refers to the event that supports the exception that the petitioner has asserted. *Rickert v. State*, 795

N.W.2d 236, 242 (Minn. 2011) (applying subdivision 4(c) and stating that an interests-of-justice claim due to late transcript delivery arose either when the transcript was ordered or when it was delivered and explaining that using either date, the petition was filed "within two years of the date the interests-of-justice claim arose"). The district court held that it *could not* consider any exception to the time bar because Duffney's exception "claim" arose on the date of the sentence. The district court's reasoning is flawed because it renders the exception provision meaningless. Its conclusion would require that anyone invoking an exception to the two-year limit must do so within the original two-year limitation period.

Duffney's assertion that "the petition is not frivolous . . . [and] is in the interests of justice" arose as soon as the facts that support his claim arose—either when Duffney's attorney sent the letter to the wrong court (August 5) or when his counsel learned he had made the mistake (on or before August 17). In either scenario, the petition was filed within two years of the mistake. The district court does not properly exercise its discretion in reviewing the interests-of-justice exception when it erroneously interprets the statute. *See Roby*, 787 N.W.2d at 191 (remanding when postconviction court erred in interpreting the postconviction statute). On remand, the district court must consider Duffney's interests-of-justice claim.

Because the postconviction court misapplied the law, we need not reach the question of whether Duffney's claim in fact satisfies the exception. Duffney also contends that his postconviction counsel provided him with ineffective assistance due to his failure to file the petition within the limitation period. Because we reverse and remand

for further proceedings to consider the interests-of-justice exception, we do not reach this argument.

Reversed and remanded.