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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-2116**

Manan Chimanbhai Patel,
petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed August 5, 2013
Affirmed
Hudson, Judge**

Olmsted County District Court
File No. 55-K6-02-000583

Kara M. Lynum, Lynum Law Office, PLLC, St. Paul, Minnesota (for appellant)

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

Mark A. Ostrem, Olmsted County Attorney, James P. Spencer, Assistant County Attorney, Rochester, Minnesota (for respondent)

Considered and decided by Hudson, Presiding Judge; Schellhas, Judge; and Bjorkman, Judge.

UNPUBLISHED OPINION

HUDSON, Judge

Petitioner challenges the district court's summary denial of his petition for postconviction relief, arguing that the two-year limitation for seeking postconviction

relief does not apply because the United States Supreme Court established a new interpretation of constitutional law that is retroactively applicable to his case in *Padilla v. Kentucky*, 559 U.S. 356, 130 S. Ct. 1473 (2010), and the interests of justice require review of his claim. Because petitioner has failed to establish that any exception to the time limitation on seeking postconviction review applies, we affirm.

FACTS

In 2003, petitioner Manan Patel entered an *Alford* plea to charges of second-degree burglary based on allegations that he entered a woman's Rochester hotel room with a master key, walked up to the edge of her bed despite being told he did not have permission to enter, and asked her if she wanted to have sex with him. At his plea hearing, Patel confirmed on the record that he had received some advice about the likely consequences of his plea; that he understood that nobody was making promises with regard to his immigration status; and that the prosecutor, the judge, and his attorney had no control over those consequences. He did not state directly that his attorney had informed him about the immigration consequences of his plea.¹

Considering Patel's sentencing request based on his status as an electrical engineering student at the University of Minnesota, the district court sentenced him to 18 months, staying imposition of sentence for up to ten years, placing him on probation, and ordering him to serve weekend jail time. In 2011, the district court discharged Patel early

¹ Although the state argued in district court that the record shows that petitioner was adequately informed of the immigration consequences of his plea, the state has not briefed this argument on appeal, and we therefore decline to consider it. *See State v. Carufel*, 783 N.W.2d 539, 545 n.3 (Minn. 2010) (declining to address theory not briefed on appeal).

from probation, ordered his conviction deemed a misdemeanor, and ordered restoration of his civil rights.

In June 2012, Patel filed a petition for postconviction relief, alleging that he was entitled to relief based on the application of *Padilla v. Kentucky*, 559 U.S. 356, 130 S. Ct. 1473, which established that the Sixth Amendment right to counsel includes the right to be informed about the deportation consequences of a guilty plea. He asserted that his plea was not intelligently made because his attorney had not furnished him specific advice about the immigration consequences of his plea, and he did not learn of those consequences until 2011, when a different attorney informed him that attempting to renew his expiring legal-permanent-resident card would result in removal proceedings. The district court summarily denied his petition, finding that the petition, files, and records conclusively showed that he had failed to state any grounds on which relief may be granted. *See* Minn. Stat. § 590.01, subd. 1 (2012). This appeal follows.

D E C I S I O N

A person who is convicted of a crime and who claims that the conviction violated his or her rights may file a petition for postconviction relief with the district court. Minn. Stat. § 590.01, subd. 1(1). Denial of a petition without a hearing is appropriate if “the petition and the files and records of the proceeding conclusively show that the petitioner is entitled to no relief.” Minn. Stat. § 590.04, subd. 1 (2012). This court reviews the district court’s summary denial of a postconviction petition for an abuse of discretion and determines whether sufficient evidence supports the district court’s findings. *Powers v.*

State, 695 N.W.2d 371, 374 (Minn. 2005). But we review de novo a postconviction court’s legal determinations. *Schneider v. State*, 725 N.W.2d 516, 520 (Minn. 2007).

Minnesota law provides that, absent listed exceptions, a postconviction petition may not be “filed more than two years after the later of . . . the entry of judgment of conviction or sentence.” Minn. Stat. § 590.01, subd. 4(a)(1) (2012). Patel pleaded guilty to second-degree burglary and was convicted in 2002. Therefore, unless he is able to show that an exception to the two-year time limitation applies, his petition must be considered untimely. *See id.*

Patel argues that the district court erred by denying his petition for postconviction relief without a hearing and failing to evaluate his claim that he was entitled to withdraw his guilty plea on the ground of manifest injustice. *See* Minn. R. Crim. P. 15.05, subd. 1 (stating that a defendant may withdraw a guilty plea at any time if withdrawal is necessary to correct a manifest injustice). He maintains that, based on the application of *Padilla*, he received constitutionally deficient representation because his attorney at the time of the plea hearing failed to fully inform him about the immigration consequences of his plea. Therefore, he argues that his petition is not time-barred because it falls within the exception for a “new interpretation of federal or state constitutional or statutory law by either the United States Supreme Court or a Minnesota appellate court,” which “is retroactively applicable” to his case. Minn. Stat. § 590.01, subd. 4(b)(3) (2012).

Both the United States Supreme Court and the Minnesota Supreme Court have held that *Padilla* announced a new rule that does not apply retroactively. *Chaidez v. United States*, 133 S. Ct. 1103, 1107 (2013); *Campos v. State*, 816 N.W.2d 480, 499

(Minn. 2012). At the time of Patel’s plea, Minnesota law did not require counsel to inform him of the immigration consequences of his plea. *See Alanis v. State*, 583 N.W.2d 573, 575, 578–79 (Minn. 1998). Therefore, his argument for a time-limitation exception based on the retroactive application of *Padilla* must fail. *Campos*, 816 N.W.2d at 485.

Patel argues in the alternative that his petition is not time-barred because the interests-of-justice exception to the timeliness requirement applies. *See* Minn. Stat. § 590.01, subd. 4(b)(5) (2012) (stating exception to time limitation if “the petitioner establishes to the satisfaction of the court that the petition is not frivolous and is in the interest of justice”); *see also Gassler v. State*, 787 N.W.2d 575, 586 (Minn. 2010) (stating that, under this exception, petition must not be frivolous and must require a hearing in the interest of justice). He asserts that he would not have pleaded guilty had he been informed of the deportation consequences of his plea, which will result in alienation from his family and the loss of his long-term job. But the interests-of-justice exception to the two-year time bar on seeking postconviction relief applies only in “exceptional and extraordinary situations.” *Carlton v. State*, 816 N.W.2d 590, 607 (Minn. 2012) (quotation omitted). Although Patel has alleged serious immigration consequences arising from his plea, we cannot conclude that his situation is so “exceptional and extraordinary” that it requires the district court to apply the interests-of-justice exception. *See id.*

In addition, a postconviction petition seeking relief under the exceptions provided in Minn. Stat. § 590.01, subd. 4(b) (2012), “must be filed within two years of the date the claim arises.” Minn. Stat. § 590.01, subd. 4(c) (2012). Patel argues that he timely sought

postconviction relief within two years of his actual knowledge of the immigration consequences of his plea, which occurred in 2011. But the Minnesota Supreme Court has held that, under an objective standard, a claim based on a statutory exception arises “when the petitioner knew *or should have known* that he had a claim.” *Sanchez v. State*, 816 N.W.2d 550, 560 (Minn. 2012) (emphasis added). In *Sanchez*, the supreme court reiterated that “interests of justice” refers to the reason that the petition was filed after the two-year time limitation, “not the substantive claims in the petition.” *Id.* at 557. When the injustice is the same as the substance of the petition, “and the substance of the petition is based on something that happened before or at the time a conviction became final,” the injustice “cannot have caused the petitioner to miss the 2-year time limit in subdivision 4(a).” *Id.* Applying these principles, the substance of Patel’s claim under the interest-of-justice exception was based on occurrences at the time he pleaded guilty in 2003. That is the same date that his claim arose under the “knew-or-should-have-known” standard. We therefore conclude that Patel’s postconviction claims are time-barred.

We note that the district court summarily denied postconviction relief without addressing the time limitations of Patel’s postconviction claims. But our affirmance of the district court, based on the conclusion that his claims are time-barred, makes it unnecessary to further address their merits.

Affirmed.