

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-2252
A12-2254**

Ramiro Dejesus Maya, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed July 15, 2013
Affirmed
Willis, Judge***

Ramsey County District Court
File Nos. 62-K0-05-001121, 62-T0-05-012233

Barry A. Cattadoris, Cundy & Martin, L.L.C., Bloomington, Minnesota (for appellant)

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

John Choi, Ramsey County Attorney, Thomas R. Ragatz, Peter R. Marker, Assistant
County Attorneys, St. Paul, Minnesota (for respondent)

Considered and decided by Stauber, Presiding Judge; Hooten, Judge; and Willis,
Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

WILLIS, Judge

In these consolidated postconviction appeals, appellant challenges the postconviction court's order summarily denying postconviction relief, arguing that the court erred by concluding that his petitions were untimely. We affirm.

FACTS

In April 2002, appellant Ramiro Maya became a lawful permanent resident of the United States. In May 2005, Maya pleaded guilty to domestic assault and violation of a domestic-abuse no-contact order. Maya signed a plea petition stating: "I understand that if I am not a citizen of the United States, my plea of guilty to this crime may result in deportation, exclusion from admission to the United States or denial of naturalization as a United States citizen." In June 2005, the district court sentenced Maya on both convictions. Maya did not appeal his convictions.

In July 2012, Maya's permanent-resident card expired, and he filed petitions for postconviction relief on both convictions, seeking to withdraw his guilty pleas. Maya alleged that he was not advised of the immigration consequences of his plea, as required by Minn. R. Crim. P. 15.02. Maya requested an evidentiary hearing but did not provide the postconviction court with a transcript of his plea hearing. Without holding a hearing, the postconviction court concluded that Maya's petitions were untimely. This appeal follows.

DECISION

Maya argues that the postconviction court abused its discretion by summarily denying his petitions. “When reviewing a postconviction court’s decision, we examine only whether the postconviction court’s findings are supported by sufficient evidence.” *Lussier v. State*, 821 N.W.2d 581, 588 (Minn. 2012) (quotation omitted). We “will reverse a decision of a postconviction court only if that court abused its discretion.” *Leake v. State*, 737 N.W.2d 531, 535 (Minn. 2007). But we review issues of law de novo. *Id.*

A person convicted of a crime may file a petition for postconviction relief. Minn. Stat. § 590.01, subd. 1 (2010). But when no direct appeal is filed, as here, a petition for postconviction relief may not be filed more than two years after the later of the entry of judgment of conviction or the sentence, unless an exception applies. Minn. Stat. § 590.01, subd. 4(a)-(b) (2010). It is undisputed that to be timely, Maya’s petitions must satisfy an exception to the two-year time bar in section 590.01, subdivision 4(a).

First, Maya argues that his petitions fall within the new-interpretation-of-law exception to the two-year time bar. This exception applies when a “petitioner asserts a new interpretation of federal or state constitutional or statutory law by either the United States Supreme Court or a Minnesota appellate court” that the petitioner establishes is “retroactively applicable” to his case. *Id.*, subd. 4(b)(3).

Maya asserts that in *Campos v. State* the supreme court established a new rule of law concerning the immigration advisory required by Minn. R. Crim. P. Rule 15. 816 N.W.2d 480, 499-500 (Minn. 2012), *cert. denied*, 133 S. Ct. 938 (2013). Rule 15

requires that, before accepting a guilty plea, a judge must “ensure defense counsel has told the defendant and the defendant understands . . . [that] [i]f the defendant is not a citizen of the United States, a guilty plea may result in deportation, exclusion from admission to the United States, or denial of naturalization as a United States citizen.”¹ Minn. R. Crim. P. 15.01, subd. 1(6)(l); 15.02, subd. 1(3). In *Campos*, the appellant alleged, and the state conceded, that he did not receive the immigration advisory required by rule 15 and that this failure was a basis to permit withdrawal of his guilty plea. 816 N.W.2d at 499-500. The supreme court determined that “[b]ased on the unique facts of this case, where the State apparently concedes error and is not arguing that the error was waived, we remand the question of whether [appellant] is entitled to withdraw his plea due to lack of compliance with Rule 15.01, subd. 1(6)(l).” *Id.* at 500. The court did not announce a new rule of law concerning the rule 15 immigration advisory. Thus, Maya’s petition does not fall within the new-interpretation-of-law exception.

Second, Maya argues that his petitions fall within the interests-of-justice exception to the two-year time bar. This exception applies when “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). For this exception to apply, the petition for postconviction relief must be filed within two years after the claim arose. *Id.*, subd. 4(c) (2012); *Sanchez v. State*, 816 N.W.2d 550, 557-58 (Minn. 2012). A claim for

¹ The 2005 version of the rule 15 immigration advisory is substantively similar to the current version.

postconviction relief arises when the petitioner “knew or should have known that he had a claim.” *Sanchez*, 816 N.W.2d at 560.

Maya alleges that his claim arose in July 2012 when his permanent-resident card expired because he was then “on notice of a possible issue with his immigration status.” This argument is unavailing. In *Sanchez*, the supreme court stated that

the interests-of-justice exception is triggered by an injustice that *caused* the petitioner to miss the primary deadline in subdivision 4(a), not the *substance* of the petition. When the only injustice claimed is identical to 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 simply cannot have caused the petitioner to miss the 2-year time limit in subdivision 4(a), and therefore is not the type of injustice contemplated by the interests-of-justice exception in subdivision 4(b)(5).

Id. at 557.

Here, Maya alleges that an injustice occurred when he entered his guilty pleas in May 2005 without receiving the rule 15 immigration advisory. The injustice he claims and the substance of his petitions are the same, and the substance of his petitions is based on events that occurred at his plea hearing. Thus, Maya knew or should have known about his claim in May 2005 when he signed the plea petition and entered his guilty pleas. Because Maya did not seek postconviction relief until July 2012, his petitions do not fall within the interests-of-justice exception.

Maya also argues that his petitions were nevertheless timely filed under Minn. R. Crim. P. 15.05, subd. 1, which provides that a defendant may withdraw a guilty plea upon a timely motion and proof that withdrawal is necessary to correct a manifest injustice.

We disagree. Because Maya's petitions are untimely under section 590.01, they are untimely under rule 15.05. See *Lussier*, 821 N.W.2d at 586 n.2 (reaffirming *James v. State*, 699 N.W.2d 723, 728 (Minn. 2005), and stating "that a motion to withdraw a guilty plea made after sentencing must be raised in a petition for postconviction relief and the timeliness of such a motion is treated the same as the manner in which delays in filing petitions for postconviction relief are treated") (quotation marks omitted).

In addition to being untimely, Maya's postconviction petitions are meritless. A district court must hold an evidentiary hearing on a postconviction petition unless "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). "Allegations in a postconviction petition must be more than argumentative assertions without factual support." *Davis v. State*, 784 N.W.2d 387, 392 (Minn. 2010) (quotation omitted).

When Maya pleaded guilty, he signed a plea petition that is in the record and includes the following advisory: "I understand that if I am not a citizen of the United States, my plea of guilty to this crime may result in deportation, exclusion from admission to the United States or denial of naturalization as a United States citizen." And Maya was represented by counsel. "We presume that, prior to entry of a guilty plea, defense counsel reviews the plea petition with the defendant and the defendant understands its terms." *State v. Byron*, 683 N.W.2d 317, 323 (Minn. App. 2004), *review denied* (Minn. Sept. 29, 2004). Maya did not provide the postconviction court with a transcript of his plea hearing. He offered only a self-serving affidavit, in which he states that he was not advised of the immigration consequences of pleading guilty. Maya's

affidavit contradicts the plea petition and is insufficient to establish, as he alleges, that he was not advised of the immigration consequences of pleading guilty or even to create an issue of fact that would require an evidentiary hearing.

We conclude that the postconviction court did not abuse its discretion by summarily denying Maya's postconviction petitions.

Affirmed.