STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0082

Harry Edward Bunkley, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed July 1, 2013
Affirmed
Schellhas, Judge

Hennepin County District Court
File No. 27-CR-05-054047

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

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

Michael O. Freeman, Hennepin County Attorney, Lee W. Barry, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

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

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

SCHELLHAS, Judge

Appellant challenges the denial of his postconviction petition to reduce his sentence for second-degree murder, contending that (1) the district court should have

considered the interests-of-justice exception to the two-year statute of limitations; (2) he is constitutionally entitled to one review of his sentence; and (3) he was entitled to a lesser sentence based upon mitigating factors. We affirm.

FACTS

Based on facts set forth in the parties' briefs, in the three weeks preceding August 8, 2005, Orson Matlock and Ira Brown discussed robbing R.A., the owner of a Minneapolis construction company. Brown contacted appellant Harry Edward Bunkley and asked him to pick up Brown and his brother, Detroit Davis, Jr., and drive them to the construction company in his van. On August 8, Bunkley picked up Brown and Davis in his van, thinking that the purpose was to "scope the place out" for a future robbery. The plans changed when Davis decided to rob R.A.

Upon arrival at the construction company, Brown exited Bunkley's van and got into Matlock's car. Matlock entered the construction-company building to determine whether R.A. was at work. While Matlock was inside the building, Brown called him, using Bunkley's cell phone, to ask if "'they were there.'" Matlock responded, "yes," and Bunkley and Davis then exited Matlock's car. Davis entered the construction-company building, and, shortly afterward, Bunkley heard gunshots and saw Davis exit the building, bleeding from his head.[1] Davis and Bunkley then got into Bunkley's van, and Bunkley drove to a Minneapolis home, where Davis removed his clothes and gave them to Bunkley for disposal.

[1] Although Davis testified at his trial that Bunkley also entered the construction-company offices and participated in the robbery, Bunkley denies that he did so.

When police arrived at the scene, they discovered that R.A. and one of his employees, P.M., were dead. A witness told the police that, after the shootings, two men drove away from the scene in a van with the license plate "Treeez." Police identified the registered owner of the van as T.T.B. with a Saint Paul address. Officers went to the address and found the van.

The police questioned Bunkley at least nine times over the course of five days, and he eventually admitted his role in the crimes. A grand jury indicted Bunkley of two counts of first-degree murder and two counts of second-degree murder. Respondent State of Minnesota and Bunkley entered a plea agreement whereby the state agreed to amend the indictment to one count of second-degree murder in violation of Minn. Stat. §§ 609.19, subd. 1(1), 609.11, 609.106, subd. 2(2), and 609.05 (2004); Bunkley agreed to plead guilty to second-degree murder and to cooperate with the state and testify at his codefendants' trials; and the state agreed to request a 360-month sentence.

At his sentencing hearing, Bunkley argued for a sentence of less than 360 months, noting that he had testified against Davis at Davis's trial and that Brown and Matlock, who knew the victims and planned the robbery, received sentences of 225 months and 300 months, respectively.[2] Bunkley also argued that his role in the crimes was minimal and that he lacked any violent-crime history. Consistent with the plea agreement, the state requested a 360-month sentence and objected to a lesser sentence, noting that Bunkley admitted his role in the crimes only after police questioned him at least nine times;

[2] Davis received life imprisonment for the murder of R.A. and an additional 240 months for the murder of P.M. *State v. Davis*, 735 N.W.2d 674, 677 n.1 (Minn. 2007).

Matlock also testified against Davis; and Davis testified at his own trial, contrary to Bunkley, that Bunkley had entered the construction-company building and participated in the crimes. The state noted that the sentencing guidelines called for a presumptive sentence of 312 to 439 months, with a median sentence of 366 months. The district court sentenced Bunkley to 360 months' imprisonment.

Approximately six years later, Bunkley filed a pro se postconviction petition for relief. He later filed an amended petition with the assistance of counsel, requesting a lesser sentence of 195 months. The district court denied the petition as untimely, concluding that Bunkley had no constitutional right to review and that no substantial and compelling circumstances warranted a lesser sentence. This appeal follows.

D E C I S I O N

Standard of Review

When reviewing the decision of the postconviction court, we review questions of law de novo. *Arredondo v. State*, 754 N.W.2d 566, 570 (Minn. 2008). Appellate courts "afford great deference to a district court's findings of fact and will not reverse the findings unless they are clearly erroneous. The decisions of a postconviction court will not be disturbed unless the court abused its discretion." *Dukes v. State*, 621 N.W.2d 246, 251 (Minn. 2001) (citation omitted).

Interests-of-Justice Exception

When direct appellate relief is not available, a person convicted of a crime "'may commence a proceeding to secure relief by filing a petition in the district court'" for postconviction relief. *Rickert v. State*, 795 N.W.2d 236, 239 (Minn. 2011) (quoting Minn.

Stat. § 590.01, subd. 1 (2010)). But "[n]o petition for postconviction relief may be filed more than two years after the later of: (1) the entry of judgment of conviction or sentence if no direct appeal is filed; or (2) an appellate court's disposition of petitioner's direct appeal." Minn. Stat. § 590.01, subd. 4(a) (2010). As a result, a petition for postconviction relief filed after the two-year statute of limitations runs is generally time barred. *Rickert*, 795 N.W.2d at 239.

The district court sentenced Bunkley on June 20, 2006, and he filed no direct appeal. Under Minn. Stat. § 590.01, subd. 4(a) (2010), the two-year time limitation for Bunkley to file a petition for postconviction relief expired on June 23, 2008.[3] Bunkley did not file his pro se petition until April 27, 2012, and therefore, unless he asserts and establishes an exception to the statute of limitations, his petition is time barred. *See id.* Bunkley asserts the "interests of justice" exception. *See* Minn. Stat. § 590.01, subd. 4(b)(5) (2010) (stating that "a court may hear a petition for postconviction relief if . . . the petitioner establishes to the satisfaction of the court that the petition is not frivolous and is in the interests of justice").

The interests-of-justice exception provided in paragraph (b) has a two-year statute of limitations. Minn. Stat. § 590.01, subd. 4(c) (2010) ("Any petition invoking an

[3] The two-year statute of limitations commenced on June 20, 2006. When the time for performing an act is fixed by law, the time "shall be computed so as to exclude the first and include the last day of the prescribed or fixed period or duration of time." Minn. Stat. § 645.15 (2010); *see also State v. Wertheimer*, 781 N.W.2d 158, 161–62 (Minn. 2010) (explaining that Minn. Stat. § 645.15 applies to filing a cause of action before the statute of limitations expires). In computing the two-year period, we exclude June 20, 2006 (the first day), and include June 21, 2008 (the last day). Because June 21, 2008, was a Saturday, the time period ends on the following non-holiday, non-weekend day and therefore ended on Monday, June 23, 2008.

exception provided in paragraph (b) must be filed within two years of the date the claim arises."); *see also Sanchez v. State*, 816 N.W.2d 550, 558 (Minn. 2012). The limitations period begins to run when the appellant "knew or should have known" that he had a claim for postconviction relief. *Sanchez*, 816 N.W.2d at 560. Specifically, "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." *Id.* at 557. When the injustice is identical to the substance of the petition, and the substance of the petition is based on an issue known at sentencing, "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*.

Here, the substance of Bunkley's petition is the duration of his sentence in comparison with the sentences of his codefendants, his lack of violent-crime history, his claimed minimal role in the crimes, and his subsequent cooperation with the state. These arguments are identical to the arguments that Bunkley raised at his sentencing hearing on June 20, 2006. Because Bunkley knew of his current claims for postconviction relief on June 20, 2006, the statute of limitations on the interests-of-justice exception began to run on June 20, 2006, and expired on June 23, 2008. Consequently, Bunkley's postconviction petition filed on April 27, 2012, was untimely.

Legislature's Intent

Bunkley contends that applying a two-year statute of limitations, as proscribed by Minn. Stat. § 590.01, subd. 4(c), to the interests-of-justice exception under subdivision 4(b)(5), is inconsistent with the legislature's intent regarding the exception.

He argues that the intent of the interests-of-justice exception is to "provide convicted defendants additional time to file a petition challenging a conviction if doing so is in the interests of justice." We disagree.

An appellate court reviews statutory-interpretation questions de novo, *State v. Wilson*, ___ N.W.2d ___, ___, 2013 WL 2219128, at *3 (Minn. May 22, 2013), with the "goal . . . [of] ascertain[ing] and giv[ing] effect to the Legislature's intent," *Sanchez*, 816 N.W.2d at 556. Bunkley's argument is essentially identical to the appellant's argument in *Sanchez*, 816 N.W.2d at 557. In *Sanchez*, the appellant argued that there is an

> irreconcilable conflict between subdivisions 4(b)(5) and 4(c) because if subdivision 4(c) applies when the claim raised in the petition for postconviction relief relates to an error that occurred before the conviction became final and more than 2 years have passed since the conviction became final, there can be no timely-filed petitions based on the interests-of-justice exception in subdivision 4(b)(5).

816 N.W.2d at 557. The supreme court expressly rejected this argument. *See id.* at 557−58 (stating that "there is no conflict between subdivisions 4(b)(5) and 4(c)" and holding that the two-year time limit in subdivision 4(c) applies to subdivision 4(b)(5) interests-of-justice claims). Therefore, in this case, the district court properly rejected this argument and properly denied Bunkley's postconviction petition for relief as untimely.

Due-Process Right to One Review

Bunkley contends that section 590.01, subdivision 4(c), is unconstitutional if construed to render his petition time barred because it would then deny him his right to one review, which he argues that due process demands. We review the constitutionality

of a statute and alleged due-process violations de novo. *Carlton v. State*, 816 N.W.2d 590, 611 (Minn. 2012).

The district court rejected Bunkley's argument based on *Carlton*, 816 N.W.2d 590. In his appellate brief, Bunkley raises arguments identical to those raised in *Carlton* and *Sanchez*. Specifically, as in *Sanchez*, Bunkley argues that the time limits, as applied to him, unconstitutionally deny him his right to one review of his criminal conviction under the Minnesota Constitution. *See Sanchez*, 816 N.W.2d at 563. In *Sanchez*, the supreme court stated that it "considered and fully rejected an identical claim in *Carlton v. State*, 816 N.W.2d 590, 610−17 (Minn. 2012)." *Id.* Furthermore, "any right to review is not unlimited and, like other constitutional rights, can be forfeited and subjected to reasonable legislative limitations." *Carlton*, 816 N.W.2d at 615. The *Carlton* court stated that "the time limit in Minn. Stat. § 590.01, subd. 4(a), is constitutional as applied to Carlton, because even if the Due Process Clause of the Minnesota Constitution provided Carlton a right to one review, the 2-year time limitation in subdivision 4(a) is a reasonable limitation on the alleged right." *Id*. at 616.

Consequently, Bunkley's identical due-process argument must fail. Bunkley is not entitled to one review of his conviction after his rights to direct appeal and postconviction relief have expired. His failure to bring a petition for postconviction relief prior to the expiration of the two-year statute of limitations in section 590.01 was therefore a proper reason for the district court to deny Bunkley's petition and did not violate his due-process rights.

Merits of the Postconviction Petition

Because we hold that Bunkley's postconviction petition for relief was untimely and that he is not constitutionally entitled to one review of his conviction, we need not address the merits of Bunkley's postconviction petition, which the district court properly denied.

Affirmed.