

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

2022 ND 80

Joseph Daniel Moncada,

Petitioner and Appellant

v.

State of North Dakota,

Respondent and Appellee

No. 20210338

Appeal from the District Court of Grand Forks County, Northeast Central
Judicial District, the Honorable John A. Thelen, Judge.

AFFIRMED.

Per Curiam.

Laura C. Ringsak, Bismarck, N.D., for petitioner and appellant; submitted on
brief.

Carmell F. Mattison, Assistant State's Attorney, Grand Forks, N.D., for
respondent and appellee; submitted on brief.

Moncada v. State
No. 20210338

Per Curiam.

[¶1] Joseph Moncada appeals from an order summarily dismissing his application for postconviction relief. In 2009, Moncada was found guilty of two counts of murder and two counts of conspiracy to commit murder. On September 14, 2021, Moncada filed a motion the court treated as an application for postconviction relief. Because the application was filed more than two years after his conviction became final, he must establish an exception under N.D.C.C. § 29-32.1-01(3) to avoid dismissal for untimeliness. Moncada argues the new interpretation of state law exception is satisfied by our decision in *State v. Swanson*, 2019 ND 181, 930 N.W.2d 645, declaring conspiracy to commit a “knowing” murder as a non-cognizable offense. Moncada requests his conspiracy to commit murder charges be vacated. *Swanson* was published on July 11, 2019. Therefore, we conclude the district court properly dismissed his application as untimely because Moncada did not file his application for postconviction relief within two years of the effective date of *Swanson*. See *Hieb v. State*, 2016 ND 146, ¶ 13, 882 N.W.2d 724 (denying relief because petitioner did not file his application within two years of the effective date of this Court’s decision in *State v. Borner*, 2013 ND 141, 836 N.W.2d 383, declaring conspiracy to commit extreme indifference murder is a non-cognizable offense). We summarily affirm under N.D.R.App.P. 35.1(a)(7).

[¶2] Jon J. Jensen, C.J.
Gerald W. VandeWalle
Daniel J. Crothers
Lisa Fair McEvers
Jerod E. Tufte