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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-0203**

Akeem Almahdi Pendleton, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed November 21, 2016
Affirmed
Halbrooks, Judge
Concurring specially, Johnson, Judge**

Hennepin County District Court
File No. 27-CR-94-111239

A.L. Brown, Capitol City Law Group, LLC, St. Paul, Minnesota (for appellant)

Lori Swanson, Attorney General, St. Paul, Minnesota

Michael O. Freeman, Hennepin County Attorney, Kelly O'Neill Moller, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Reilly, Presiding Judge; Halbrooks, Judge; and Johnson, Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant challenges the district court's denial of his postconviction petition seeking a declaration of eligibility for exoneration compensation under Minn. Stat.

§ 590.11 (2014), the Minnesota Imprisonment and Exoneration Remedies Act, arguing that (1) he is exonerated and (2) he is entitled to a hearing wherein he could establish his innocence. We affirm.

FACTS

On December 10, 1994, appellant Akeem Pendleton and his fiancée, L.W., were in a duplex in Minneapolis. L.W.'s cousin, T.C., went to the duplex that evening, and an argument ensued between L.W. and T.C. about L.W.'s relationship with Pendleton. T.C. punched Pendleton in the eye, causing him to bleed. Pendleton asked T.C. to leave, but T.C. refused. Pendleton then grabbed a shotgun out of the ceiling tiles. T.C. lunged at Pendleton, and they both struggled for control of the gun. Pendleton ultimately shot T.C. in the shoulder. L.W. and Pendleton testified at trial that T.C. had a knife in his hand when he lunged at Pendleton. Another bystander in the apartment testified that he did not see a knife, but he saw T.C. standing with his hand behind his back.

The state charged Pendleton with attempted second-degree murder, first-degree assault, and second-degree assault. At trial, Pendleton claimed that he acted in self-defense and in defense of his dwelling. The district court combined the jury instructions for self-defense and defense of dwelling, which ultimately required the jury to find Pendleton not guilty based on defense of dwelling if he acted out of fear of death or great bodily harm. The jury returned a verdict of not guilty of attempted second-degree murder and guilty of first- and second-degree assault. The district court sentenced Pendleton to 36 months in prison.

Pendleton appealed his convictions, arguing that the defense-of-dwelling jury instruction was “inaccurate and misleading.” The Minnesota Supreme Court concluded that the combined jury instruction did not properly state the law for defense of dwelling and reversed the conviction and remanded the case for a new trial. *See State v. Pendleton*, 567 N.W.2d 265, 269-71 (Minn. 1997).

Pendleton completed his prison sentence while his case was on appeal. The case is marked “Dismissed” in the district court records, but the source and nature of the dismissal are unknown. Pendleton filed a timely postconviction petition for an order declaring eligibility for exoneration compensation under Minn. Stat. § 590.11. The district court denied the petition without a hearing, concluding that Pendleton was not exonerated, he did not establish innocence, and he is ineligible for compensation. This appeal follows.

D E C I S I O N

I.

The Minnesota Imprisonment and Exoneration Remedies Act provides compensation to persons who served time in prison for crimes they did not commit. *See generally* Minn. Stat. §§ 611.362-.368 (2014). Prior to submitting a claim, a person must file a postconviction petition in district court for an order declaring eligibility for exoneration compensation. Minn. Stat. §§ 590.11, subd. 2, 611.362, subd. 1. Filing this petition is a multi-step process. *Back v. State*, 883 N.W.2d 614, 619-20 (Minn. App. 2016), *review granted* (Minn. Sept. 28, 2016). As “an initial eligibility requirement,” the petitioner must establish that he or she is exonerated as defined in Minn. Stat. § 590.11,

subd. 1. Failure to meet this requirement means that the petitioner is ineligible for further proceedings. *Id.* at 619. A person is exonerated if:

- (1) a court of this state:
 - (i) vacated or reversed a judgment of conviction on grounds consistent with innocence and the prosecutor dismissed the charges; or
 - (ii) ordered a new trial on grounds consistent with innocence and the prosecutor dismissed the charges or the petitioner was found not guilty at the new trial; and
- (2) the time for appeal of the order resulting in exoneration has expired or the order has been affirmed and is final.

Minn. Stat. § 590.11, subd. 1.¹

Pendleton argues that he is exonerated and that the district court erred by denying his postconviction petition because its interpretation of “consistent with innocence” is too narrow. We review the denial of a petition for postconviction relief for an abuse of discretion. *Riley v. State*, 819 N.W.2d 162, 167 (Minn. 2012). “A postconviction court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record.” *Id.* (quotation omitted). The district court held that Pendleton was not exonerated because the reversal of his convictions was not “on grounds consistent with innocence.” Interpretation of a statute is a question of law, which we review de novo. *State v. Riggs*, 865 N.W.2d 679, 682 (Minn. 2015). “The first step in

¹ In *Back*, we severed “and the prosecutor dismissed the charges” from Minn. Stat. § 590.11, subd. 1(1)(i) because it violated Back’s equal-protection rights under the Minnesota Constitution. 883 N.W.2d at 628. Because Pendleton’s conviction was reversed and the case was remanded for a new trial, the implications of our holding in *Back* do not apply in this case. *Pendleton*, 567 N.W.2d at 271; *see also* Minn. Stat. § 590.11, subd. 1(1)(ii).

statutory interpretation is to determine whether the statute is ambiguous on its face.” *State v. Jones*, 848 N.W.2d 528, 535 (Minn. 2014). Statutory language is ambiguous if it is subject to more than one reasonable interpretation. *Id.* In *Back*, we concluded that the phrase, “consistent with innocence,” was ambiguous because it could reasonably mean either “agrees with innocence” or “does not contradict innocence.” 883 N.W.2d at 620-21.

Pendleton urges us instead to conclude that a reversal is consistent with innocence if it is plausible that the petitioner did not commit the crime alleged or that the petitioner could plausibly secure a not-guilty verdict if retried. He asserts that the reversal of his conviction falls within this interpretation because the supreme court stated that he presented sufficient evidence to support his defense-of-dwelling theory. *See Pendleton*, 567 N.W.2d at 271. But this showing only entitles him to a jury instruction on the defense-of-dwelling theory. *See State v. Yang*, 774 N.W.2d 539, 559 (Minn. 2009) (“A party is entitled to a specific jury instruction if evidence exists at trial to support the instruction.”). Without deciding which reasonable interpretation of “consistent with innocence” the legislature intended, we conclude that the reversal of Pendleton’s conviction is not on grounds consistent with innocence under any reasonable interpretation of the phrase. *See Back*, 883 N.W.2d at 623 (refraining to resolve between two reasonable interpretations of “consistent with innocence” because it was not necessary to the disposition of the controversy).

In *Back*, we concluded that a conviction was reversed on grounds consistent with innocence under any reasonable interpretation of the phrase because the supreme court concluded that Back owed no legal duty to either protect the victim or control the criminal

actions of a third party and therefore could not be culpably negligent. *Id.* Here, Pendleton's conviction was reversed due to an improper jury instruction. *Pendleton*, 567 N.W.2d at 271. Unlike the reversal in *Back*, in which the supreme court held as a matter of law that an element of the charged offense could not be established, the supreme court did not hold that Pendleton was not criminally liable as a matter of law. *Id.* The record establishes that Pendleton grabbed a shotgun and shot T.C. in the shoulder. Although his testimony at a new trial would likely be that he acted to prevent the commission of a felony in his residence, a jury could freely discount it and return a guilty verdict, notwithstanding a proper defense-of-dwelling instruction.

Pendleton also argues the district court abused its discretion when it concluded that the record does not clearly establish that the prosecutor had dismissed the charges. Because Pendleton's convictions were reversed and remanded for a new trial, he must show that the prosecutor dismissed the charges in order to demonstrate that he is exonerated. Minn. Stat. § 590.11, subd. 1(1)(ii). If the district court orders the dismissal of a criminal complaint, it must state the reasons for the dismissal in a court order. Minn. Stat. § 631.21 (2014). A prosecutor may dismiss a complaint if the prosecutor "state[s] the reasons for the dismissal in writing or on the record." Minn. R. Crim. P. 30.01.

Here, court records indicate that the case was dismissed on February 2, 1998. The district court noted that the prosecutor's file stated, "Dismissed. No victim. [Pendleton] already served all of his time." Pendleton argues that the prosecutor must have dismissed the case because there is no evidence in the record that the district court dismissed the case

over the prosecutor's objection. But, similarly, there is no evidence that the prosecutor stated reasons for dismissing the case to the district court in writing or on the record.

Because Pendleton's conviction was not reversed on grounds consistent with innocence under any reasonable interpretation of the phrase and because the district court did not abuse its discretion when it determined that the record is not clear whether the prosecutor dismissed the charges, we conclude that Pendleton is not exonerated under Minn. Stat. § 590.11, subd. 1.

II.

Even if Pendleton is exonerated, the state contends that he is not entitled to exoneration compensation because the record and filings conclusively show that Pendleton cannot establish his innocence. We agree.

The district court denied Pendleton's petition, in part, because it concluded that he did not establish his innocence. "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). Only an exonerated petitioner who satisfies "the higher burden of proving innocence" is entitled to exoneration compensation. *Back*, 883 N.W.2d at 623-24; *see also* Minn. Stat. § 590.11, subd. 3. Innocence is established if: (1) the prosecutor joins the petition and "indicates that it is likely that the original complaint or indictment would not have been filed or sought or would have been dismissed with the knowledge of all of the circumstances" or (2) the prosecutor does not join the petition, the petitioner must establish innocence by demonstrating either that the "crime was not committed or that the crime was not

committed by the petitioner.” Minn. Stat. § 590.11, subd. 3. Because the prosecutor did not join Pendleton’s petition, Pendleton must demonstrate that the crime was not committed or that the crime was not committed by him.

Pendleton contends that he is entitled to a hearing where he would attempt to establish innocence. A district court must schedule a hearing on a petition for an order seeking eligibility for exoneration compensation unless “the petition and the files and records of the proceeding conclusively show that the petitioner is not eligible for compensation.” *Id.*, subd. 6.

Here, the district court did not hold a hearing because it concluded that the files and district court record conclusively demonstrate that Pendleton is not eligible for exoneration compensation. It determined that the success of Pendleton’s defense-of-dwelling theory depended on the fact-finder believing his self-defense testimony, which was questionable. To determine whether innocence is established, a district court may also consider additional evidence, including “acts by the petitioner that may have contributed to bringing about the conviction.” Minn. Stat. § 590.11, subd. 4. And the record establishes that Pendleton introduced a gun into the altercation, which was ultimately used to shoot T.C.

We conclude that even if Pendleton is exonerated under Minn. Stat. § 590.11, subd. 1, the district court’s conclusion that Pendleton did not establish his innocence and is not entitled to exoneration compensation is supported with sufficient evidence.

Affirmed.

JOHNSON, Judge (concurring specially)

I respectfully disagree with part I of the opinion of the court, which concludes that the district court correctly interpreted and applied subdivision 1 of section 590.11 of the Minnesota Statutes. We cannot determine that issue without resolving the ambiguity identified in *State v. Back*, 883 N.W.2d 614 (Minn. App. 2016), *review granted* (Minn. Sept. 28, 2016). If the phrase “on grounds consistent with innocence” means “agrees with innocence,” *see id.* at 621, the district court did not err because the supreme court’s reversal of Pendleton’s conviction and remand for a new trial does not necessarily mean that he is innocent, *see State v. Pendleton*, 567 N.W.2d 265, 269-71 (Minn. 1997). But if the phrase “on grounds consistent with innocence” means “does not contradict innocence,” *see Back*, 883 N.W.2d at 621, the district court erred because the supreme court’s decision made it possible that Pendleton would be found not guilty by a properly instructed jury, *see Pendleton*, 567 N.W.2d at 269-71, and possible that he would be able to prove “that a crime was not committed or . . . not committed by [him],” *see* Minn. Stat. § 590.11, subd. 3 (2014). Nonetheless, I agree with part II of the opinion of the court, which concludes that the district court did not err by finding that Pendleton did not establish his innocence pursuant to subdivision 3(b). Part II is a sufficient basis for affirming the district court’s decision. Therefore, I concur in the judgment.