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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-0897**

Sahal Osman Shidane, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed March 20, 2017
Affirmed
Schellhas, Judge**

Olmsted County District Court
File No. 55-CR-11-2813

P. Chinedu Nwaneri, Nwaneri Law Firm, 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 Schellhas, Presiding Judge; Kirk, Judge; and Bratvold, Judge.

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant challenges the denial of his petition for postconviction relief, arguing that his untimely petition should be considered under the interests-of-justice exception. We affirm.

FACTS

In February 2011, Sahal Shidane sexually assaulted a 15-year-old girl who was helping him back into his wheelchair after he used the restroom at the Mayo Clinic. The state charged Shidane with fourth-degree criminal sexual conduct in violation of Minnesota Statutes section 609.345, subdivision 1(b) (2010). Shidane pleaded guilty on June 8, 2012. Because Shidane is not a U.S. citizen, the district court warned him at the plea hearing, “[W]e don’t know what consequences, if any, will result as a result of this plea of guilty.” Shidane responded that he nevertheless wished to plead guilty. Shidane’s signed plea petition also indicated that he understood that his plea could “result in deportation, exclusion from admission to the United States of America or denial of citizenship.” At sentencing on August 30, 2012, the district court granted Shidane a stay of imposition and placed him on probation.

Over three years later, on December 31, 2015, Shidane moved the district court to withdraw his plea, arguing that his counsel provided ineffective assistance by failing to warn him about “the mandatory immigration consequences of his guilty plea.” The district court treated the motion as a petition for postconviction relief and summarily denied the petition as time-barred.

This appeal follows.

DECISION

A person claiming that his conviction or sentence violated his constitutional rights may file a petition for postconviction relief. Minn. Stat. § 590.01, subd. 1 (2014). “When a criminal defendant seeks to withdraw a guilty plea under Rule 15.05, after the defendant

has been sentenced, the motion to withdraw the plea must be raised in a petition for postconviction relief.” *James v. State*, 699 N.W.2d 723, 727 (Minn. 2005). We review the denial of a postconviction petition for an abuse of discretion. *Swaney v. State*, 882 N.W.2d 207, 214 (Minn. 2016). The district court’s legal determinations are reviewed de novo, and its fact-findings are reviewed for clear error. *Id.*

A petition for postconviction relief must be filed within two years of the later of “the entry of judgment of conviction or sentence if no direct appeal is filed” or “an appellate court’s disposition of petitioner’s direct appeal.” Minn. Stat. § 590.01, subd. 4(a)(1)–(2) (2014). Because Shidane did not directly appeal his conviction, he had two years from sentencing on August 30, 2012, to file a postconviction petition. *See id.*, subd. 4(a)(1). Shidane filed his petition on December 31, 2015, over a year after the two-year time limit had expired. Shidane’s petition is therefore untimely.

A petition filed after the two-year time limit may nevertheless be considered if it satisfies one of five statutory exceptions. Minn. Stat. § 590.01, subd. 4(b) (2014). Shidane argues that his petition may be considered under the interests-of-justice exception, which requires him to show “that the petition is not frivolous and is in the interests of justice.” Minn. Stat. § 590.01, subd. 4(b)(5). The Minnesota Supreme Court has explained 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).

Sanchez v. State, 816 N.W.2d 550, 557 (Minn. 2012).

Shidane has not alleged an injustice that caused him to miss the two-year time limit. Rather, Shidane alleges that his attorney was ineffective for failing to adequately inform him about the immigration consequences of his guilty plea. Because this alleged injustice is identical to the substance of the petition and occurred at the time of conviction, the interests-of-justice exception is unavailable. *See id.*

Even if Shidane could satisfy the substance of the interests-of-justice exception, his invocation of the exception would nevertheless still be barred under Minnesota Statutes section 590.01, subdivision 4(c) (2014). A postconviction petition invoking a time-bar exception must be filed within two years of the date the claim arose. Minn. Stat. § 590.01, subd. 4(c); *see also Yang v. State*, 805 N.W.2d 921, 925 (Minn. App. 2011) (defining “claim” as “an event that supports a right to relief under the asserted exception”), *review denied* (Minn. Aug. 7, 2012). And a claim “arises when the petitioner knew or should have known that he had a claim.” *Sanchez*, 816 N.W.2d at 560.

Shidane argues that his interests-of-justice claim arose in May 2014. That month the Social Security Administration sent him a letter informing him that he would eventually stop receiving benefits unless he became “a U.S. citizen or an eligible alien under the law.” Shidane asserts that he then consulted with an immigration attorney and learned that he could be deported from the United States because his criminal-sexual-conduct conviction is an “aggravated felony” under 8 U.S.C. § 1101(a)(43)(A) (2012). But whether fourth-

degree criminal sexual conduct is an aggravated felony under federal law could have been discovered at the time of his conviction on June 8, 2012. Shidane's interests-of-justice claim therefore arose on that date. *See Sanchez*, 816 N.W.2d at 558 (holding that when a claim arises is an objective standard, not a "subjective, actual knowledge standard"). Because Shidane filed his petition more than two years after his claim arose, his invocation of the interests-of-justice exception is also time-barred under subdivision 4(c).

Affirmed.