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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1566**

Michelle Rae Wilson, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed May 8, 2017
Affirmed
Klaphake, Judge***

Ramsey County District Court
File No. 62-K7-08-000188

Cathryn Middlebrook, Chief Appellate Public Defender, Lydia Maria Villalva Lijó,
Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

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

Considered and decided by Smith, Tracy M., Presiding Judge; Reilly, Judge; and
Klaphake, Judge.

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

UNPUBLISHED OPINION

KLAPHAKE, Judge

In this appeal from the denial of her second petition for postconviction relief on the basis that the petition was time-barred, appellant argues that her petition was timely under the interests of justice exception to the two-year statute of limitations. Because the postconviction court correctly concluded that appellant's petition is time-barred, we affirm.

DECISION

Appellate courts review a district court's 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). We review the postconviction court's findings of fact for clear error, but review questions of law de novo. *Id.* The determination of when a claim arose is a question of fact. *Sanchez v. State*, 816 N.W.2d 550, 560 (Minn. 2012).

Minn. Stat. § 590.01, subd. 4(a) (2014), generally provides that a petition for postconviction relief must be filed within two years of the entry of judgment of conviction or sentence or the disposition of the direct appeal, whichever is later. The district court sentenced appellant Michelle Rae Wilson to 350 months for her second-degree intentional murder conviction in January 2010, and this court dismissed her direct appeal in July 2010 for failing to correct a number of procedural deficiencies in her appeal, including her failure to order a trial transcript. The present petition for postconviction relief, filed in March

2016, was clearly filed beyond the two-year limitation set forth in Minn. Stat. § 590.01, subd. 4(a).

The statute, however, provides an exception to the general two-year time bar if “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) (2014). The interests of justice exception “relate[s] to the *reason* the petition was filed after the 2-year time limit in [Minn. Stat. § 590.01, subd. 4(a)], not the *substantive claims* in the petition.” *Sanchez*, 816 N.W.2d at 557. The interests of justice exception to the time bar has its own statutory time bar. Specifically, a claim filed under the interests of justice exception must be filed within two years of the date that claim arose. Minn. Stat. § 590.01, subd. 4(c) (2014). A claim arises for the purposes of Minn. Stat. § 590.01, subd. 4(b)(5), “when the petitioner knew or should have known that [she] had a claim.” *Sanchez*, 816 N.W.2d at 560.

Wilson argues that the reason her present petition was filed beyond the two-year limit is because it was not yet unequivocally established that her claims were unreviewable without a transcript. Wilson filed a pro se petition for postconviction relief on July 16, 2012, and the postconviction court denied the petition. This court affirmed the denial of the postconviction petition by an opinion filed on January 27, 2014, stating that the court could not review Wilson’s claims of error without a transcript. *Wilson v. State*, No. A13-0152, 2014 WL 273941, at *2 (Minn. App. Jan. 27, 2014). Wilson petitioned for further review, and the supreme court denied the petition on April 15, 2014. Wilson argues that the date of the supreme court’s denial of her petition for review is the relevant date for determining when her claim arose and that her petition, filed in March 2016, was therefore

timely. Wilson asserts that the supreme court's order "unequivocally established that appellate review was not possible without a record that included transcripts" and thus is the date that her claim arose.¹

We reject Wilson's contention that her claim did not arise until April 2014. As a starting point, Minn. R. Civ. App. P. 110.02, subd. 1, provides that an appellant has the duty to order a transcript, provide an agreed-upon statement of the record, or notify the respondent of the intent to proceed without a transcript. *See* Minn. R. Civ. App. 101.01 (providing that Minnesota Rules of Civil Appellate Procedure apply in criminal proceedings insofar as they are not inconsistent with Minnesota Rules of Criminal Procedure); Minn. R. Crim. P. 28.02, subds. 8, 9 (providing procedure for appeal of defendants).

Moreover, the record reflects that Wilson was aware shortly after her conviction that she would need to acquire transcripts in order to obtain appellate review. In a June 21, 2010 order in connection with Wilson's direct appeal, this court ordered that Wilson make financial arrangements for ordering a transcript. Thus, Wilson knew in June 2010 that a transcript would be necessary to obtain appellate review of her claims of error. Indeed, less than a month later this court dismissed the direct appeal because Wilson had failed to remedy a number of procedural deficiencies noted in its previous order, including Wilson's failure to make financial arrangements for the transcript.

¹ While Wilson reads the supreme court's denial of her petition for review as an affirmation of the fact that her petition could not be reviewed absent a trial transcript, Wilson conceded in her petition for further review that a transcript was required for review of her conviction.

Notably, Wilson has never stated her intent to proceed without a transcript, has never argued that a transcript was not necessary to review her claims of error, and indeed has indicated on at least two occasions prior to the supreme court's denial of her petition for further review that a transcript is necessary. Rather than claiming that a transcript is not required for appellate review, Wilson has repeatedly argued that she is indigent and therefore not responsible for paying the costs of the transcript.

Moreover, although Wilson argues that the supreme court's denial of her petition for further review "unequivocally established that appellate review was not possible without a record that included transcripts," the standard for when Wilson's claim arose is when Wilson knew or should have known that she needed to order a transcript in order to obtain appellate review, not when an order of the supreme court "unequivocally established" that she needed to order a transcript to obtain appellate review.

We acknowledge that Wilson has never had substantive review of her conviction, that she unsuccessfully attempted on numerous occasions to get the State Public Defender's Office to represent her in postconviction proceedings, and that she was only able to secure its presentation when it was too late for a court to grant relief. Moreover, we note that it is possible that Wilson has asserted a meritorious claim. However, because the record indicates that Wilson was or should have been aware as early as June 2010 that a transcript was necessary for appellate review, we conclude that the postconviction court properly determined that Wilson's petition was time-barred.

Affirmed.