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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0342**

Amecio Navro Enge, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent

**Filed December 11, 2017
Affirmed
Worke, Judge**

Hennepin County District Court
File Nos. 27-CR-10-46636, 27-CR-CV-11-11, 27-CR-CV-11-12, 27-CR-CV-11-13

Zachary A. Longsdorf, Inver Grove Heights, Minnesota (for appellant)

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

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

Considered and decided by Worke, Presiding Judge; Halbrooks, Judge; and Rodenberg, Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant argues that the district court abused its discretion by denying his petition for postconviction relief on the grounds that his claims were time-barred, procedurally barred, and meritless. We affirm.

DECISION

Enge argues that the district court abused its discretion by denying his petition for postconviction relief on the grounds that the petition was time-barred.

Denial of a petition for postconviction relief is reviewed for an abuse of discretion. *Colbert v. State*, 870 N.W.2d 616, 621 (Minn. 2015). This court reviews the district court's factual determinations under the clearly erroneous standard and will not reverse those determinations unless they are not factually supported by the record. *State v. Vang*, 847 N.W.2d 248, 266 (Minn. 2014). This court reviews legal issues de novo. *Colbert*, 870 N.W.2d at 621.

Minnesota statute precludes the filing of a petition for postconviction relief more than two years after an appellate court's disposition of the petitioner's direct appeal. Minn. Stat. § 590.01, subd. 4(a)(2) (2016). The postconviction statute lists five exceptions to the two-year statute of limitations. Minn. Stat. § 590.01, subd. 4(b) (2016). Specifically, a petitioner may be exempted from the two-year statute of limitations if: (1) the petitioner alleges the existence of newly discovered evidence; or (2) the petitioner establishes that the petition is not frivolous and is in the interests of justice. Minn. Stat. § 590.01, subs. 4(b)(2), 4(b)(5).

Enge does not dispute that he filed his petition more than two years after the denial of his direct appeal. Enge argues instead that both the newly-discovered-evidence and interests-of-justice exceptions apply.

To satisfy the newly-discovered-evidence exception, the petitioner must show that the evidence:

(1) is newly discovered; (2) could not have been ascertained by the exercise of due diligence by the petitioner or the petitioner's attorney within the [two]-year time-bar for filing a petition; (3) is not cumulative to evidence presented at trial; (4) is not for impeachment purposes; and (5) establishes by the clear and convincing standard that the petitioner is innocent of the offenses for which he was convicted.

Riley v. State, 819 N.W.2d 162, 168 (Minn. 2012); *see also* Minn. Stat. § 590.01, subd. 4(b)(2). The petitioner must satisfy all five criteria to obtain relief. *Riley*, 819 N.W.2d at 168.

The district court held, based upon its findings of fact, that Enge failed to establish that evidence concerning stolen diamond rings was newly discovered or could have been ascertained by the exercise of due diligence by Enge or his attorney. In particular, the district court found that Enge's own affidavit and his mother's affidavit established that both he and his attorney were aware of the theft before trial. In his affidavit, Enge stated that he "felt it was important that [he] testify to tell the jury about how [his] stepfather and [he] were robbed and beat up and why [he] reacted in the way [he] did." Enge's mother, in her affidavit, stated that she "told [Enge]'s trial attorney about the rings and the cash before [Enge]'s trial." The district court's findings that Enge and his attorney knew about the theft of the diamond rings before trial are supported by the record and are not clearly erroneous. Consequently, this evidence is not newly discovered and the newly-discovered-evidence exception does not apply.

The district court also concluded that Enge failed to establish the applicability of the interests-of-justice exception to the statute of limitations. The district court reasoned that Enge had already exercised his right to a direct appeal and raised a sufficiency-of-the-

evidence claim, which we rejected. Consequently, the district court held that no “fundamental unfairness” warranted the reopening of Enge’s case.

“[T]he interests of justice are implicated only in exceptional and extraordinary situations.” *Carlton v. State*, 816 N.W.2d 590, 607 (Minn. 2012) (quotation omitted). This exception is triggered by “an injustice that *caused* the petitioner to miss the primary postconviction deadline, not the substantive merits of the petition.” *Brown v. State*, 863 N.W.2d 781, 788 (Minn. 2015). The supreme court has identified a non-exclusive list of factors for courts to consider in determining whether the interests-of-justice exception applies. *Carlton*, 816 N.W.2d at 607. Specifically, courts may consider: (1) whether the claim has substantive merit; (2) whether the defendant deliberately and inexcusably failed to raise the issue on a prior direct appeal; (3) whether the party alleging error is at fault for that error and the degree of fault assigned to the party defending the alleged error; (4) whether some fundamental unfairness to the defendant must be addressed; and (5) whether application of the interests-of-justice analysis is necessary to protect the fairness, integrity, or reputation of judicial proceedings. *Id.*

Enge argues that the interests-of-justice exception applies because evidence of the ring theft was newly discovered. However, Enge fails to identify any injustice that caused him to miss the primary postconviction deadline. While he argues that a pretrial order prevented him from speaking to his mother and learning about the theft of the rings for several months, that order expired in 2011, more than two years prior to the postconviction petition deadline. We hold that the district court correctly concluded that the interests-of-justice exception did not apply and did not abuse its discretion by denying Enge’s petition

as time-barred. Therefore, we need not address whether Enge's petition was barred by *Knaffla* or whether his petition was meritless.

Enge argues that the district court abused its discretion by declining to hold an evidentiary hearing upon his petition for postconviction relief. This court reviews the denial of a request for an evidentiary hearing for an abuse of discretion. *Riley*, 819 N.W.2d at 167. A petitioner is entitled to a hearing upon a postconviction petition unless the petition and the files and records of the proceeding conclusively show that the petitioner is entitled to no relief. *Id.*; *accord*. Minn. Stat. § 590.04, subd. 1 (2016). “[A] postconviction court may summarily deny a claim that is [time-barred] by the postconviction statute of limitations.” *Brown*, 863 N.W.2d at 786.

The district court correctly held that Enge's petition was barred by the statute of limitations. Therefore, we hold that the district court did not abuse its discretion by declining to hold an evidentiary hearing upon Enge's petition.

Affirmed.