STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0663

Manuel Enrique Muro Martinez, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed December 26, 2017
Affirmed
Rodenberg, Judge

Olmsted County District Court
File No. 55-K0-99-002821

Terry Duggins, Duggins Law Firm, Arden Hills, Minnesota (for appellant)

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

Mark A. Ostrem, Olmsted County Attorney, Eric M. Woodford, Deputy County Attorney, Rochester, Minnesota (for respondent)

Considered and decided by Connolly, Presiding Judge; Ross, Judge; and Rodenberg, Judge.

U N P U B L I S H E D O P I N I O N

RODENBERG, Judge

Appellant Manuel Enrique Muro Martinez appeals from the district court's denial of his motion to correct a sentence under Minn. R. Crim. P. 27.03, subd. 9, after his conviction for second-degree murder under Minn. Stat. § 609.19 (Supp. 1995), and the

district court's upward departure from the sentencing guidelines. He argues that the sentence was an upward durational departure from the Minnesota Sentencing Guidelines that is not "authorized by law," and he challenges the district court's determination that his request for relief is time-barred. We affirm.

FACTS

In May 1996, appellant committed a violent murder. The state charged him with four counts of first-degree murder and one count of second-degree murder. On September 8, 2000, appellant pleaded guilty to second-degree murder as part of a negotiated plea agreement under which the state dismissed the first-degree murder charges. The agreement further provided that appellant would be sentenced to 40 years (480 months) in prison. Although the sentencing guidelines[1] indicated a presumptive sentence length of 346 months, based on appellant's criminal history score of two and an offense severity level of ten, Minn. Sent. Guidelines, IV (1996), the parties agreed to an upward departure to the statutory maximum sentence of 480 months, Minn. Stat. § 609.19. Had appellant been convicted of first-degree murder, he would have faced a possible sentence of life in prison without the possibility of parole.

At the sentencing hearing on October 17, 2000, appellant's attorney explained that "this was a counseled plea," negotiated over several months. Appellant understood that the original charges exposed him to a life sentence without the possibility of parole. And,

[1] This court applies the sentencing guidelines and related case law in effect at the time of the offense "to determine the correctness of a sentence." *Townsend v. State*, 834 N.W.2d 736, 739 (Minn. 2013).

according to his attorney, "with that in mind [he] entered into this plea agreement." After reviewing the facts of the case as presented to the grand jury, and considering the plea agreement, the district court sentenced appellant to 480 months in prison. The district court's departure report indicates that the reasons supporting the upward sentencing departure were the plea agreement authorizing it and particular cruelty to the victim.

Twelve years later, appellant filed a pro se motion to modify the sentence. The district court considered the motion to more properly be a petition for postconviction relief, and wrote a letter to appellant recommending that appellant seek assistance from the state public defender. Appellant filed an appeal, but because the district court had not made any appealable order, we dismissed for lack of jurisdiction.

In 2016, appellant again filed a motion seeking sentence modification under rule 27.03, subdivision 9. The district court considered the motion as a petition for postconviction relief and denied it as time-barred. Appellant promptly moved for reconsideration, which the district court also denied.

This appeal followed.

D E C I S I O N

I. The district court properly deemed appellant's motion to be a request for postconviction relief.

Appellant appeals the district court's denial of his motion to modify the 480-month sentence under Minn. R. Crim. P. 27.03, subd. 9. The district court construed his motion as a petition for postconviction relief and denied it as beyond the two-year time limit in the postconviction statute. Minn. Stat. § 590.01, subd. 4(a)(1) (2016). We review the denial

of a postconviction petition for abuse of discretion. *Reed v. State*, 793 N.W.2d 725, 729 (Minn. 2010).

We first analyze whether appellant's motion concerns a request for correction of an illegal sentence under rule 27.03, or instead, a request for postconviction relief under Minn. Stat. § 590.01 (2016). Under rule 27.03, subdivision 9, a defendant may, "at any time," move to "correct a sentence not authorized by law." Minn. R. Crim. P. 27.03, subd. 9. Under Minn. Stat. § 590.01, subd. 1(1), a convicted defendant may petition the district court for postconviction relief if "the conviction obtained or the sentence or other disposition made violated the [defendant's] rights under the Constitution or laws of the United States or of the state," but such a petition must be made within the two-year time limit provided by statute. *Id.*, subd. 4(a)(1). Minn. Stat. § 590.01 provides a much wider scope of relief than the criminal rule, but is limited to timely petitions. Rule 27.03, subdivision 9, on the other hand, is "plainly 'limited to . . . modifying a sentence.'" *Johnson v. State*, 877 N.W.2d 776, 779 (Minn. 2016). On separation-of-powers grounds, "the two-year limit [in section 590.01, subdivision 4(a),] does not apply to motions properly filed under" rule 27.03, subdivision 9. *Vasquez v. State*, 822 N.W.2d 313, 318 (Minn. App. 2012).

A motion to modify a sentence reached as part of a negotiated plea agreement is properly filed only under Minn. Stat. § 590.01 as a petition for postconviction relief. *Johnson*, 877 N.W.2d at 778 (quoting *Wayne v. State*, 870 N.W.2d 389, 391 (Minn. 2015)) (explaining that such a motion is, "in substance, a challenge to a criminal conviction" so the offender may not use rule 27.03, subdivision 9, "to circumvent the procedural

requirements of the postconviction statute"). The supreme court in *Johnson* applied the same reasoning it used in *State v. Coles*, 862 N.W.2d 477 (Minn. 2015), where the requested relief was a reduced sentence despite a negotiated plea agreement. *Id.* at 779. Addressing only the sentence in such a circumstance amounts to a request to receive the benefits, but not the consequences, of a plea agreement. In such a circumstance, it is proper that the district court consider whether to permit the state to "withdraw from the plea agreement and move forward to trial on [the] original charges." *Id.* When the relief sought implicates more than the sentence itself, a motion purportedly brought under rule 27.03, subdivision 9, is properly considered as a petition for postconviction relief under Minn. Stat. § 590.01. So it is here: appellant's request for relief from his sentence implicates the underlying plea agreement, which had the effect of relieving appellant of the risk of a life-without-parole sentence. The district court properly evaluated appellant's request for relief under Minn. Stat. § 590.01.

II. Appellant's postconviction relief request is time-barred.

Minnesota Statute section 590.01, subdivision 4(a)(1), requires a petitioner to request postconviction relief within two years of the date the sentence was entered. Minn. Stat. § 590.01, subd. 4(a)(1). For convictions that became final before August 1, 2005, the deadline to file a petition was August 1, 2007. 2005 Minn. Laws ch. 136, art. 14, § 13 at 1098 ("Any person whose conviction became final before August 1, 2005 shall have two years after the effective date of this act to file a petition for postconviction relief."). For petitions not filed within the two-year period, relief may still be available if one of the exceptions in subdivision 4(b) applies, including an assertion of a new interpretation of law

and in the interests of justice. Minn. Stat. § 590.01, subd. 4(b). Yet, "[a]ny petition invoking an exception provided in paragraph (b) must be filed within two years of the date the claim arises." *Id.*, subd. (4)(c); *see Sanchez v. State*, 816 N.W.2d 550, 557-58 (Minn. 2012) (applying the two-year time limit to an interests-of-justice claim pursuant to Minn. Stat. § 590.01, subd. 4(b)(5)).

As discussed, appellant requests that his sentence, arrived at by a plea agreement, be reduced. Therefore, it is evaluated as a request for postconviction relief. Appellant's conviction was entered in October 2000, nearly five years before the time bar of section 590.01, subdivision 4(a), went into effect, and seven years before the August 1, 2007 deadline. Appellant's first request for relief was filed on September 12, 2012, and the second was on August 10, 2016. Both requests for relief came years after the August 1, 2007 deadline. *See* 2005 Minn. Laws ch. 136, art. 14 § 13 at 1098. Both of appellant's requests were untimely.

Appellant argues that he qualifies for two exceptions to the procedural two-year bar. First, under subdivision 4(b)(3), he asserts a new interpretation of federal or state constitutional or statutory law by either the United States Supreme Court or a Minnesota appellate court. Second, under subdivision 4(b)(5), he argues that his petition is not frivolous and is in the interests of justice. Neither of these exceptions applies.

Appellant argues that two separate new-interpretations-of-law issues apply to his case. First, he argues that the United States Supreme Court's decision in *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531 (2004), extending *Apprendi v. New Jersey*, 530 U.S. 466, 120 S. Ct. 2348 (2000), ought to apply to his sentence. He argues that *Blakely*

clarified the *Apprendi* holding that "any fact [extending a sentence] . . . must be submitted to a jury." *Apprendi*, 530 U.S. at 476 (quotation omitted). Appellant also argues that the Minnesota Supreme Court decision in *State v. Misquadace* also constitutes a new interpretation of state law requiring more than the reasons given here by the district court in support of the upward sentencing departure. 664 N.W.2d 65, 71 (Minn. 2002) (quoting Minn. Sent. Guidelines II.D.04 cmt. (1998)).

Misquadace was decided in 2002, and *Blakely* was decided in 2004. These decisions came down two and four years, respectively, after appellant's conviction and sentencing. Appellant argues that the holdings in these cases should be applied retroactively to require the district court to grant him a separate hearing on the upward departure sentence. The supreme court in *Misquadace* made clear that the rule it established is not retroactive. *See State v. Lewis*, 656 N.W.2d 535, 537 (Minn. 2003) (stating that in *Misquadace*, the supreme court expressly limited its retroactive application). And, the Court in *Blakely* "announced a new rule of federal constitutional criminal procedure and [such rules] apply to cases pending on direct review or not yet final but not to cases on collateral review such as a petition for postconviction relief." *State v. Hughes*, 758 N.W.2d 577, 580 (Minn. 2008).

Minn. Stat. § 631.20 (1994) existed in its current form in 1996, the date of the offense. Minnesota Statute section 631.20 requires a court to hear the testimony of "witnesses examined in open court" to determine the aggravating or mitigating factors that may impact the sentence. Minn. Stat. § 631.20. Here, the district court did not hear testimony in determining the upward departure on which the parties had agreed. Instead,

it considered the grand jury testimony, in addition to the parties' plea agreement, and found aggravating factors justifying the agreed-upon upward departure. There was no objection to the district court's use of the grand jury testimony. In context, the parties implicitly waived Minn. Stat. § 631.20's provision of an open-court hearing.

Moreover, and even if the holdings in *Misquadace* and *Blakely* applied retroactively, and despite the existence of section 631.20 at the time appellant was sentenced, the statutory two-year deadline concerning all of these arguments expired long before appellant's first motion in 2012 challenging his sentence. *See* Minn. Stat. § 590.01, subd. 4(a)(1) (providing a petition for postconviction relief may be filed no more than two years after the entry of judgment of conviction or sentence); *see also* 2005 Minn. Laws ch. 136, art. 14, § 13 at 1098 (providing that a postconviction petition regarding a conviction that became final before August 1, 2005 must be filed before August 1, 2007). Appellant's arguments based on *Misquadace*, *Blakely*, and Minn. Stat. § 631.20 are both time-barred and meritless.

Second, appellant argues that his motion (considered as a postconviction petition) triggers the "interests of justice" exception under Minn. Stat. § 590.01, subd. 4(b)(5), because the district court failed to provide a separate hearing when it imposed an upward departure sentence and, instead, relied on the grand jury transcript and the plea agreement made by the parties.

Appellant does not explain how this claimed violation of the statute caused him to miss the two-year postconviction-petition deadline. *See Sanchez v. State*, 816 N.W.2d 550, 560 (Minn. 2012) ("[T]he interest-of-justice exception is triggered by an injustice that

caused the petitioner to miss the primary deadline in [Minn. Stat. 590.01, subd. 4(a).”). Appellant has not demonstrated that the interests-of-justice exception excuses his late filing.

Moreover, and aside from the petition’s untimeliness, the postconviction court concluded that “there is nothing unjust about the sentencing [appellant] received.” At the time the district court considered the grand jury testimony, the requirement under *Blakely* for a separate sentencing trial did not exist. Therefore, the district court’s choice to rely on the grand jury testimony concerning the extraordinary nature of this murder is not error. Neither party objected to the sentencing court’s consideration of the grand jury testimony at the time of sentencing, and the sentencing court’s consideration of that testimony supported the plea agreement reached by the parties.

We consider the plea agreement as the district court did; it was “voluntarily and accurately entered into after lengthy negotiations.” Appellant testified that he understood the 40-year sentence to be “a departure, meaning it’s greater than the sentence that the Minnesota Sentencing Guidelines calls for.” After a brief discussion of the calculation of appellant’s criminal-history points, counsel asked appellant about the grounds for the upward departure to which the parties agreed. Appellant had many opportunities to seek clarification, from the translation of documents to the chance to ask questions of his attorney and the court. But appellant challenged neither the plea agreement nor its impact on his sentence until September 2012 and again in August 2016. Despite all the briefing and argument, both to the district court and on appeal, appellant failed to submit an affidavit explaining why he waited so many years to file a motion. Without demonstrating when he

knew or should have known of his interests-of-justice claim, appellant cannot benefit from this exception.

The district court did not abuse its discretion in denying appellant's postconviction relief motion. We therefore affirm the district court's well-reasoned order in which we see no legal error.

Affirmed.