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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0204**

Mike Sanchez, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed October 22, 2018
Affirmed
Larkin, Judge**

Dakota County District Court
File No. 19HA-CR-13-2330

Mike Sanchez, Red Wing, Minnesota (pro se appellant)

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

James C. Backstrom, Dakota County Attorney, Anna Light, Assistant County Attorney,
Hastings, Minnesota (for respondent)

Considered and decided by Larkin, Presiding Judge; Schellhas, Judge; and Smith,
Tracy M., Judge.

UNPUBLISHED OPINION

LARKIN, Judge

Appellant challenges the postconviction court's summary denial of his petition for postconviction relief, arguing that he is eligible for a reduced sentence under the Drug Sentencing Reform Act (DSRA). We affirm.

FACTS

On July 23, 2013, appellant Mike Sanchez was arrested while in possession of 991 grams of cocaine. A later search of Sanchez's residence uncovered 2,655.28 additional grams of cocaine, 1,341.97 grams of methamphetamine, and 31.12 grams of marijuana. On September 9, 2013, Sanchez pleaded guilty to first-degree controlled-substance possession under Minn. Stat. § 152.021, subd. 2(a)(1) (2012). That same day, the district court entered judgment of conviction and imposed a presumptive guidelines sentence of 98 months in prison. Sanchez did not file a direct appeal.

In 2017, Sanchez petitioned for postconviction relief, requesting resentencing under the DSRA. Sanchez argued that his sentence would be much shorter under the DSRA, that people convicted of first-degree controlled-substance crimes after passage of the DSRA receive shorter sentences than he did, and that principles of uniformity, proportionality, and predictability support resentencing. The postconviction court summarily denied Sanchez's petition on the merits, concluding that the DSRA does not apply because Sanchez's conviction was final before the effective date of the DSRA. Sanchez appeals.

DECISION

“[A] person convicted of a crime, who claims that: . . . [his] sentence . . . violated [his] rights under the Constitution or laws of the United States or of the state” may file a petition for postconviction relief. Minn. Stat. § 590.01, subd. 1(1) (2016). “[A] petitioner is entitled to a hearing on the petition ‘[u]nless the petition and the files and records of the proceeding conclusively show that the petitioner is entitled to no relief.’” *Riley v. State*, 819 N.W.2d 162, 167 (Minn. 2012) (quoting Minn. Stat. § 590.04, subd. 1 (2010)). “A postconviction evidentiary hearing is not required when the petitioner alleges facts that, if true, are legally insufficient to grant the requested relief.” *Henderson v. State*, 906 N.W.2d 501, 505 (Minn. 2018) (quotation omitted).

This court reviews “a denial of a petition for postconviction relief, as well as a request for an evidentiary hearing, for an abuse of discretion.” *Riley*, 819 N.W.2d at 167. 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). Factual determinations by the postconviction court are reviewed for clear error, and this court does “not reverse those determinations unless they are not factually supported by the record.” *Id.* Legal conclusions are reviewed de novo. *Leake v. State*, 737 N.W.2d 531, 535 (Minn. 2007).

Sanchez argues that he is eligible for resentencing under the DSRA. Section 18 of the DSRA modified certain provisions of the sentencing guidelines. 2016 Minn. Laws ch. 160, § 18(b), at 591. As a result, many drug-related crimes, including first-degree controlled-substance crimes, are now classified less severely and have lower presumptive

sentencing ranges. *Compare* Minn. Sent. Guidelines 4.C (2016) (drug offender guidelines grid), *with* Minn. Sent. Guidelines 4.A (2012) (standard guidelines grid). Sanchez’s sentence of 98 months in prison is higher than the new sentencing range for first-degree controlled-substance crimes.¹

Sanchez is entitled to relief only if the changes mandated by section 18 apply to his conviction and sentence. This determination turns on when his conviction became final. In general, section 18 applies to crimes committed on or after its effective date of May 23, 2016. *See* 2016 Minn. Laws ch. 160, § 18, at 591 (“This section is effective the day following final enactment.”); 2016 Minn. Laws ch. 160, at 592 (stating that governor signed DSRA into law on May 22, 2016). The supreme court has held that section 18 also applies retroactively to crimes committed before May 23, 2016, if three requirements are met: “(1) the Legislature made no statement that clearly establishes the Legislature’s intent to abrogate the amelioration doctrine; (2) the amendment mitigated punishment; and (3) final judgment had not been entered as of the date the amendment took effect.” *State v. Kirby*, 899 N.W.2d 485, 490 (Minn. 2017). In *Kirby*, the supreme court held that no statement by the legislature clearly demonstrates an intent to abrogate the amelioration

¹ When Sanchez committed the offense in July 2013, the presumptive sentencing range for first-degree controlled-substance possession for a person with a criminal-history score of 1 was 84 to 117 months in prison. Minn. Sent. Guidelines 4.A (2012). After enactment of the DSRA in May 2016, the presumptive sentencing range is 64 to 90 months in prison. Minn. Sent. Guidelines 4.C (2016).

doctrine and that the DSRA mitigates punishment. *Id.* at 496. Thus, the sole issue before this court is whether final judgment was entered in Sanchez’s case before May 23, 2016.²

The supreme court recently explained that, if a defendant does not file a direct appeal, his conviction “[becomes] final when the time for filing a direct appeal expire[s].” *Johnson v. State*, ___ N.W.2d ___, ___, 2018 WL 3999734, at *4 n.4 (Minn. Aug. 22, 2018). Here, the district court entered judgment of conviction and sentenced Sanchez on September 9, 2013. Sanchez had 90 days after that date in which to appeal. *See* Minn. R. Crim. P. 28.02, subd. 4(3)(a). Because Sanchez did not file a direct appeal, his conviction “became final when the time for filing a direct appeal expired.” *Johnson*, 2018 WL 3999734, at *4 n.4. Thus, Sanchez’s conviction became final 90 days after September 9, 2013, well before the DSRA’s effective date of May 23, 2016, and he is not entitled to resentencing under the DSRA-amended guidelines.

This court recently denied relief in a similar case. The defendant in *Luna-Pliego v. State* was sentenced to 74 months in prison for a first-degree controlled-substance crime in

² The state argues that Sanchez’s petition is untimely because it was filed more than two years after entry of judgment of conviction and sentence, and no exception to a two-year statutory time bar applies. *See* Minn. Stat. § 590.01, subd. 4(a)-(c) (2016) (stating that petitions for postconviction relief may not be filed more than two years after “the entry of judgment of conviction or sentence if no direct appeal is filed,” unless certain exceptions apply). However, the state did not challenge the timeliness of Sanchez’s petition in the postconviction court. We therefore will not consider that challenge for the first time on appeal. *See State v. Morse*, 878 N.W.2d 499, 502 (Minn. 2016) (noting that reviewing courts consider only the issues that were presented and considered by the district court); *see also Carlton v. State*, 816 N.W.2d 590, 606 (Minn. 2012) (“[T]he State’s failure to assert that [the defendant’s] petition was untimely under the 2-year statute of limitations [in Minn. Stat. § 590.01, subd. 4(c)] waived this defense.”). Because the postconviction court denied Sanchez’s petition for postconviction relief on the merits, without considering the timeliness of his petition, we review the denial on the merits.

June 2015. 904 N.W.2d 916, 917 (Minn. App. 2017). He did not file a direct appeal. *Id.* After enactment of the DSRA, Luna-Pliego petitioned for postconviction relief, requesting resentencing under the DSRA-amended guidelines. *Id.* at 918. This court applied *Kirby*, held that the defendant’s judgment was final prior to May 23, 2016, and affirmed the postconviction court’s denial of postconviction relief. *Id.* at 918-20. The relevant facts of this case are indistinguishable from those in *Luna-Pliego*.

Nonetheless, Sanchez advances two arguments in support of resentencing under the DSRA, both of which are unavailing. First, Sanchez cites *State v. Vazquez*, 330 N.W.2d 110, 112 (Minn. 1983), for the proposition that the supreme court “has discretion in individual cases to modify the sentence of an appealing defendant if that appears to be in the interests of fairness and uniformity. . . . [Fairness in sentencing] . . . involves comparing the sentence of the defendant with those of other offenders.” However, that discretion belongs to the supreme court, and not to this court. Moreover, *Vazquez* was a direct sentencing appeal in which the supreme court compared the sentences of similarly situated defendants under the same sentencing law. 330 N.W.2d at 111-13. Here, Sanchez compares his sentence to the sentences of offenders who were sentenced under a law that does not apply to Sanchez’s case. Defendants similarly situated to Sanchez are those who were sentenced under the pre-DSRA-amended guidelines and whose convictions were final before May 23, 2016. Sanchez does not assert that his sentence is not fairly comparable to the sentences of those defendants.

Second, Sanchez relies on Minn. Stat. § 590.01, subd. 3 (2016), which allows “resentencing under [a] subsequently enacted law.” However, that statute applies only to crimes committed before May 1, 1980. Minn. Stat. § 590.01, subd. 3.

In sum, because Sanchez’s conviction was final before the effective date of the DSRA, the postconviction court did not abuse its discretion by summarily denying his petition for postconviction relief on the merits.

Affirmed.