STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0434

Andrew Bearden Williams, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed October 28, 2019
Affirmed
Connolly, Judge

Cook County District Court
File No. 16-CR-13-136

Cathryn Middlebrook, Chief Appellate Public Defender, Chang Y. Lau, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Molly C. Hicken, Cook County Attorney, Grand Marais, Minnesota (for respondent)

Considered and decided by Cochran, Presiding Judge; Connolly, Judge; and Johnson, Judge.

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

CONNOLLY, Judge

Appellant challenges the district court's denial of his petition for postconviction relief following an evidentiary hearing, arguing that he filed his petition within two years of discovering his claims. Because the record supports the district court's finding that appellant's petition was untimely because he filed his petition more than two years after he objectively knew or should have known of his underlying claims, we affirm.

FACTS

In May 2013, appellant Andrew Bearden Williams was charged with two counts of third-degree criminal sexual conduct, two counts of fifth-degree criminal sexual conduct, and one count of solicitation of a minor. Respondent State of Minnesota later amended the complaint to add another count of third-degree criminal sexual conduct involving a different minor victim. Attorney J.L. represented appellant against these charges. In January 2014, the parties reached a plea agreement, which provided that appellant would plead guilty to one count of third-degree criminal sexual conduct and one count of fifth-degree criminal sexual conduct in exchange for dismissal of the remaining counts. The Minn. R. Crim. P. 15 plea petition appellant signed included language related to mandatory conditional release periods for "most sex offenses." The petition also read: "In this case, the period of conditional release is ___ years." The parties contemplated a 36-month prison sentence, stayed for seven years with conditions of probation. Conditional release was not mentioned at appellant's plea hearing.

The presentence investigation report filed before appellant's sentencing hearing included an attached sentencing worksheet with the following language: "Conditional Release Statutes Apply if Prison Sentence is Executed: 10 Years." The district court accordingly sentenced appellant to 36 months in prison, but stayed execution for seven years and imposed conditions of probation. The warrant of commitment did not mention a conditional release period.

After appellant violated his probation, the parties appeared for a hearing in October 2014, where attorney G.W. represented appellant. Appellant admitted to violating his probation, and the district court issued an amended warrant of commitment, which stated: "Commit to Commissioner of Corrections at the MN Correctional Facility – St. Cloud for 36 months. Sentence is stayed for 7 years. Conditional release after confinement has been set at 10 years." G.W. continued to represent appellant throughout several probation proceedings. After finding two additional probation violations following contested violation hearings in March and May 2015, the district court executed appellant's stayed 36-month sentence at a June 8, 2015 disposition hearing. The district court told appellant on the record, "[i]t's a harsh wake-up call, but I hope it will be a wake-up call, because you're going to remain on conditional release for a period of up to ten years based upon the original sentence and the presumptive sentence in this case." The amended warrant of commitment again included language about the ten-year conditional release period.

On December 14, 2017, appellant filed a petition for postconviction relief, asserting that he was entitled to plea withdrawal based on an unconstitutional guilty plea and ineffective assistance of counsel. Appellant's petition included an affidavit from the state

appellate public defender who represented him at a Department of Corrections revocation hearing in October 2016. The state appellate public defender averred that she had "advised [appellant] that he [might] have a valid claim that his guilty plea was not valid because of his attorney's failure to advise him of conditional release before he entered his guilty plea."

In July 2018, appellant and his two former attorneys testified at an evidentiary hearing. Following the hearing, the district court issued a written order denying appellant's petition, concluding that, while appellant's claims were not frivolous, it was not in the interests of justice to grant them. The district court held that appellant learned about his underlying claims sometime before the June 8, 2015 disposition hearing, rendering his petition untimely under the interests-of-justice exception to the postconviction relief statute. On appeal, appellant argues that the district court erred in concluding that his petition was untimely.

D E C I S I O N

A district court's denial of a petition for postconviction relief is reviewed for an abuse of discretion. *Henderson v. State*, 906 N.W.2d 501, 505 (Minn. 2018). This decision will not be reversed "unless the [district] court exercised its discretion in an arbitrary or capricious manner, based its ruling on an error of law, or made clearly erroneous factual findings." *Swaney v. State*, 882 N.W.2d 207, 214 (Minn. 2016). "We review the postconviction court's legal conclusions de novo and its findings of fact for clear error." *Griffin v. State*, 883 N.W.2d 282, 284 (Minn. 2016).

An individual convicted of a crime who claims that his or her constitutional rights have been violated may file a petition for postconviction relief. Minn. Stat. § 590.01, subd.

1 (2016). To be timely, a postconviction petition must be filed within two years after "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," whichever is later. *Id.*, subd. 4(a) (2016). Notwithstanding this two-year statute of limitations, a petition may be heard if "the petitioner establishes to the satisfaction of the court that the petition is not frivolous and is in the interests of justice." *Id.*, subd. 4(b)(5) (2016). "The interests-of-justice exception is available only in rare and exceptional situations." *Hooper v. State*, 888 N.W.2d 138, 142 (Minn. 2016). Postconviction petitions brought under the interests-of-justice exception must be filed within two years of the date the "claim arises." Minn. Stat. § 590.01, subd. 4(c) (2016).

Appellant does not dispute that his postconviction petition was filed more than two years after the district court entered judgment in April 2014. Instead, appellant argues that his petition meets the interests-of-justice exception because it involves nonfrivolous claims and he brought the petition within two years of discovering these claims in October 2016.

We first consider whether appellant filed his petition in compliance with the time requirements of subdivision 4(c). *See Carlton v. State*, 816 N.W.2d 590, 600 (Minn. 2012) (explaining that courts should consider whether a petitioner has complied with the two-year time limit under subdivision 4(c) before determining whether the petitioner has satisfied an exception under subdivision 4(b)). A "claim arises" under the interests-of-justice exception when the petitioner objectively "knew or should have known" that the

claim existed. *Sanchez v. State*, 816 N.W.2d 550, 558-60 (Minn. 2012).[1] "A postconviction court's determination of when a petitioner knew or should have known about his or her claim is reviewed under a clearly erroneous standard." *Bolstad*, 878 N.W.2d at 497.

The district court found that appellant knew or should have known of his underlying claims before the June 8, 2015 disposition hearing because attorney G.W. testified that he advised appellant about conditional release before his second probation-violation hearing in 2015. The district court credited the attorney's testimony that he informed appellant about the nature of conditional release, including its ten-year duration in appellant's case. In making this finding, the court rejected appellant's contrary testimony. We do not second-guess that credibility determination. *See Miles v. State*, 840 N.W.2d 195, 201 (Minn. 2013) ("The postconviction court is in the best position to evaluate witness credibility and so we defer to the court's credibility determinations.").

The record from the evidentiary hearing supports the district court's finding. At the hearing, G.W. testified that he remembered appellant's case better than others. He also testified that he spoke with appellant by telephone and informed him of what conditional release entailed after his paralegal reported that appellant had questions about the meaning of conditional release and supervised release. In his testimony, G.W. recalled that he described conditional release to appellant as a form of extended probation, where appellant

[1] The Minnesota Supreme Court has repeatedly rejected the invitation to adopt a subjective, actual knowledge standard for assessing when a "claim arises" for the two-year limitations period in Minn. Stat. § 590.01, subd. 4(c). *See, e.g.*, *Bolstad v. State*, 878 N.W.2d 493, 497 (Minn. 2016); *Greer v. State*, 836 N.W.2d 520, 523 (Minn. 2013).

could be revoked if he violated any conditional release terms, such as using drugs and alcohol, or procuring new criminal charges. G.W. accurately described conditional release to appellant. *See State ex rel Duncan v. Roy*, 887 N.W.2d 271, 272 n.1 (Minn. 2016) ("Functionally, conditional release is identical to supervised release."); *see also* Minn. Stat. § 244.05, subd. 3(2) (2014) (stating that if an inmate violates the conditions of their supervised release, the commissioner may revoke that release).[2] This information about conditional release was sufficient to provide objective notice to appellant of his postconviction claims.

In urging the opposite conclusion, appellant asserts that G.W. failed to "adequately notify" him that he had a viable claim for plea withdrawal. It is true that G.W. did not explicitly inform appellant that he had a potential basis to withdraw his guilty plea. However, based on his attorney's description of conditional release and its ten-year duration in appellant's case, appellant knew or should have known that he could be subject to additional prison time beyond the 36 months in the plea agreement if he violated any conditional release terms. In turn, this advice furnished appellant with a basis to challenge the validity of his guilty plea and the adequacy of his trial attorney's representation. Therefore, the district court's finding that appellant objectively knew or should have known of his claim sometime before the June 8, 2015 hearing is not clearly erroneous.

The fact that appellant subjectively did not receive legal advice to challenge his plea until October 2016 does not hamper the district court's finding. Rather, the record shows

[2] The 2014 version of the statute was in effect when G.W. advised appellant about conditional release.

that, under the objective standard for analyzing when a "claim arises" under Minn. Stat. § 590.01, subd. 4(c), appellant's claim arose when he and his attorney spoke about conditional release, which occurred sometime before the June 8, 2015 disposition hearing. Appellant filed his petition on December 14, 2017. Accordingly, the district court did not abuse its discretion in finding that appellant's petition was untimely.

Even if appellant's assertion that G.W. failed to provide adequate advice of the conditional release period was correct, his claims nonetheless arose when the district court executed his sentence on June 8, 2015. "A claim under [the interests-of-justice exception] arises on the date of an event that establishes a right to relief in the interests of justice." *Bee Yang v. State*, 805 N.W.2d 921, 925 (Minn. App. 2011), *review denied* (Minn. Aug. 7, 2012). When the district court executed appellant's 36-month sentence, it informed him on the record that he would be subject to a ten-year conditional release period. Any injury or prejudice to appellant resulting from the imposition of the allegedly unknown conditional release term would have occurred on this date. Thus, appellant's postconviction claims arose when the district court directly informed him that he was subject to the conditional release period on June 8, 2015. *See id.* (holding that petitioner's interests-of-justice claim arose on the date when the district court revoked his probation and imposed a longer conditional release term than he had been promised at sentencing). Appellant's petition was filed two years beyond the June 8, 2015 hearing, rendering it untimely under Minn. Stat. § 590.01, subd. 4(c).

Affirmed.