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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1265**

Bunrerth Mao, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed April 27, 2020
Affirmed
Slieter, Judge**

Scott County District Court
File No. 70-CR-13-2273

Maria T. Miller, Bloomington, Minnesota (for appellant)

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

Ronald Hocesvar, Scott County Attorney, Todd P. Zettler, Assistant County Attorneys,
Shakopee, Minnesota (for respondent)

Considered and decided by Rodenberg, Presiding Judge; Smith, Tracy M., Judge;
and Slieter, Judge.

UNPUBLISHED OPINION

SLIETER, Judge

Appellant Bunrerth Mao argues the district court abused its discretion by denying his petition for postconviction relief. The interests-of-justice exception does not apply because the injustice alleged by Mao, which led to his missing of the postconviction filing

deadline, is the same as his substantive postconviction relief sought. Therefore, the district court did not abuse its discretion in denying Mao's petition and we affirm.

FACTS

In January 2013, following an incident involving his girlfriend, the state charged Bunrerth Mao with felony domestic assault, in violation of Minn. Stat. § 609.2242, subd. 1 (2012). Mao pleaded guilty to the charge and signed a standard plea petition in September 2013 which included the following language, “[m]y attorney has told me and I understand that if I am not a citizen of the United States this plea of guilty may result in deportation, exclusion from admission to the United States of America or denial of citizenship.” The district court sentenced Mao on May 30, 2014 to a 30-month prison term, with execution stayed for five years during a period of probation.

Mao is not a United States citizen, but has been a legal permanent resident of the United States since 1984. As a result of his conviction, deportation proceedings began and Mao first appeared in immigration court in September 2018. Mao was granted a discharge from probation on May 1, 2019.

Mao petitioned for postconviction relief on June 18, 2019, asking the district court to vacate his conviction in the interests of justice pursuant to Minn. Stat. § 590.01, subd. 4(b)(5) (2018). The district court denied Mao's petition. Mao appeals.

DECISION

Appellate courts review a denial of a postconviction petition for an abuse of discretion. *See Erickson v. State*, 842 N.W.2d 314, 318 (Minn. 2014). A district court abuses its discretion when it has “exercised its discretion in an arbitrary or capricious

manner, based its ruling on an erroneous view of the law, or made clearly erroneous factual findings.” *Reed v. State*, 793 N.W.2d 725, 729 (Minn. 2010).

A petition for postconviction relief must be filed within two years of “the entry of judgment of conviction or sentence if no direct appeal is filed.” Minn. Stat. § 590.01, subd. 4(a)(1) (2018). The district court may hear a petition for postconviction relief filed outside this two-year time frame if the petitioner satisfies one of five statutory exceptions. *See* Minn. Stat. § 590.01, subd. 4(b) (2018).

Mao asserts that his petition is proper pursuant to the interests-of-justice exception, which allows consideration of an untimely petition if the “petition is not frivolous and is in the interests of justice.” Minn. Stat. § 590.01, subd. 4(b)(5). Claims made pursuant to this exception “must be filed within two years of the date the claim arises.” Minn. Stat. § 590.01, subd. 4(c) (2018). However, and as explained below, the district court properly concluded that the interests-of-justice exception is not available to provide Mao relief.

The Minnesota supreme court has explained:

The interests-of-justice exception is triggered by an injustice that caused the petitioner to miss the primary deadline in subdivision 4(a), not the substance of the petition. When the only injustice claimed is identical to the substance of the petition, and the substance of the petition is based on something that happened before or at the time a conviction became final, the injustice simply cannot have caused the petitioner to miss the 2-year time limit in subdivision 4(a), and therefore is not the type of injustice contemplated by the interests-of-justice exception in subdivision 4(b)(5).

Sanchez v. State, 816 N.W.2d 550, 557 (Minn. 2012) (emphasis added). Mao alleges in his postconviction petition that he missed the primary deadline for filing under subdivision

4(a) because his attorney did not advise him of the immigration consequences of his guilty plea. The district court concluded that because this alleged injustice is identical to the substance of Mao's petition for postconviction relief, the petition, consistent with the ruling in *Sanchez*, must be denied.

We agree with the district court. Mao alleges that his attorney was ineffective for failing to adequately inform him of the immigration consequences of entering his plea which, ultimately, led to the immigration action commenced in 2018. Because this alleged injustice is identical to the substance of his postconviction petition, the interests-of-justice exception is not available.¹

Moreover, and to the extent a viable interests-of-justice claim had been raised, Mao's petition would still be time-barred pursuant to Minn. Stat. § 590.01, subd. 4(c) because his claim arises when he knew or should have known of the claim, which is May 2014. Subdivision 4(c) requires that a petitioner must invoke the interests-of-justice exception within two years of the date the interests-of-justice claim arises. *See* Minn. Stat. § 590.01, subd. 4(c); *Rickert v. State*, 795 N.W.2d 236, 242 (Minn. 2011). Courts apply an objective standard when determining the date the claim arises. *Sanchez*, 816 N.W.2d at 558. An interests-of-justice claim therefore arises "when the petitioner knew or should have known that he had a claim." *Id.* at 560.

¹ Raised for the first time during oral argument, Mao's counsel cited *Ramirez-Barajas v. Sessions*, 877 F.3d 808 (8th Cir. 2017), to distinguish Mao's case from a number of unpublished decisions from our court which have affirmed the denial of postconviction relief based upon *Sanchez*. We find no distinction exists following this 8th circuit case and it does not change our analysis.

Mao's signed plea petition stated that his attorney informed him that his guilty plea may lead to deportation if he was not a United States citizen. In addition, Mao told the district court at his plea hearing in May 2014 that he understood everything in the plea petition and that he went over the petition with his attorney before signing it. Based on this record evidence, Mao's interests-of-justice claim arose at the time of sentencing in 2014. Mao's June 2019 postconviction petition is therefore untimely pursuant to subdivision 4(c).

We recognize that the law as it exists results in an inability for Mao to substantively present his interests-of-justice postconviction petition to the district court, but we are bound by supreme court precedent. *State v. Curtis*, 921 N.W.2d 342, 346 (Minn. 2018). Mao has not shown that the district court erred in denying his petition for postconviction relief.

Affirmed.