STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1103

Jose Santoya Juarez, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed October 4, 2021
Affirmed
Reilly, Judge

Kandiyohi County District Court
File No. 34-CR-10-594

Cathryn Middlebrook, Chief Appellate Public Defender, St. Paul, Minnesota; and

Richard A. Dahl, Dahl Law Firm PA, Brainerd, Minnesota (for appellant)

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

Shane D. Baker, Kandiyohi County Attorney, Julianna F. Passe, Assistant County Attorney, Willmar, Minnesota (for respondent)

Considered and decided by Ross, Presiding Judge; Segal, Chief Judge; and Reilly, Judge.

NONPRECEDENTIAL OPINION

REILLY, Judge

Appellant challenges the denial of postconviction relief, arguing that the district court erred by denying his claim of newly discovered evidence as untimely and denying an

evidentiary hearing. Because the district court did not abuse its discretion by denying appellant's postconviction petition, we affirm.

FACTS

In July 2010, appellant Jose Santoya Juarez began speaking with a woman, the victim, in a bar. Appellant touched the victim's thighs and breasts multiple times, and she told him not to touch her. The bartender asked appellant to leave the bar. The victim left the bar later that evening to smoke a cigarette. As she stood outside, appellant "came from behind" her and dragged her into an alley. Appellant tried to pull the victim's pants off, called her a "whore," a "skank," and a "b-tch," and stated he "kn[e]w [she] want[ed] it." Appellant pulled off the victim's tank top and grabbed her breasts and vagina.

The victim called for help and told appellant to leave her alone. The victim took her cell phone from her pocket and redialed the last number she called. Appellant grabbed her phone and threw it against the cement wall. While the victim was unable to say anything into the phone, the person she called heard a voicemail of the victim screaming. Appellant then threw the victim against the cement ground and pushed her head against the cement two or three times, causing her to "black[] out." The victim did not know how long she was unconscious. But the victim recalled that appellant pulled his pants down and held her down with his knees. Appellant put his penis by the victim's mouth and told her to suck it. The victim screamed and told appellant no. While appellant was trying to put his penis in the victim's mouth, the victim's friends found her and threw appellant off her. The victim testified she "thought [she] was going to die" in the alley when appellant was banging her head against the cement.

The state charged appellant with attempted first-degree criminal sexual conduct, kidnapping with intent to commit great bodily harm, two counts of second-degree criminal sexual conduct, and third-degree assault. Following a bench trial in August 2011, the district court found appellant guilty of attempted first-degree criminal sexual conduct, second-degree criminal sexual conduct, kidnapping, and assault. The district court sentenced appellant to life imprisonment without the possibility of release for second-degree criminal sexual conduct. We affirmed appellant's conviction on appeal. *State v. Juarez*, No. A11-2189, 2012 WL 5476119, at *1 (Minn. App. Nov. 13, 2012), *aff'd*, 837 N.W.2d 473 (Minn. 2013). The Minnesota Supreme Court accepted further review and affirmed the conviction in 2013. *State v. Juarez*, 837 N.W.2d 473 (Minn. 2013).

Appellant petitioned for a writ of habeas corpus with the United States District Court for the District of Minnesota. In March 2016, a federal magistrate recommended that the U.S. District Court deny the habeas petition, dismiss the action with prejudice, and deny a certificate of appealability. In April 2016, a U.S. District Court Judge accepted the magistrate judge's recommendation and dismissed the petition.

In November 2019, appellant petitioned for postconviction relief. The district court denied the petition without an evidentiary hearing. This appeal follows.

DECISION

We review a denial of postconviction relief for an abuse of discretion. *Reed v. State*, 925 N.W.2d 11, 18 (Minn. 2019). We review the "postconviction court's legal determinations de novo, and its factual findings for clear error." *Brown v. State*, 895 N.W.2d 612, 617 (Minn. 2017). "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, or exercises its discretion in an arbitrary or capricious manner." *Crow v. State*, 923 N.W.2d 2, 9 (Minn. 2019) (quotation omitted).

I. The postconviction petition is untimely and no exception applies.

A. The petition is untimely.

A person convicted of a crime who claims a violation of his rights under the Constitution or laws of the United States or Minnesota may petition for postconviction relief unless direct appellate relief is available. Minn. Stat. § 590.01, subd. 1 (2018). A petition "filed outside the statute of limitations may be summarily denied, unless a statutory exception applies." *Andersen v. State*, 913 N.W.2d 417, 423 (Minn. 2018).

A postconviction petition must be filed within two years of either "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. Minn. Stat. § 590.01, subd. 4(a) (2018). Here, appellant appealed his conviction to this court, and we affirmed the conviction in November 2012. *Juarez*, No. A11-2189, 2012 WL 5476119, at *1. The Minnesota Supreme Court affirmed the conviction in October 2013. *Juarez*, 837 N.W.2d at 478. Appellant filed his postconviction petition in November 2019, long after the two-year statutory deadline.[1] Thus, appellant's petition for postconviction relief is untimely under Minn. Stat. § 590.01, subd. 4(a).

[1] Appellant claims the two-year time period runs from the filing of his 2016 habeas petition. This argument is unsupported. *See Wayne v. State*, 866 N.W.2d 917, 919 (Minn. 2015) (noting that a postconviction petition is a "creature of state statute, . . . governed by its own

B. The newly-discovered-evidence exception does not apply.

We next consider whether an exception applies. A district court may consider a petition filed beyond the two-year time limit if the petitioner establishes any one of five enumerated exceptions. Minn. Stat. § 590.01, subd. 4(b)(1)-(5) (2018). The presentation of newly discovered evidence is one of the five enumerated exceptions. *Id.*, subd. 4(b)(2). Such evidence must, on its face, prove the petitioner's innocence by a clear and convincing standard. *Id.* A petition invoking this exception, however, is subject to another limitations period—which provides that the petition "must be filed within two years of the date the claim [for the exception] arises." *Id.*, subd. 4(c) (2018). As a result, "[a] postconviction petitioner is not entitled to relief or an evidentiary hearing on an untimely petition unless he can demonstrate that he satisfies one of the [statutory] exceptions . . . and that application of the exception is not time-barred." *Roberts v. State*, 856 N.W.2d 287, 290 (Minn. App. 2014) (quotation omitted), *rev. denied* (Minn. Jan. 28, 2015). When a petitioner seeks relief more than two years after the claim arose, a district court "does not abuse its discretion when it summarily denies the petition." *Rhodes v. State*, 875 N.W.2d 779, 787 (Minn. 2016).

i. The petition was filed more than two years after the claim arose.

Appellant claims the newly-discovered-evidence exception applies. We determine, first, that appellant's attempt to invoke this exception to the two-year statute of limitations under Minn. Stat. § 590.01, subd. 4(a), is itself untimely under Minn. Stat. § 590.01,

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statutory time bar"). We reject appellant's attempt to avoid the statutory time bar by relying on the federal habeas corpus statute of limitations.

subd. 4(c). A claim arises when the petitioner "knew or should have known" the claim existed. *Sanchez v. State*, 816 N.W.2d 550, 560 (Minn. 2012).

After the federal court denied appellant's habeas petition in 2016, appellant's sister contacted a private investigator to interview some witnesses. The investigator interviewed L.S., M.O., and R.O. These interviews were completed by October 2017. According to appellant, the investigator discovered that (1) the victim "had a reputation for going to bars, dressing provocatively and encouraging guys to buy her drinks"; (2) one of the victim's friends thought the victim had a drinking problem; and (3) one of the victim's friends stated the victim told her the sexual contact was consensual and she falsely accused appellant of assault when he stopped buying her drinks.

Appellant's petition could have been brought within two years of the "discovery" of this evidence. The investigator completed all the interviews by October 2017, which was more than two years before appellant filed his postconviction petition in November 2019. The district court reasoned that appellant "knew or should have known about the content of the statements . . . on the dates the statements were taken." We discern no abuse of discretion in this determination.

ii. The petition fails on the merits.

We also determine the petition fails on the merits. A court may consider an untimely petition under the newly-discovered-evidence exception if: (1) the petitioner alleges the existence of newly discovered evidence; (2) the evidence could not have been discovered through the due diligence of the petitioner or his attorney within the two-year time limit; (3) the evidence is not cumulative; (4) the evidence is not for impeachment purposes; and

(5) the evidence establishes the petitioner's innocence by clear and convincing evidence. *Roberts*, 856 N.W.2d at 290; *see also* Minn. Stat. § 590.01, subd. 4(b)(2).

Here, clear and convincing evidence does not establish that appellant is actually innocent of the crime under the fifth prong of the test. Appellant argues that he is entitled to postconviction relief because the victim recanted her statement. To obtain a postconviction evidentiary hearing because of false testimony, we apply the *Larrison* test and consider whether: (1) the court is reasonably well satisfied the testimony given by a material witness is false; (2) the jury might have reached a different conclusion without the testimony; and (3) the party seeking a new trial was taken by surprise when the false testimony was given and was unable to meet it or did not know of its falsity until after the trial. *Reed*, 925 N.W.2d at 26-27 (citing *State v. Caldwell*, 322 N.W.2d 574, 584-85 (Minn. 1982); *Larrison v. United States*, 24 F.2d 82, 87-88 (7th Cir. 1928)). "To obtain a postconviction evidentiary hearing, [a petitioner is] not required to satisfy the *Larrison* test. Instead, he [is] simply required to present competent material evidence that, if found to be true following an evidentiary hearing, could satisfy the *Larrison* test." *Martin v. State*, 825 N.W.2d 734, 743 (Minn. 2013).

The district court reviewed the victim's trial testimony and the investigator's report and determined that the purported recantation was not genuine. Witness R.O. claimed the victim recanted her testimony and that another witness, M.O., also heard her recant. Yet, M.O. denied that the victim recanted. The district court determined that R.O.'s statement "does not prove the innocence of [appellant] in any way." The district court also determined the statements constituted inadmissible hearsay. "[H]earsay evidence is

[never] sufficient to warrant a new trial under the first prong of *Larrison*." *Campbell v. State*, 916 N.W.2d 502, 507 (Minn. 2018). A district court does not abuse its discretion by denying a claim of newly discovered evidence of false testimony when the appellant fails to "present any admissible evidence of . . . recantation." *Dobbins v. State*, 845 N.W.2d 148, 155 (Minn. 2013). The district court determined the statements from R.O., M.O., and L.S. were "hearsay, and at best [had] only impeachment value against the testimony of [the victim]." Appellant argues that the statements are not hearsay but fails to support his argument with citation to any relevant legal authority. The district court did not abuse its discretion in finding it was not reasonably well satisfied that the victim's testimony was false.[2]

We conclude that appellant failed to present "competent material evidence that, if found to be true following an evidentiary hearing, could satisfy the *Larrison* test." *Martin*, 825 N.W.2d at 743. Without this showing, appellant cannot satisfy the five-part test of the newly-discovered-evidence exception. *See Roberts*, 856 N.W.2d at 290 ("[a]ll five criteria must be satisfied to obtain relief"); *see also* Minn. Stat. § 590.01, subd. 4(b)(5). In sum, we determine that the district court did not abuse its discretion by denying appellant's postconviction petition.

[2] While we need not consider the other factors, we also determine that the third *Larrison* factor is not met because appellant was not "taken by surprise" by the victim's testimony. Appellant was represented by counsel at trial and defense counsel thoroughly cross-examined the victim at trial. Appellant was not surprised by the victim's testimony or otherwise unable to meet her testimony, failing the third *Larrison* prong. And we reject as baseless and belied by the record counsel's assertion on appeal that appellant was convicted with no evidence of injuries to corroborate the victim's account of the attack.

II. Appellant was not entitled to an evidentiary hearing.

Appellant argues he was entitled to an evidentiary hearing on his postconviction petition. But a district court need not hold a hearing if "the petition and the files and records of the proceeding conclusively show that the petitioner is entitled to no relief." Minn. Stat. § 590.04, subd. 1 (2018); *see also Davis v. State*, 784 N.W.2d 387, 392 (Minn. 2010) (stating that a hearing is unnecessary if petitioner fails to allege facts sufficient to entitle him to relief). We review the district court's decision on whether to hold an evidentiary hearing for an abuse of discretion. *Riley v. State*, 819 N.W.2d 162, 167 (Minn. 2012). Here, appellant's postconviction petition is untimely and his petition failed to satisfy the newly-discovered-evidence exception to the statutory deadline. Thus, the district court did not abuse its discretion by denying appellant's request for an evidentiary hearing.

Affirmed.