

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1226**

Abas Ibrahim Mohamed, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed August 2, 2021
Reversed and remanded
Smith, Tracy M., Judge**

Sherburne County District Court
File No. 71-CR-13-386

Stephen V. Grigsby, Northfield, Minnesota (for appellant)

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

Kathleen A. Heaney, Sherburne County Attorney, George R. Kennedy, Assistant County Attorney, Elk River, Minnesota (for respondent)

Considered and decided by Smith, Tracy M., Presiding Judge; Jesson, Judge; and Florey, Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In this appeal from an order denying postconviction relief following a stay of adjudication and discharge from probation, appellant Abas Ibrahim Mohamed argues that the district court erred by construing his motion to withdraw his guilty plea as a petition

for postconviction relief and then dismissing his petition because postconviction relief is not available to challenge a stay of adjudication. Because the plain language of Minnesota Rule of Criminal Procedure 15.05 permits a timely motion to withdraw a plea at any time, and because the relevant caselaw does not dictate that a rule 15.05 motion be construed as a petition for postconviction relief following a stay of adjudication and discharge, we conclude that the district court erred by construing Mohamed’s request to withdraw his guilty plea only as a petition for postconviction relief and refusing to address it as a motion under rule 15.05. We therefore reverse and remand for the district court to address Mohamed’s rule 15.05 motion to withdraw his guilty plea, including whether the motion was timely, and for further proceedings as necessary.

FACTS

The following facts are drawn from the plea hearing and the record regarding Mohamed’s request to withdraw his guilty plea. Mohamed arrived as a refugee in 2006 and is now a lawful permanent resident¹ of the United States. In September 2013, Mohamed pleaded guilty to a felony fifth-degree controlled-substance crime. Mohamed asserts that his plea counsel told him that the guilty plea would not affect his immigration status. During the guilty plea colloquy, the district court asked Mohamed if his attorney had informed him about the potential immigration consequences of his guilty plea and asked whether Mohamed wanted to plead guilty “with full knowledge of the potential of immigration consequences.” Mohamed responded that he had been informed of the

¹ A lawful permanent resident—colloquially known as a green-card holder—is an immigrant authorized to live and work indefinitely within the United States.

potential immigration consequences of his plea and wished to plead guilty. After accepting his guilty plea, the district court stayed adjudication for up to five years and placed Mohamed on probation. Three years later, in 2016, the district court discharged Mohamed from probation. Mohamed thus was not adjudicated guilty of the controlled-substance crime.

In 2019, after learning that his guilty plea would render him automatically deportable even though he had never been convicted of the crime under Minnesota law,² Mohamed moved the district court to, among other things, (1) permit him to withdraw his guilty plea pursuant to Minnesota Rule of Criminal Procedure 15.05, subdivision 1, or (2) schedule an evidentiary hearing for postconviction relief. Mohamed's motion was based on a claim of violation of his constitutional right to counsel under *Padilla v. Kentucky*, where the United States Supreme Court held that an attorney's failure to properly advise criminal defendants of the immigration consequences of pleading guilty to a crime constitutes ineffective assistance of counsel. 559 U.S. 356, 368-69, 130 S. Ct. 1473, 1483 (2010).

The district court construed Mohamed's rule 15.05 motion as a petition for postconviction relief under Minnesota Statutes section 590.01 (2020) and directed

² Under the Immigration and Nationality Act (INA), one conviction for an aggravated felony renders a lawful permanent resident deportable. 8 U.S.C. § 1227(a)(2)(iii) (2018). The INA's definition of "conviction" includes cases in which "adjudication of guilt has been withheld" but the defendant "admitted sufficient facts to warrant a finding of guilt" and the judge imposed a punishment. 8 U.S.C. § 1101(a)(48)(A) (2018). Mohamed's stay of adjudication therefore constitutes a conviction under the INA. Mohamed's conviction was for a felony fifth-degree controlled-substance crime. This crime constitutes an "aggravated felony" under the INA. 8 U.S.C. § 1101(a)(43)(B) (2018).

Mohamed to refile his motion as a petition pursuant to that chapter. Mohamed did. The district court then denied the petition. The district court concluded that, because Mohamed was not adjudicated guilty, he was not “convicted of a crime” and was therefore ineligible for postconviction relief.

Mohamed appeals.

DECISION

We review denials of a petition for postconviction relief for an abuse of discretion. *See Pearson v. State*, 891 N.W.2d 590, 596 (Minn. 2017). “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.” *Id.* (quotation omitted).

Mohamed’s petition for postconviction relief sought withdrawal of his guilty plea based on ineffective assistance of counsel under *Padilla*. Mohamed argues that the district court erred by construing his plea-withdrawal motion as a petition for postconviction relief and instead should have addressed his motion under Minn. R. Crim. P. 15.05. That rule states, in relevant part:

At any time the court must allow a defendant to withdraw a guilty plea upon a timely motion and proof to the satisfaction of the court that withdrawal is necessary to correct a manifest injustice. Such a motion is not barred solely because it is made after sentencing. If a defendant is allowed to withdraw a plea after sentencing, the court must set aside the judgment and the plea.

Minn. R. Crim. P. 15.05, subd. 1.

The state, in contrast, contends that the district court properly construed Mohamed’s motion as a petition for postconviction relief and that, under the supreme court’s recent decision in *Johnston v. State*, 955 N.W.2d 908 (Minn. 2021), Mohamed is ineligible for postconviction relief because he was not “convicted of a crime” as required by the postconviction statute. *See* Minn. Stat. § 590.01.

We begin our analysis with *Johnston*. In that case, the supreme court considered whether a defendant who received a stay of adjudication and was discharged from probation could seek postconviction relief for ineffective assistance of counsel under *Padilla*. *Johnston*, 955 N.W. 2d at 909, 913. Johnston, a lawful permanent resident, pleaded guilty to of a deportable offense. *Id.* at 909-10. He received a stay of adjudication and was placed on probation for one year. *Id.* at 910. Johnston then successfully completed, and was discharged from, probation. *Id.* Three days after his release from probation, Johnston received notice that the federal government had initiated removal proceedings against him. *Id.* He petitioned for postconviction relief, seeking to withdraw his plea under *Padilla*, arguing that his attorney did not competently advise him about the immigration consequences of his plea and that he therefore received ineffective assistance of counsel. *Id.*

The supreme court held that Johnston was not eligible for postconviction relief. *Id.* at 913. To do so, it interpreted the language in the postconviction-relief statute providing that “a person convicted a crime . . . may commence a proceeding to secure relief.” Minn. Stat. § 590.01, subd. 1. The supreme court observed that a stay of adjudication does not constitute a conviction, explaining that “[i]f adjudication is stayed a guilty plea is not

recorded because there is, by definition, no adjudication of guilt, and therefore no conviction.” *Johnston*, 955 N.W. 2d at 911 (quotation omitted). And, the supreme court reasoned, because Johnston did not have a conviction, he was not “a person convicted of a crime” under the plain meaning of that phrase and was thus was not eligible to seek postconviction relief under Minn. Stat. § 590.01. *Id.* at 913.

Had Mohamed sought relief pursuant to chapter 590, *Johnston* would dictate denial of his petition. As in *Johnston*, Mohamed received a stay of adjudication and was discharged from probation before seeking withdrawal of his plea. He therefore was not “a person convicted of a crime,” Minn. Stat. § 590.01, and is thus ineligible for postconviction relief. But this case is procedurally distinct from *Johnston*. Unlike Johnston, Mohamed sought to withdraw his plea under rule 15.05 and sought postconviction relief only when the district court required him to reframe his motion as a postconviction petition.

The distinction is important because the supreme court in *Johnston* raised the possibility of a rule 15.05 motion following a stay of adjudication and discharge, and, while the court did not approve such an approach, neither did it foreclose it. In his dissent, Justice Thissen observed that, at oral argument, the supreme court prompted the parties to address whether Johnston could have moved to withdraw his plea under rule 15.05. *Johnston*, 955 N.W.2d at 915 n.2 (Thissen, J., dissenting). Justice Thissen wrote:

Whether a motion to withdraw a guilty plea was available to Johnston to challenge a guilty plea that resulted in a stay of adjudication *after* he had completed the conditions of his probation and the stay (and case) disappeared is a question we have not answered, and the court does not reach the issue in this case.

Id. Justice Thissen continued, “[I]f a Rule 15.05 motion were available to Johnston, the district court readily could have treated Johnston’s postconviction motion under section 590.01 seeking to vacate the guilty plea as a Rule 15.05 motion and addressed the merits accordingly.” *Id.*

In response, the majority disagreed that postconviction relief was available under section 590.01, and wrote:

However, Johnston does not have a conviction, but a vacated stay of adjudication, and there is no procedural mechanism for the district court to vacate a vacated stay of adjudication. As the dissent suggests, if a Rule 15.05 motion was available to Johnston, the district court could have addressed that motion under section 590.01. This issue is not before us.

Id. at 913 n.5.

Thus, the issue of the availability of a rule 15.05 motion to seek plea withdrawal following a stay of adjudication was not answered in *Johnston* but is squarely before us now. We thus must determine whether Mohamed could pursue a rule 15.05 motion to withdraw a plea or was limited to a petition for postconviction relief, for which he was ineligible.

We look first to the rule at issue. “In interpreting the rules of criminal procedure, we look first to the plain language of the rule and its purpose.” *See State v. Lee*, 929 N.W.2d 432, 439 (Minn. 2019) (quotation omitted). We interpret court rules using the rules of grammar and the common meanings of words and phrases. *See id.* “If the language is plain and unambiguous, we follow the plain language of the rule.” *See id.*

Rule 15.05 states that “[a]t any time the court must allow a defendant to withdraw a guilty plea upon a *timely* motion and proof to the satisfaction of the court that withdrawal is necessary to correct a manifest injustice.” Minn. R. Crim. P. 15.05, subd. 1 (emphases added). Under the plain language of the rule, defendants may move to withdraw their plea at any time provided the motion is timely. Nothing in the rule states that a motion to withdraw a plea following a stay of adjudication and discharge can only be brought by postconviction petition.

But the state argues that caselaw dictates that a postconviction petition is the only avenue available to seek plea withdrawal in those circumstances. The state relies on *James v. State*, 699 N.W.2d 723 (Minn. 2005). In *James*, the appellant pleaded guilty to and was convicted of a deportable offense and his stayed prison sentence was ultimately executed following violation of probation. *Id.* at 725-26. He then moved to withdraw his plea under rule 15.05, subdivision 1, based on his challenge to the imposition of a conditional-release term as part of his sentence. *Id.* at 726. In analyzing whether James’s plea-withdrawal request was time-barred, the supreme court wrote that, “after the defendant has been sentenced, the motion to withdraw the plea must be raised in a petition for postconviction relief.” *Id.* at 727. The supreme court went on to conclude that James’s plea-withdrawal request was timely. *Id.* at 728.

But, unlike the defendant in *James*, *see id.* at 726, Mohamed was never sentenced. In *Dupey v. State*, the supreme court concluded that a stay of adjudication “is not a judgment of conviction or [a] sentence” for purposes of the limitations provision of the postconviction statute. 868 N.W.2d 36, 37 (Minn. 2015). And the supreme court reaffirmed

that ruling in *Johnston*, 955 N.W.2d at 911-12. Accordingly, because Mohamed was not sentenced, *James* does not dictate that Mohamed's plea-withdrawal request had to be brought via a petition for postconviction relief. The state's reliance on *James* is therefore misplaced.

Mohamed, in turn, argues that another case, *Campos v. State*, authorizes a rule 15.05 motion here. 816 N.W.2d 480 (Minn. 2012). In that case, Reyes Campos pleaded guilty to a deportable crime without having been informed by his counsel about the immigration consequences of his plea and without having been questioned by the district court about his understanding of the immigration consequences of his plea. *Id.* at 483; *see also* Minn. R. Crim. P. 15.01, subd. 1(6)(1) (requiring a district court, before accepting a guilty plea, to inquire about the defendant's understanding of the immigration consequences of a plea). The district court accepted Reyes Campos's plea, stayed imposition of sentence, and placed him on probation. *Id.* at 484. Months later, Reyes Campos was detained by Immigration and Customs Enforcement. *Id.* About nine months after his guilty plea and the district court's disposition of his case, Reyes Campos moved to withdraw his guilty plea under rule 15.05, subdivision 1, on the ground of ineffective assistance of counsel under the Supreme Court's intervening decision in *Padilla* and on the ground of violation of rule 15.01. *Id.* at 485, 499. The supreme court held that *Padilla* does not apply retroactively and denied Reyes Campos relief based on ineffective assistance of counsel. *Id.* at 499. But the supreme court remanded to the district court the question of whether Reyes Campos was

entitled to withdraw his plea due to lack of compliance with rule 15.01, subdivision 1(6)(1).
Id. at 500.³

Mohamed argues that, just as Reyes Campos was permitted to pursue plea withdrawal under rule 15.05 following a guilty plea and stay of imposition of sentence, he can pursue plea withdrawal under rule 15.05 following his guilty plea and stay of adjudication. But *Campos* is procedurally different from this case. Unlike Mohamed, Reyes Campos did not have a stay of adjudication and had not been discharged from probation at the time he brought his rule 15.05 motion. *Id.* at 484 (stating that Reyes Campos was placed on probation for three years). Moreover, the supreme court in *Campos* did not discuss the postconviction statute or its possible application. *Campos* therefore does not answer whether a rule 15.05 motion must be treated as a postconviction petition in the circumstances here.

In sum, we conclude that *Campos* does not authorize a rule 15.05 motion following a stay of adjudication and discharge. But, at the same time, the state has not persuaded us that a rule 15.05 motion must be construed as a petition for postconviction relief when the defendant has been neither convicted nor sentenced. We therefore conclude that Mohamed could move to withdraw his guilty plea under rule 15.05, rather than via a postconviction petition, provided his motion was timely.

The district court therefore erred by construing Mohamed's rule 15.05 motion to withdraw his plea as a petition for postconviction relief, for which he was ineligible.

³ In remanding, the supreme court emphasized the "unique facts" of the case, where the state conceded error and was not arguing that the issue was waived. *Id.*

Instead, the district court should have addressed Mohamed's rule 15.05 motion. We therefore remand the matter for the district court to address Mohamed's motion to withdraw his guilty plea under rule 15.05, including whether the motion was timely, and for further proceedings as necessary.

Reversed and remanded.