STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1443

S'Emaj Avyiair Okongwu, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed July 19, 2021
Affirmed; motion denied
Larkin, Judge

Dakota County District Court
File Nos. 19HA-CR-16-2305; 19HA-CR-16-4101

P. Chinedu Nwaneri, Nwaneri Law Firm, PLLC, St. Paul, Minnesota (for appellant)

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

Kathryn M. Keena, Acting Dakota County Attorney, Heather Pipenhagen, Assistant County Attorney, Hastings, Minnesota (for respondent)

Considered and decided by Reyes, Presiding Judge; Larkin, Judge; and Bjorkman, Judge.

NONPRECEDENTIAL OPINION

LARKIN, Judge

Appellant challenges the postconviction court's summary denial of his petition for relief as untimely and without merit. We affirm.

FACTS

In July 2016, respondent State of Minnesota charged appellant S'Emaj Avyiair Okongwu with one count of third-degree criminal sexual conduct, alleging that he assaulted a 14-year-old girl. Okongwu was 18 years old at the time of the offense. In May 2017, the state charged Okongwu with another single count of third-degree criminal sexual conduct for an offense against a 13-year-old girl.

In May 2017, Okongwu appeared before the district court with counsel and pleaded guilty to the two charges. He signed and tendered a petition to plead guilty for each charge. During his plea, he acknowledged that he was waiving his right to assert a mistake-of-age defense, that he understood the mistake-of-age defense, and that he knew his victims' ages at the time of the offenses.[1] On August 24, 2017, the district court entered judgments of conviction, stayed imposition of sentence, and placed Okongwu on probation for ten years. Okongwu did not appeal his convictions.

In June 2020, Okongwu petitioned for postconviction relief, seeking to withdraw his guilty pleas. He asserted that he received ineffective assistance of counsel in the plea proceeding and that his pleas were invalid. The postconviction petition was assigned to the same judge who had accepted Okongwu's guilty pleas and entered judgments of conviction.

[1] The third-degree criminal-sexual-conduct statute allows for an affirmative mistake-of-age defense in some instances "if the actor is no more than 120 months older than the complainant" and "reasonably believes the complainant to be 16 years of age or older." Minn. Stat. § 609.344, subd. 1(b) (2014).

In his affidavit in support of his postconviction petition, Okongwu asserted that he learned of the "availability of postconviction relief about early August 2019," but the two-year statutory deadline for requesting such relief passed before he could file a petition. He claimed that he learned "the real age of the complainants after these criminal cases commenced" and that his attorney did not explain that he had an affirmative defense to the charges based on "an honest belief that the complainants were 16 years or older at the time of the incidents." He also claimed that his attorney directed him to waive his affirmative defense and to falsely admit that he knew the ages of the victims. Lastly, he claimed that his attorney failed to explain certain consequences that would result from the guilty pleas, such as difficulty obtaining student loans, housing, and employment.

The postconviction court denied Okongwu's petition without a hearing, concluding that it was both time barred and without merit. Okongwu appeals.

DECISION

Under Minnesota's postconviction statute, a person convicted of a crime may seek relief by filing a petition claiming that the conviction "violated the person's rights under the Constitution or laws of the United States or of the state." Minn. Stat. § 590.01, subd. 1(1) (2020). "The person seeking postconviction relief bears the burden of establishing by a preponderance of the evidence that his claims merit relief." *Crow v. State*, 923 N.W.2d 2, 10 (Minn. 2019). An evidentiary hearing on a postconviction petition must be held unless "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 (2020); *Hannon v. State*, 957 N.W.2d 425, 434 (Minn. 2021) (quotation omitted). "In determining whether an

evidentiary hearing is required, a postconviction court considers the facts alleged in the petition as true and construes them in the light most favorable to the petitioner." *Brown v. State*, 895 N.W.2d 612, 618 (Minn. 2017).

We review the denial of a postconviction petition, including a denial based on a determination that a petition is untimely, for an abuse of discretion. *Colbert v. State*, 870 N.W.2d 616, 621-22 (Minn. 2015). In doing so, we review legal issues de novo and factual findings for clear error. *Id.* at 621. The 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." *State v. Nicks*, 831 N.W.2d 493, 503 (Minn. 2013) (quotation omitted).

I.

Okongwu contends that the postconviction court erred by rejecting his petition as time barred. A postconviction petition must be filed within two years of "entry of judgment of conviction or sentence if no direct appeal is filed." Minn. Stat. § 590.01, subd. 4(a)(1) (2020). Minn. Stat. § 590.01, subd. 4(b) (2020), sets forth five exceptions to the time bar in subdivision 4(a). "Any petition invoking an exception provided in [subdivision 4(b)] must be filed within two years of the date the claim arises." Minn. Stat. § 590.01, subd. 4(c) (2020). The two-year time limit in subdivision 4(c) applies to all of the exceptions listed in subdivision 4(b). *Sanchez v. State*, 816 N.W.2d 550, 552 (Minn. 2012). For purposes of calculating the two-year time limit in subdivision 4(c), a claim based on an exception in subdivision 4(b) arises when the claimant knew or should have known that the claim existed. *Id.*

In the postconviction proceeding, Okongwu acknowledged that he failed to file his petition before the statutory deadline. He relied on an exception to the deadline under subdivision 4(b)(5), which applies if "the petitioner establishes to the satisfaction of the court that the petition is not frivolous and is in the interests of justice." The postconviction court concluded that Okongwu failed to plead sufficient grounds to satisfy that exception. For the reasons that follow, we agree.

The interests-of-justice exception is limited to exceptional circumstances. *Carlton v. State*, 816 N.W.2d 590, 607 (Minn. 2012). To invoke the exception, "the claim must relate to an injustice that *caused* the petitioner to miss the primary deadline in subdivision 4(a), [and] not the *substance* of the petition." *Jackson v. State*, 929 N.W.2d 903, 907 (Minn. 2019) (quotation omitted). Here, the district court entered judgments of conviction and stayed imposition of sentence on August 24, 2017, and Okongwu did not file a direct appeal. Thus, Okongwu had two years from August 24, 2017, to timely petition for postconviction relief. *See* Minn. Stat. § 590.01, subd. 4(a)(1). Okongwu does not identify *any* circumstance that caused him to miss the deadline for filing a timely petition.

Okongwu argues that he did not become aware of the availability of postconviction relief until August 2019. But actual knowledge is irrelevant in determining when a claim arises for the purpose of an exception to the statutory time bar; an objective standard applies. *Pearson v. State*, 946 N.W.2d 877, 884 (Minn. 2020). Okongwu does not explain why that objective standard is satisfied in this case. Instead, he asserts that if section 590.01, subdivision 4(c), "is properly construed or determined to be unconstitutional," then his postconviction petition was timely.

Okongwu argues that subdivision 4(c), at times, "kills or swallows" the time-bar exceptions in subdivision 4(b). He points to circumstances in which a postconviction claim "arises" prior to entry of judgment of conviction or sentence and no direct appeal is filed. He argues that in such cases, subdivision 4(c) effectively prohibits any time-bar exception because the time bar in subdivision 4(c) will necessarily take effect on or before the general two-year time bar in subdivision 4(a). Okongwu therefore argues that subdivision 4(c) deprives postconviction courts of their "inherent power" to consider postconviction claims under the interests-of-justice exception.[2]

"We review the constitutionality of a statute de novo." *Carlton*, 816 N.W.2d at 611. "Statutes are presumed to be constitutional, and we will find a statute unconstitutional only when absolutely necessary." *Id.* (quotation omitted). "The party challenging a statute must demonstrate that the statute is unconstitutional beyond a reasonable doubt." *Id.* (quotation omitted).

The Minnesota Supreme Court and this court have deemed the time bars in section 590.01 constitutional. *See, e.g.*, *id.* at 616 (holding that the time bar in subdivision 4(a) was constitutional as applied); *Bee Yang v. State*, 805 N.W.2d 921, 924 (Minn. App. 2011) (holding that subdivision 4(c) is constitutional), *review denied* (Minn. Aug. 7, 2012). In *Sanchez*, the Minnesota Supreme Court held that "[t]he Legislature did not unconstitutionally usurp a judicial function when it added time limits to the postconviction relief statute, Minn. Stat. § 590.01, subd. 4 (2010)," and that "application of the time limits

[2] The postconviction court rejected Okongwu's constitutional argument.

in the statute did not violate appellant's due process rights under the Minnesota Constitution." 816 N.W.2d at 553.

Moreover, in *Sanchez*, the supreme court rejected an argument similar to the one Okongwu raises here. *Id*. at 556. The supreme court noted that "the interests-of-justice referred to in subdivision 4(b)(5) relate to the *reason* the petition was filed after the 2-year time limit in subdivision 4(a), [and] not the *substantive claims* in the petition." *Id*. at 557. The supreme court explained:

> 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). Consequently, there is no conflict between subdivisions 4(b)(5) and 4(c).

Id. The supreme court in *Sanchez* also declined to overrule established caselaw holding that subdivision 4(c) "applies to all of the subdivision 4(b) exceptions." *Id.*; *see Rickert v. State*, 795 N.W.2d 236, 242 (Minn. 2011) ("[A] petition for postconviction relief invoking an exception under subdivision 4(b) must be filed within two years of the date the interests-of-justice claim 'arises.'").

Okongwu argues that "the appellate courts (or Minnesota Supreme Court) should reconsider and overrule the decision in *Sanchez*." But "this court[] is bound by supreme court precedent and the published opinions of the court of appeals." *State v. M.L.A.*, 785 N.W.2d 763, 767 (Minn. App. 2010), *review denied* (Minn. Sept. 21, 2010). Given the

clear precedent upholding the constitutionality of subdivision 4(c), there is no basis for this court to further consider Okongwu's constitutional challenge.[3]

In sum, the postconviction court did not abuse its discretion by summarily denying Okongwu's postconviction petition as time barred.

II.

Okongwu contends that the postconviction court erred by rejecting his request for relief on the merits. He argues that he has shown a basis for relief because his attorney was ineffective and because his guilty pleas were invalid. Because we have concluded that the postconviction court correctly denied relief on procedural grounds, it is not necessary to address the court's ruling on the merits. We nonetheless do so and for the reasons that follow conclude that the postconviction court did not abuse its discretion by rejecting Okongwu's request for relief on the merits.

Ineffective Assistance of Counsel

To demonstrate ineffective assistance of counsel a defendant must satisfy a two-prong test from *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052 (1984). *State v. Ecker*, 524 N.W.2d 712, 718 (Minn. 1994). First, the defendant must show "that counsel's representation fell below an objective standard of reasonableness." *Id.* (quotation omitted). Second, the defendant must show prejudice by demonstrating that there is "a reasonable

[3] Okongwu moved this court to supplement the record with documents regarding the legislative intent behind section 590.01, subdivision 4(c). Because we do not further consider Okongwu's constitutional challenge to subdivision 4(c), information regarding legislative intent is irrelevant. We therefore deny Okongwu's motion as moot. *See Drewitz v. Motorwerks, Inc.*, 728 N.W.2d 231, 233 n.2 (Minn. 2007) (denying motion to strike as moot when court did not rely on challenged materials).

probability that, but for counsel's errors, [the defendant] would not have pleaded guilty and would have insisted on going to trial." *State v. Ellis-Strong*, 899 N.W.2d 531, 536 (Minn. App. 2017) (quotation omitted). When reviewing a postconviction court's denial of a claim of ineffective assistance of counsel, we consider the court's factual findings that are supported by the record, review the legal implication of those facts de novo, and "either affirm the court's decision or conclude that the court abused its discretion because postconviction relief is warranted." *Nicks*, 831 N.W.2d at 503-04.

We recognize that in postconviction proceedings, a court must consider the facts alleged in the petition as true and construe them in the light most favorable to the petitioner. *See Brown*, 895 N.W.2d at 618. However, appellate courts routinely rely on statements made by defendants at the time of their guilty pleas, both on the record and in their plea petitions, when assessing the validity of guilty pleas. *See State v. Raleigh*, 778 N.W.2d 90, 96 (Minn. 2010) (relying on an on-the-record exchange between defendant and his attorney to conclude that defendant's plea was voluntary); *Ecker*, 524 N.W.2d at 718-19 (relying on "[t]he record of the guilty plea" to reject a claim that a plea was not voluntary); *State v. Aviles-Alvarez*, 561 N.W.2d 523, 526-27 (Minn. App. 1997) (relying on the plea petition and testimony at the plea hearing to conclude that defendant's plea was intelligent), *review denied* (Minn. June 11, 1997). A defendant is not entitled to postconviction relief, or even an evidentiary hearing, "if [his] allegations lack factual support and are directly refuted by [his] own testimony in the record." *Williams v. State*, 760 N.W.2d 8, 14 (Minn. App. 2009), *review denied* (Minn. Apr. 21, 2009).

If a defendant makes inconsistent statements regarding the validity of his guilty plea, then "credibility determinations are crucial, [and] a reviewing court will give deference to the primary observations and trustworthiness assessments made by the district court." *Aviles-Alvarez*, 561 N.W.2d at 527. Because Okongwu has made assertions in support of his ineffective-assistance-of-counsel claim that are inconsistent with his sworn statements at the plea hearing, and because the same judge presided over both matters, deference to the postconviction court's credibility determinations is appropriate here.

In the postconviction court, Okongwu asserted that his attorney inappropriately persuaded him to plead guilty, to waive a mistake-of-age defense, and to answer questions at the plea hearing untruthfully. The postconviction court rejected those arguments because they were "in direct conflict with sworn testimony" and not "compelling." The plea transcripts and Okongwu's petitions to plead guilty establish that Okongwu was advised of the mistake-of-age defense and that he knew the age of his victims when the offenses occurred. Thus, the postconviction court's rejection of Okongwu's claims that his sworn statements at the plea hearing were untruthful is a credibility determination to which we defer. *See id*. Okongwu proffered no other evidence to support his assertions that his attorney's representation was objectively unreasonable.[4]

As to the alleged failure of Okongwu's attorney to advise him of certain consequences of his plea, a defendant need not be advised of every consequence of a plea, only direct consequences. *Kaiser v. State*, 641 N.W.2d 900, 903-04 (Minn. 2002).

[4] Okongwu informs this court that his attorney is now deceased.

"[D]irect consequences are those which flow definitely, immediately, and automatically from the guilty plea." *Alanis v. State*, 583 N.W.2d 573, 578 (Minn. 1998). Thus, Okongwu's complained-of consequences—such as difficulty obtaining student loans, housing, and employment—do not establish that his attorney's performance was objectively unreasonable.

In sum, the postconviction court did not abuse its discretion by summarily rejecting Okongwu's claim of ineffective assistance of counsel.

Validity of Guilty Pleas

"To be constitutionally valid, a guilty plea must be accurate, voluntary, and intelligent." *Raleigh*, 778 N.W.2d at 94. A defect in any of those three components invalidates a guilty plea. *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007). "A defendant bears the burden of showing his plea was invalid." *Raleigh*, 778 N.W.2d at 94. The validity of a guilty plea is a question of law that this court reviews de novo. *Id*.

Okongwu argues that his plea is invalid because the district court did not provide "mandatory warnings or verifications" under Minn. R. Crim. P. 15.01, subd. 1. Rule 15.01, subd. 1, states that, before a judge accepts a felony guilty plea, the defendant must be sworn and questioned regarding a list of topics, such as the crime charged, the plea agreement, and the rights being waived. However, the supreme court has stated:

> [T]he trial court's failure to follow the suggested questions in Minn. R. Crim. P. 15.01 verbatim is not fatal. The Comments to Minn. R. Crim. P. 15.01, and Minnesota case law establish that failure to interrogate a defendant as set forth in Rule 15.01 or to fully inform him of all constitutional rights does not invalidate a guilty plea. What is important is not the order or the wording of the questions, but whether the record is

> adequate to establish that the plea was intelligently and voluntarily given.

State v. Doughman, 340 N.W.2d 348, 351 (Minn. App. 1983) (citation omitted), *review denied* (Minn. Mar. 15, 1984).

The intelligence of a guilty plea may be established if a criminal defendant signs a petition to plead guilty during a plea hearing and states that he understands the petition. *See Saliterman v. State*, 443 N.W.2d 841, 844 (Minn. App. 1989), *review denied* (Minn. Oct. 13, 1989). Okongwu signed and tendered plea petitions addressing the topics in rule 15.01, subdivision 1, including the rights being waived and his admission of guilt. In addition, prior to the district court's acceptance of Okongwu's guilty pleas, the attorneys and judge conducted a thorough, on-the-record inquiry regarding his understanding of his rights, his waiver of defenses, the factual basis for his guilty pleas, and his admission of guilt. This record does not suggest that Okongwu's guilty plea was invalid under rule 15.01.

Okongwu also argues that his guilty pleas were not "knowingly made" because his attorney did not explain the meaning of an affirmative defense "in detail." We once again defer to the postconviction court's determination that Okongwu's postconviction assertions regarding his attorney's performance were not credible.

In sum, Okongwu did not show that his guilty pleas were invalid. The postconviction court therefore did not abuse its discretion by summarily denying Okongwu's request for relief based on the alleged invalidity of his guilty pleas.

Affirmed; motion denied.