This opinion is nonprecedential except as provided by Minn.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
A20-1530

Mohamed Hassan Ali, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed June 21, 2021
Affirmed
Florey, Judge

Hennepin County District Court
File Nos. 27-CR-11-38829; 27-CR-11-8168

Cathryn Middlebrook, Chief Appellate Public Defender, Erik I. Withall, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Michael O. Freeman, Hennepin County Attorney, Brittany D. Lawonn, Assistant County Attorney, Minneapolis, Minnesota; and

James R. Rowader, Jr., Minneapolis City Attorney, Zenaida Chico, Assistant City Attorney, Minneapolis, Minnesota (for respondent)

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

Florey, Judge.

NONPRECEDENTIAL OPINION

FLOREY, Judge

Appellant Mohamed Hassan Ali argues that the district court abused its discretion by denying his petition for postconviction relief based on its untimeliness. We affirm.

FACTS

On June 6, 2011, Ali pleaded guilty to fifth-degree criminal sexual conduct. Although he received no legal advice regarding the immigration consequences of a conviction before pleading guilty, he did receive immigration advice before sentencing. Specifically, Ali was advised that he would be immediately deportable if he received a sentence of 365 days or greater. Consequently, his attorney negotiated for a 364-day sentence. Ali was also advised that fifth-degree criminal sexual conduct is considered a crime of moral turpitude under federal immigration law and that he would be subject to immigration consequences if he were convicted of a second crime of moral turpitude.

Later in 2011, the state issued a citation against Ali for misdemeanor theft. Although he was represented by an attorney, he received no legal advice regarding the immigration consequences of a theft conviction. He pleaded guilty and was sentenced for the theft on March 13, 2012.

In June 2013, the United States Department of Homeland Security initiated removal proceedings against Ali based on these two convictions. In November 2013, an immigration court determined that Ali was removable because his criminal-sexual-conduct conviction and his theft conviction were both crimes of moral turpitude. But the federal

government did not attempt to actually remove Ali until 2017. That removal attempt was unsuccessful, and Ali was returned to the United States.

In April 2018, Ali brought a motion in immigration court to reopen the immigration matter. After the immigration court initially denied the motion, the Board of Immigration Appeals sustained the appeal, reopened the proceedings, and remanded to the immigration court. Thereafter, on October 15, 2019, the immigration court again concluded that both convictions were for crimes of moral turpitude and again determined that Ali was subject to removal.

On January 7, 2020, Ali filed petitions for postconviction relief seeking to withdraw his guilty pleas to both fifth-degree criminal sexual conduct and theft. He argued that he should be allowed to withdraw his pleas based on ineffective assistance of counsel pursuant to *Padilla v. Kentucky*, 559 U.S. 356, 130 S. Ct. 1473 (2010).

The district court held an evidentiary hearing on the petition. At the hearing, Ali admitted that he knew in 2013 that the immigration court concluded that he was removable based on the convictions at issue here. He also admitted that the immigration attorney that gave him advice in the criminal-sexual-conduct matter told him that his criminal-sexual-conduct conviction was a crime of moral turpitude that could lead to immigration consequences if he accrued additional convictions.

Following the hearing, the district court entered an order denying Ali's postconviction petition because it was untimely. Nevertheless, the district court analyzed in dicta Ali's ineffective-assistance-of-counsel claims and concluded that Ali had a

meritorious claim in the theft case but a meritless claim in the criminal-sexual-conduct case. This appeal follows.

DECISION

Ali appeals the denial of his postconviction petition. An appellate court reviews the denial of a postconviction petition for an abuse of discretion. *Rhodes v. State*, 875 N.W.2d 779, 786 (Minn. 2016). A postconviction court abuses its discretion if it "exercise[s] its discretion in an arbitrary or capricious manner, base[s] its ruling on an erroneous view of the law, or [makes] clearly erroneous factual findings." *Id.* (quotation omitted).

The district court denied Ali's petition based solely on its conclusion that the petition was untimely. A defendant seeking postconviction relief must bring a petition under chapter 590 within two years after the entry of judgment of conviction or sentence if, as is the case here, the defendant filed no direct appeal. Minn. Stat. § 590.01, subd. 4(a) (2020). There are several exceptions to this time limit, but only one is relevant here: the postconviction court may hear an untimely petition if the petitioner's claim is not frivolous and reviewing the claim is in the interests of justice. Minn. Stat. § 590.01, subd. 4(b)(5) (2020). The interests-of-justice exception is "triggered by an injustice that caused the petitioner to miss the primary postconviction deadline, not the substantive merits of the petition." *Brown v. State*, 863 N.W.2d 781, 788 (Minn. 2015). Untimely petitions brought under the interests-of-justice exception are also subject to a statute of limitations—a petition brought under the exception must be brought within two years of the date the claim arises. Minn. Stat. § 590.01, subd. 4(c) (2020); *see also Pearson v. State*, 946 N.W.2d 877, 884 (Minn. 2020).

Ali generally argues that the district court abused its discretion in two ways: (1) by erroneously finding that Ali's claim arose when he was sentenced in March 2012 or, at the latest, when he was subjected to immigration proceedings based on his convictions in 2013 and (2) by failing to toll the time limits for filing a petition until Ali's immigration consequences were finalized. We address each argument in turn.

I. The district court did not clearly err in finding that Ali's claim arose in March 2012.

Ali first argues that the district court erred by finding that his claim arose in March 2012, when he was sentenced for the theft conviction, or, at the latest, in 2013, when he was taken into custody, removal proceedings were initiated, and the immigration court determined that Ali was removable based on his two convictions.

A claim arises when the defendant "knew or should have known" of the claim. *Pearson*, 946 N.W.2d at 884 (quoting *Sanchez v. State*, 816 N.W.2d 550, 558 (Minn. 2012)). "It is not a subjective, actual knowledge standard." *Id.* (quotation omitted). The determination of when a claim arose is a question of fact, reviewed for clear error. *Sanchez*, 816 N.W.2d at 560.

In *Sanchez*, the supreme court concluded that the district court did not err when it found that the petitioner's claim arose once the attorney's actions as counsel were completed because "all of the facts on which Sanchez's ineffective assistance of appellate counsel claim was based were known or knowable by him." *Id.* at 558 (quotation omitted). Similarly, in this case, we conclude that the district court did not clearly err in finding that Ali's claim arose in March 2012, when he was sentenced on the theft conviction without

receiving any legal advice.[1] At that time, Ali knew or could have known all the facts supporting his ineffective-assistance-of-counsel claim.

Moreover, "[w]hen 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 . . . and therefore is not the type of injustice contemplated by the interests-of-justice exception." *Sanchez*, 816 N.W.2d at 557. Here, the only injustice that Ali appears to claim to invoke the interests-of-justice exception to the ordinary two-year time limit is that he was unaware of his claim because he received ineffective assistance of counsel. But that is "not the type of injustice contemplated by the interests-of-justice exception." *Id.* at 557.

Ali was required to bring a postconviction petition within two years of the date that his claim arose. His claim arose in 2012, but he did not bring a postconviction petition until 2020.[2] Consequently, the district court did not abuse its discretion by denying Ali's petition based on its untimeliness.

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[1] Even if we applied a subjective standard to determine when a claim arose, Ali's claim would have arisen, as the district court observed, in 2013 at the latest, when the immigration court actually determined that Ali was removable based on his two convictions. Ali admitted at the evidentiary hearing that he knew that the immigration proceedings were based on the two convictions at issue here.

[2] Ali also argues that his ineffective-assistance-of-counsel claim did not arise until 2019 because he did not suffer any prejudice as a result of his counsel's deficient performance until the immigration court determined, for a second time, he was removable based on the convictions and the collateral immigration consequences of his convictions were "set in stone." We are not persuaded. Prejudice, in the context of an ineffective-assistance-of-counsel claim aimed at withdrawing a guilty plea, only requires a showing that there was a "reasonable probability that, but for counsel's errors, [the defendant] would not have

II. The district court did not err by declining to toll the two-year time limit while Ali's immigration case proceeded.

Ali also argues that the district court should have tolled the time limit to bring a postconviction petition while his immigration matter proceeded to serve the interest of judicial economy. But Ali never raised this argument to the district court. Thus, we need not address it. *See Davis v. State*, 784 N.W.2d 387, 391 (Minn. 2010) ("We will not address that argument for the first time on appeal from a postconviction petition."). We observe, however, that Ali's argument finds no support in the unambiguous terms of the postconviction statute, which does not provide that the time limit should be tolled. Minn. Stat. § 590.01; *Sanchez*, 816 N.W.2d at 557 (stating that an unambiguous statute must be construed according to its plain language).

Affirmed.

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pleaded guilty and would have insisted on going to trial." *Campos v. State*, 816 N.W.2d 480, 486 (Minn. 2012) (citing *Hill v. Lockhart*, 474 U.S. 52, 59, 106 S. Ct. 366, 371 (1985)). Ali could have made that showing long before the 2019 immigration court order concluding for a second time that his convictions formed the basis for removal. Ali conceded in his post-evidentiary-hearing memorandum that the law was "truly clear" that theft was a crime of moral turpitude. Had Ali been accurately advised of the likely immigration consequences of his theft conviction, he probably would not have pleaded guilty, regardless of whether the immigration proceedings were briefly reopened. A reasonable person in Ali's position should have known that it was at least reasonably likely that he was removable based on his convictions in 2013, when the immigration proceedings began.