This opinion is nonprecedential except as provided by Minn.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
A21-0649

Terrance James Bowers, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed December 13, 2021
Affirmed
Connolly, Judge

St. Louis County District Court
File No. 69DU-CR-15-2769

Cathryn Middlebrook, Chief Appellate Public Defender, Jenna Yauch-Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Kimberly J. Maki, St. Louis County Attorney, Kristen E. Swanson, Assistant County Attorney, Duluth, Minnesota (for respondent)

Considered and decided by Connolly, Presiding Judge; Cochran, Judge; and Halbrooks, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

Appellant challenges the dismissal of his petition for postconviction relief as untimely, arguing that the interests-of-justice exception applies to his case. Because appellant provides no explanation for the untimeliness of his petition, we affirm the dismissal.

FACTS

In January 2017, appellant Terrance Bowers was convicted of first-degree possession of a controlled substance; in March 2017, he was sentenced to 98 months in prison. In June 2017, he filed a direct appeal, but in October 2017 he requested a stay of that appeal so he could pursue postconviction relief. On November 2, 2017, as a result of his petition for postconviction relief, appellant was resentenced to 78 months, and on November 30, 2017, he voluntarily dismissed his appeal.

More than three years later, in December 2020, appellant filed a second petition for postconviction relief, alleging that the evidence was insufficient to support his conviction. Without reaching the merits of appellant's petition, the district court summarily dismissed it as untimely under Minn. Stat. § 590.01, subd. 4(a)(1)(2020) (providing that a defendant who does not pursue a direct appeal must file a petition for postconviction relief within two years of the entry of judgment of conviction or the imposition of sentence). Appellant does not dispute that his petition was untimely under the statute, but argues that the interests-of-justice exception should apply.

DECISION

The denial of a postconviction petition is reviewed for an abuse of discretion. *Colbert v. State*, 870 N.W.2d 616, 621-22 (Minn. 2015). A claim that is untimely under the statute of limitations may be summarily denied. *Id*. at 622. But a court may hear an untimely petition if it is satisfied that the petition is not frivolous and that hearing it would be in the interests of justice. Minn. Stat. § 590.01, subd. 4(b)(5) (2020); *see also Hooper v. State*, 888 N.W.2d 138, 142 (Minn. 2016) (holding that an interests-of-justice claim "must relate to an injustice that delayed the filing of the petition, not to the substantive merit of the petition"); *Sanchez v. State*, 816 N.W.2d 550, 557 (Minn. 2012) (same). Appellant has offered neither the district court nor this court any explanation of his delay in filing his petition.

Appellant argues first that the interests-of-justice exception should apply because he has had no review of his criminal conviction and is entitled to one review under Article 1, section 6, of the Minnesota Constitution. *See Barnes v. State*, 768 N.W.2d 359, 364 (Minn. 2009). But the entitlement to review of a criminal conviction is not an entitlement to review at any time a defendant chooses: a defendant has only two years to assert that right. Otherwise Minn. Stat § 590.01, subd. 4(a) (2020), would be meaningless, and "a statute should be interpreted, whenever possible, to give effect to all of its provisions; no word, phrase, or sentence should be deemed superfluous, void, or insignificant*." Cnty. of Hennepin by Freeman v. 6131 Colfax Lane, Minneapolis*, 907 N.W.2d 257, 260 (Minn. App. 2018) (quotation omitted). Appellant chose not to pursue a timely review of his conviction when he withdrew his appeal.

Appellant argues further that, because his claim has not previously been raised in either a direct appeal or a postconviction petition, it is not dismissible under *State v. Knaffla*, 243 N.W.2d 737, 741 (Minn. 1976) (holding that neither claims raised in a direct appeal from a conviction nor claims known but not raised will be considered in a subsequent petition for postconviction relief). But *Knaffla* is irrelevant because appellant's claim has not previously been addressed.

Finally, appellant relies on *State v. Carlton*, 816 N.W.2d 590, 607 (Minn. 2012) for the five *Gassler* factors considered when applying the interests-of-justice exception:

> (1)Whether the claim has substantive merit; (2) whether the defendant deliberately and inexcusably failed to raise the issue on direct appeal; (3) whether the party alleging error is at fault for that error and the degree of fault assigned to the party defending the alleged error, (4) whether some fundamental unfairness to the defendant needs to be addressed; and (5) whether application of the interests-of-justice analysis is necessary to protect the fairness, integrity, or public reputation of judicial proceedings.

Id. at 608 (citing *State v. Gassler*, 787 N.W.2d 575, 586-87 (Minn. 2010)). Appellant claims that he satisfies the second factor: he did not "deliberately and inexcusably fail to raise the issue on appeal" because he voluntarily dismissed his appeal and has had no review of his conviction. But appellant admits he deliberately chose not to pursue the issue on direct appeal, and he has offered no excuse for doing so.

As to the third factor, appellant says he "is not at fault for the state's lack of sufficient evidence." But *Carlton* concluded that "The third . . . factor. . . also weighs against [the petitioner], because he bases his interests-of-justice argument on lack of appellate review in his case. This error is attributable to [him,] not to the State, because it

was [he] who failed to follow through with either a direct appeal or timely postconviction petition." *Id.* at 609. The same is true here.

As to the fourth and fifth factors, the supreme court rejected the arguments of the petitioner in *Carlton* that:

> it is fundamentally unfair for a defendant convicted of first-degree murder not to receive appellate review, and that the integrity of the judicial system depends upon review of convictions involving life imprisonment . . . . [W]hen a defendant convicted of first-degree murder has not received appellate review of his conviction, the case constitutes the type of extraordinary circumstances that warrant application of the interests-of-justice exception.
>
> But our fairness inquiry under the interests-of-justice analysis has often involved looking to whether the party had an opportunity to correct any potential unfairness. Here, [the petitioner] had an opportunity to seek review of his underlying claims and failed to do so multiple times. Additionally, nothing in [his] petition suggests that the integrity of the judicial system will be harmed if his claim is not reviewed. [He] does not allege misconduct or flagrant disregard for judicial process. Rather, . . . [his] claims involve two discretionary decisions on probable cause and evidentiary issues. Given the extraordinary nature of the interests of justice exception, and the fact that [he] has failed to allege facts to show that application of the exception to his case is necessary to prevent unfairness, these fourth and fifth *Gassler* factors do not require us to hear Carlton's petition.

Id. at 610 (citations omitted). Like the petitioner in *Carlton*, appellant had an opportunity to seek review of his underlying claim and has presented no support for his assertions that "it is fundamentally unfair to allow [his] conviction to stand on insufficient evidence" and "due to the nature of [his] claim, failing to remedy it undermines the integrity of the judicial proceedings." If a first-degree murder conviction and a possible life sentence were not a sufficient basis to invoke the interests-of-justice exception in *Carlton*, appellant's drug

offense and 78-month prison sentence are not sufficient to do so here. The interests-of-justice exception does not apply to appellant's case.

Affirmed.