STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0407

Shane Paul Schultz, petitioner,
Respondent,

vs.

State of Minnesota,
Appellant.

Filed January 24, 2022
Reversed
Johnson, Judge

Redwood County District Court
File No. 64-CR-14-466

Kenneth R. White, Law Office of Kenneth R. White, P.C., Mankato, Minnesota (for respondent)

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

Jenna Marie Peterson, Redwood County Attorney, Redwood Falls, Minnesota; and

Travis J. Smith, Special Assistant County Attorney, Slayton, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Reilly, Judge; and Jesson, Judge.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

In 2015, Shane Paul Schultz pleaded guilty to first-degree test refusal based on his admission that he refused to submit to a warrantless blood or urine test after being arrested

for driving while impaired. In 2017, Schultz petitioned for post-conviction relief, and his petition was denied. In 2019, Schultz again petitioned for post-conviction relief. His second petition was granted. The state appeals, arguing that the district court erred by not concluding that the second petition is untimely because it was filed more than two years after Schultz's conviction and because no exception to the two-year limitations period applies. In light of a recent supreme court opinion, we conclude that Schultz's second post-conviction petition is untimely and that the district court erred by considering the merits of the petition. Therefore, we reverse.

FACTS

On June 28, 2014, a Redwood County deputy sheriff arrested Schultz for driving while impaired. The deputy requested that Schultz submit to a warrantless blood or urine test pursuant to the implied-consent statute. Schultz refused to do so. The state later charged him with three offenses, including first-degree refusal to submit to chemical testing, in violation of Minn. Stat. § 169A.20, subd. 2 (2012). In January 2015, the parties entered into a plea agreement under which Schultz pleaded guilty to the test-refusal charge and the state dismissed the two remaining charges. In February 2015, the district court imposed a 42-month prison sentence but stayed execution of the sentence for seven years and placed Schultz on probation. Schultz did not pursue a direct appeal of his conviction or sentence.

In June 2016, the United States Supreme Court held that a warrantless blood test is an unreasonable search under the Fourth Amendment, that the search-incident-to-arrest doctrine does not apply, and that a person may not be criminally punished for refusing to

submit to such a search. *Birchfield v. North Dakota*, 136 S. Ct. 2160, 2173-82 (2016). In October 2016, the Minnesota Supreme Court held that *Birchfield* applies to both blood tests and urine tests and that it is unconstitutional to convict a person of test-refusal under section 169A.20, subdivision 2, for refusing to submit to either type of test. *State v. Trahan*, 886 N.W.2d 216, 221 (Minn. 2016); *State v. Thompson*, 886 N.W.2d 224, 233-34 (Minn. 2016).

In December 2016, Schultz violated a condition of his probation. In February 2017, the district court revoked his probation and executed his prison sentence. That same month, Schultz filed a petition for post-conviction relief. He argued that, in light of *Birchfield*, *Trahan*, and *Thompson*, his 2015 test-refusal conviction was unconstitutional. The post-conviction court denied the petition on the ground that *Birchfield* does not apply retroactively. Schultz did not appeal from the denial of post-conviction relief.

In August 2018, the Minnesota Supreme Court held that *Birchfield*, *Trahan*, and *Thompson* apply retroactively to convictions on collateral review. *Johnson v. State*, 916 N.W.2d 674, 684 (Minn. 2018). In December 2019, Schultz filed a second petition for post-conviction relief. He argued that, in light of *Johnson*, his 2015 test-refusal conviction is unconstitutional under *Birchfield*, *Trahan*, and *Thompson*. The state opposed Schultz's second petition on the grounds that it is time-barred and procedurally barred by the *Knaffla* doctrine.

In September 2020, while Schultz's second petition was pending, this court held that a post-conviction petition based on *Birchfield*, *Trahan*, and *Thompson* is timely under the new-interpretation-of-law exception to the two-year statute of limitations if the petition was filed within two years of the supreme court's *Johnson* opinion. *Edwards v. State*, 950

N.W.2d 309, 318 (Minn. App. 2020) (subsequent history omitted). Approximately one week later, the post-conviction court ruled that, in light of *Edwards*, Schultz's second petition is timely. The post-conviction court also ruled that Schultz's second petition is not procedurally barred by the *Knaffla* doctrine.

The post-conviction court later conducted an evidentiary hearing on Schultz's second petition. In February 2021, the post-conviction court filed an order in which it granted Schultz's second petition based on *Birchfield*, *Trahan*, and *Thompson* and vacated his test-refusal conviction.

The state filed a notice of appeal. In August 2021, while this appeal was in the briefing stage, the Minnesota Supreme Court held that a post-conviction petitioner seeking relief based on *Birchfield*, *Trahan*, and *Thompson* more than two years after his conviction may take advantage of the new-interpretation-of-law exception to the two-year statute of limitations only if the petition was filed within two years of the supreme court's *Trahan* and *Thompson* opinions. *Aili v. State*, 963 N.W.2d 442, 449 (Minn. 2021). Approximately one month later, the Minnesota Supreme Court vacated this court's *Edwards* opinion. *Edwards v. State*, No. A19-1943 (Minn. Sept. 21, 2021) (order).

DECISION

The state argues that the post-conviction court erred by granting Schultz's second post-conviction petition for two reasons. First, the state argues that Schultz's second petition is untimely because it was filed more than two years after his conviction and sentencing and because no exception to the two-year statute of limitations applies. Second,

the state argues that Schultz's second petition is procedurally barred by the *Knaffla* doctrine. We begin our analysis by considering the state's first argument.

In general, a person seeking post-conviction relief must file a post-conviction petition within a two-year limitations period. Minn. Stat. § 590.01, subd. 4(a) (2018). The two-year limitations period begins upon the latter of "(1) the entry of judgment of conviction or sentence if no direct appeal is filed; or (2) an appellate court's disposition of petitioner's direct appeal." *Id.* If the two-year limitations period has expired, the post-conviction court nonetheless may consider the post-conviction petition if any one of five exceptions applies. *Id.*, subd. 4(b). The exception at issue in this appeal allows a post-conviction court to consider an otherwise untimely petition if "the petitioner asserts a new interpretation of federal or state constitutional or statutory law by either the United States Supreme Court or a Minnesota appellate court and the petitioner establishes that this interpretation is retroactively applicable to the petitioner's case." *Id.*, subd. 4(b)(3). But a petition relying on any exception to the two-year statute of limitations is subject to another limitations period, which provides that the petition "must be filed within two years of the date the claim arises." *Id.*, subd. 4(c). The date on which a "claim arises" is determined by an objective "knew or should have known" standard. *Sanchez v. State*, 816 N.W.2d 550, 558-60 (Minn. 2012).

The state contends that the post-conviction court's determination of timeliness is inconsistent with the supreme court's recent opinion in *Aili*. The four petitioners in *Aili* sought to withdraw their guilty pleas, which were entered in 2014 and 2015, based on retroactive applications of *Birchfield*, *Trahan*, and *Thompson*. 963 N.W.2d at 444. The

supreme court framed the issue on appeal as "when a petitioner knows or should know that a subdivision 4(b)(3) 'claim arises,' thus triggering the 2-year time limit in subdivision 4(c)" that applies to exceptions to the two-year statute of limitations. *Id.* at 447. The supreme court stated that the knew-or-should-have-known standard is satisfied when "the petitioner knew or should have known of the information that would allow him to *assert* a claim that an exception applied." *Id*. More specifically, the supreme court held, "A postconviction petitioner knows or should know he has a claim on the date that a court decision announces an interpretation of law that provides the basis for a claim that the petitioner is entitled to relief because the interpretation is a new rule of law that applies retroactively to the petitioner's conviction." *Id.* at 449. The supreme court concluded that, because the petitioners were relying on *Birchfield*, *Trahan*, and *Thompson*, the two-year limitations period in subdivision 4(c) for the new-interpretation-of-law exception to the two-year statute of limitations expired on October 12, 2018, two years after the supreme court issued its opinions in *Trahan* and *Thompson*. *Id*. Because all four of the petitioners had filed their post-conviction petitions in late 2019, they were unable to establish the exception in subdivision 4(b)(3). *Id.*

In this case, Schultz's second petition was filed in December 2019, more than four years after his conviction and sentencing. The post-conviction court applied this court's *Edwards* opinion and determined that Schultz's second petition is timely because it was filed within two years of the supreme court's *Johnson* opinion. But, as indicated above, this court's *Edwards* opinion no longer is good law; it was effectively overruled by the supreme court's *Aili* opinion, and it later was vacated by the supreme court. *See Threlkeld*

v. Robbinsdale Fed'n of Teachers, Local 872, AFL-CIO, 316 N.W.2d 551, 552 (Minn. 1982) (stating that vacated opinion is "without force or effect"); *In re Hallbom's Estate*, 249 N.W. 417, 418 (Minn. 1933) (stating that vacated opinion is "of no effect"). The applicable law now is found in *Aili*, in which the supreme court held that a post-conviction petitioner seeking relief based on *Birchfield*, *Trahan*, and *Thompson* after the two-year statute of limitations has lapsed must have filed a post-conviction petition by not later than October 12, 2018. 963 N.W.2d at 449. Because Schultz filed his petition in December 2019, he cannot establish the timeliness of his petition under the new-interpretation-of-law exception in subdivision 4(b)(3).

Schultz has not invoked any other exception to the two-year limitations period in subdivision 4(a). Accordingly, his second post-conviction petition is untimely. Therefore, the district court erred by ruling that the petition is timely and by considering the merits of the petition. Because that conclusion is a sufficient basis for reversing the district court's decision, we need not consider the state's *Knaffla* argument.

Reversed.