

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0020**

Keegan James Rich Brouillette, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed July 10, 2023
Affirmed
Smith, Tracy M., Judge**

Scott County District Court
File No. 70-CR-18-20496

Cathryn Middlebrook, Chief Appellate Public Defender, Sharon E. Jacks, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Ronald Hocesvar, Scott County Attorney, Todd P. Zettler, Assistant County Attorney, Shakopee, Minnesota (for respondent)

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

SYLLABUS

If no direct appeal is filed, the two-year statute of limitations for filing a petition for postconviction relief under Minnesota Statutes section 590.01, subdivision 4(a) (2022), does not restart when a district court executes an imposed but stayed sentence.

OPINION

SMITH, TRACY M., Judge

Appellant Keegan James Rich Brouillette challenges the district court's decision to deny his petition for postconviction relief as time-barred. Following his convictions in a criminal case, Brouillette was given a stayed 15-month prison sentence and was placed on probation. More than two years later, his probation was revoked and his sentence was executed. Within two years of the execution of his sentence, Brouillette filed a petition for postconviction relief. He argues that, because his petition was filed within two years of the execution of his stayed sentence, the district court erred by determining that it was time-barred. We conclude that the two-year limitations period did not restart when his sentence was executed and that his petition was time-barred. We therefore affirm.

FACTS

Following a jury trial, Brouillette was convicted of two counts of felony domestic assault under Minnesota Statutes section 609.2242, subdivision 4 (2018), based on assaults against his former girlfriend. On June 24, 2019, the district court sentenced Brouillette to 15 months in prison but stayed the sentence for five years and placed him on probation with conditions.

On August 26, 2021, after Brouillette admitted to violating his probation conditions, the district court revoked Brouillette's probation and executed the 15-month sentence.

On July 19, 2022, Brouillette filed a petition for postconviction relief, asking the district court to vacate his convictions and grant a new trial. He argued that unobjected-to prosecutorial misconduct deprived him of a fair trial, asserting that the prosecutor

improperly presented evidence of Brouillette's prior bad acts and probationary status and elicited testimony about other witnesses' veracity. In response, respondent State of Minnesota argued that the petition was time-barred and, in the alternative, that the petition should be summarily denied because, even if there was prejudicial plain error, failure to correct the error would not seriously affect the fairness, integrity, or public reputation of judicial proceedings.

The district court denied Brouillette's petition, concluding that it was time-barred and, in the alternative, that failure to correct the asserted errors would not seriously affect the fairness, integrity, or public reputation of judicial proceedings.

Brouillette appeals.

ISSUE

Under Minnesota Statutes section 590.01, subdivision 4(a), was Brouillette's postconviction petition timely when it was filed more than two years after the entry of judgments of conviction and the imposition of a stayed sentence but within two years of the execution of that sentence?

ANALYSIS

The timeliness of Brouillette's petition for postconviction relief presents a question of law that this court reviews de novo. *See Dupey v. State*, 868 N.W.2d 36, 39 (Minn. 2015).

The postconviction statute authorizes a person convicted of a crime who claims that the conviction or sentence violates their rights under the constitution or laws of the United States or Minnesota to file a petition for postconviction relief. Minn. Stat. § 590.01, subd. 1

(2022). A petition’s timeliness is generally governed by Minnesota Statutes section 590.01, subdivision 4(a):

No petition for postconviction relief may be filed more than two years after the later 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.

Under this subdivision, if no direct appeal is filed and no exception applies, a defendant has a period of two years to file a petition, which “commences upon ‘the later of: . . . the entry of judgment of conviction or sentence.’” *Dupey*, 868 N.W.2d at 39 (quoting Minn. Stat. § 590.01, subd. 4(a)).

Brouillette does not dispute that his petition was filed more than two years after the entry of judgments of conviction and the imposition of sentence. Nor does Brouillette allege that an exception to the two-year statute of limitations applies. Instead, relying on *Pageau v. State*, 820 N.W.2d 271 (Minn. App. 2012), Brouillette contends that the date of August 26, 2021—when the district court executed his sentence—should be used to determine the timeliness of his petition. We disagree.

In *Pageau*, we considered whether the defendant’s petition was timely when it was filed more than three years after the entry of judgments of conviction and sentences but within two years of the district court modifying the defendant’s sentence. *See Pageau*, 820 N.W.2d 271. In that case, the district court’s oral pronouncement of sentence included a 17-month prison term stayed for three years and a 15-month prison term stayed for three years. *Id.* at 272-73. About three years after the sentence was imposed, the department of

corrections asked the district court whether the stays of execution were concurrent—consistent with the department’s and defense counsel’s understanding—or consecutive. *Id.* at 273. The district court responded that the stays were consecutive. *Id.* We determined that the defendant’s petition, which was filed within two years of the district court’s response to the department, was timely because the district court modified the stays of execution to be consecutive rather than concurrent. *Id.* at 280-81.

Brouillette asserts that the district court modified his sentence by executing his sentence and that his petition is thus timely under *Pageau*. We disagree. The district court imposed a 15-month prison term and stayed execution for five years with conditions. After Brouillette admitted to violating those conditions, the district court executed that 15-month sentence. Unlike in *Pageau*, where the district court’s response to the department of corrections’ inquiry effectively doubled the length of the defendant’s stay of execution, *id.*, here, the district court did not change the length of Brouillette’s prison term by executing his sentence. Rather, consistent with the plain language of the statute governing revocation of a stay of execution, the district court “order[ed] execution of the sentence previously imposed.” Minn. Stat. § 609.14, subd. 3(2) (2022).

Brouillette asserts that, because the district court did not continue the stay and instead ordered him to prison, the district court modified his sentence. But neither the possibility that Brouillette could have avoided serving time in prison by complying with his probation conditions nor the district court’s authority to continue the stay despite the violations suggests that the district court modified his sentence. *See id.* To the contrary, his sentence remained unchanged from the time it was imposed in 2019. As Brouillette knew,

he faced a 15-month prison term if he did not comply with the conditions of his stay for five years. Thus, we hold that the execution of his previously imposed but stayed sentence did not restart the two-year statute of limitations to file a petition for postconviction relief under Minnesota Statutes section 590.01, subdivision 4(a).

Because executing a previously imposed sentence does not modify that sentence, the district court did not err by concluding that Brouillette's petition was time-barred under Minnesota Statutes section 590.01, subdivision 4(a).¹ As a result, we do not address Brouillette's other contentions of error.

DECISION

The district court did not modify Brouillette's sentence by executing his previously imposed but stayed sentence. Therefore, Brouillette did not file his petition within the two-year statute of limitations under Minnesota Statutes section 590.01, subdivision 4(a), and the petition was properly denied as time-barred.

Affirmed.

¹ We clarify that our decision is limited to petitions for postconviction relief under Minnesota Statutes section 590.01 (2022) and does not preclude Brouillette from bringing a valid motion to correct his sentence under Minnesota Rule of Criminal Procedure 27.03, subdivision 9, should he have grounds to do so. The two-year statute of limitations in the postconviction statute does not apply to such motions. *Reynolds v. State*, 888 N.W.2d 125, 133-34 (Minn. 2016). If a sentence was unlawful at the time it was imposed, a court may correct that sentence at any time. *Id.* at 133; *see also State v. Fields*, 416 N.W.2d 734, 736 (Minn. 1987).