

*This opinion is nonprecedential except as provided by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
A23-0925**

Newland Derrick Hambrick, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed February 12, 2024
Affirmed
Segal, Chief Judge**

St. Louis County District Court
File Nos. 69DU-CR-21-1202, 69DU-CR-21-3126

Cathryn Middlebrook, Chief Appellate Public Defender, Chelsie M. Willett, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Kimberly J. Maki, St. Louis County Attorney, Victoria D. Wanta, Assistant County Attorney, Duluth, Minnesota (for respondent)

Considered and decided by Schmidt, Presiding Judge; Segal, Chief Judge; and Kirk,
Judge.*

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

NONPRECEDENTIAL OPINION

SEGAL, Chief Judge

Appellant argues on appeal that the district court erred in denying his petition for postconviction relief, claiming that his right to counsel was not vindicated. We affirm because appellant obtained representation by the Office of the Minnesota Appellate Public Defender (OMAPD) before the district court issued the order now on appeal; and the OMAPD, after having the opportunity to review the relevant pleadings and transcripts, advised the court that it would not be submitting any filing in addition to appellant's previously filed pro se petition.

FACTS

Appellant Newland Derrick Hambrick had seven criminal cases pending against him that were all resolved by a plea agreement. Under the terms of the agreement, Hambrick was to plead guilty in two of the cases to one count of gross-misdemeanor violation of a domestic-abuse no-contact order (DANCO) in file No. 69DU-CR-21-1202 and to one count of felony escape from lawful custody in file No. 69DU-CR-21-3126 (collectively, the DANCO and escape cases). The agreement provided that a third case, for fifth-degree possession of a controlled substance (file No. 69DU-CR-21-3367), was to be resolved with a stay of adjudication (the controlled-substance case).¹ The remaining four cases were to be dismissed. The district court accepted the plea agreement and

¹ We note that the file in the controlled-substance case is not part of the appellate record in the two matters on appeal—the DANCO and escape cases. Because the controlled-substance case is referenced by the parties in this appeal, we take judicial notice of the file in that case so that we may address the parties' arguments in full.

Hambrick's guilty pleas; the district court then sentenced Hambrick in accordance with the agreement. Hambrick was represented by a public defender through sentencing.

In June 2022, about six weeks after his sentencing, Hambrick filed, pro se, a motion titled "Motion for Remedy and Relief." Hambrick's motion referenced all his previously charged files, including the DANCO and escape cases and the controlled-substance case. Hambrick asked the court to set aside his convictions and grant him monetary damages under numerous state statutes, including procedural statutes codifying the rules of civil procedure, outlining the ability of courts to set aside judgments involving perjury, and requiring court reporters to provide a complete record; statutes regulating attorney misconduct, deceit or collusion by attorneys, and the unauthorized practice of law; and other civil statutes related to securities fraud, insurance, and unconscionable commercial contracts.² The motion further asked the court to "satisfy Mr. Hambrick's loss[es]" and "restor[e] Hambrick's liberties and rights." Hambrick's federal claims primarily referenced 18 U.S.C. § 242 (2018), which allows an aggrieved person to pursue a civil claim for deprivation of their civil rights. Hambrick then filed another "Motion for Remedy and Relief" a few days later, reiterating his arguments and challenging the court's jurisdiction.

Neither of the motions submitted by Hambrick were forwarded by the court administrator to the state public defender as is required for postconviction petitions under

² Some of the statutes cited provide criminal sanctions in addition to civil remedies, but for offenses wholly unrelated to any of the cases involving Hambrick.

Minn. Stat. § 590.02, subd. 1(4) (2020). And the parties agree that Hambrick never waived his right to counsel.

In response to the motions, the district court issued an order denying the relief sought under the various, primarily civil, statutes cited by Hambrick; “liberally” construed the balance of the relief sought as a guilty-plea withdrawal request; and set the motions for a hearing (the June 2022 order). Hambrick then advised the court that he did not want to withdraw his guilty pleas and the hearing was cancelled.

In November 2022, Hambrick filed, pro se, a petition for postconviction relief in the controlled-substance case. Hambrick requested that the court set aside all judgments made final to April 20, 2021, sought compensation for pain, suffering, and loss of liberty and life, including compensatory relief under various federal civil statutes, and requested relief under Minn. Stat. § 80A.68 (2022) (affording relief in securities fraud cases) to be “free from fraudulent practices.”

The district court denied Hambrick’s November 2022 motion on the grounds, first, that the motion was filed in the controlled-substance case, which did not arise until October 2021. The district court noted that Hambrick’s claims appeared to concern a hearing held in April 2021 in a different case and that, as such, Hambrick’s “Petition does not challenge the judgment in the present matter and does not state a basis for relief” under the postconviction statute. Second, the district court reasoned that Hambrick’s petition requested “monetary damages for alleged pain, suffering, loss of liberty and life, and emotional and physical damages,” but that none of the federal or state statutes cited by Hambrick provide him with the relief he requests. Third, the district court explained that

the forms of relief allowed in Minnesota's postconviction statute, Minn. Stat. § 590.01 (2022), do not include claims for monetary damages.

In January 2023, the OMAPD informed the district court by letter that, as a result of Hambrick's application for a public defender a few months earlier, it had received a copy of Hambrick's pro se petitions and would assign him counsel in the DANCO and escape cases. The OMAPD did not agree to represent Hambrick in the controlled-substance case, as it "does not provide post-conviction representation on cases that were resolved with a stay of adjudication disposition." The appellate public defender who was assigned the cases (the PD) requested time to review the files and to order and review applicable transcripts. After completing the review, the PD sent a letter to the district court in May 2023, stating:

After reviewing the files and speaking with Mr. Hambrick, he would like our representation in this matter. However, we do not have anything to add to what he has already filed. We would just ask this Court to construe his postconviction petition and memorandum as an affidavit, and grant the relief requested by Mr. Hambrick in the interests of fairness and justice. To clarify, Mr. Hambrick is not asking for plea withdrawal, but, rather, he is asking for his convictions to be vacated and dismissed for the reasons cited in his petition. Thank you.

The district court then issued an order denying Hambrick's motions for relief in the DANCO and escape cases (the June 2023 order). The district court reasoned that the relief requested had already been denied by the district court in its June 2022 and December 2022 orders.

Hambrick now appeals the district court's June 2023 order.

DECISION

Hambrick argues that the June 2023 order of the district court should be reversed so that he can proceed with a postconviction petition to vacate the convictions in his DANCO and escape cases with the assistance of counsel. Hambrick contends the June 2023 order is “unlawful” because it improperly references the December 2022 order in the controlled-substance case, and because the district court reviewed Hambrick’s previous request for relief in June 2022 without forwarding his petition to the OMAPD or securing a waiver of his right to counsel. The state agrees with Hambrick that the order should be reversed because the district court failed to advise Hambrick of his right to counsel before issuing its June 2022 order.

On appeal, regardless of whether the parties agree as to the outcome, we independently review whether the district court erred in applying the law to undisputed facts. *Bonga v. State*, 765 N.W.2d 639, 642 (Minn. 2009); *see also State v. Hannuksela*, 452 N.W.2d 668, 673 n.7 (Minn. 1990) (noting that appellate courts have a duty to decide cases in accordance with the law). We review a district court’s denial of a petition for postconviction relief for an abuse of discretion, and we review questions of law de novo, including whether a petitioner’s right to counsel was vindicated. *Bonga*, 765 N.W.2d at 642.

Criminal defendants are entitled to the assistance of counsel, and that right extends to representation in a direct appeal or, if no direct appeal was brought, in a postconviction proceeding. Minn. Const. art. I, § 6; *Deegan v. State*, 711 N.W.2d 89, 98 (Minn. 2006).

The failure to vindicate a defendant's right to counsel is a structural error, requiring reversal. *Bonga*, 765 N.W.2d at 643.

At the outset, we acknowledge that the district court erred in failing to forward Hambrick's initial pro se "Motion for Relief and Remedy" to the OMAPD. The district court administrator is required to notify the state public defender when a pro se motion seeking postconviction relief is filed in district court, but that did not occur in this case. Minn. Stat. §§ 590.02, subd. 1(4), .05 (2020); *Paone v. State*, 658 N.W.2d 896, 899-900 (Minn. App. 2003) (holding that the remedy for a failure to forward a pro se petition seeking relief is reversal and remand to permit the defendant to begin postconviction proceedings again). If this appeal had been taken from the June 2022 order denying relief when Hambrick was unrepresented, we would reverse the order and remand so that Hambrick's right to counsel could be vindicated.

But this appeal is not from the June 2022 order—it is from the June 2023 order. Between the June 2022 order and the June 2023 order, Hambrick obtained representation by the OMAPD. The OMAPD assigned Hambrick a PD in the DANCO and escape cases, and the PD had a full opportunity to review the files. Hambrick thus received the remedy he is now seeking—to be represented by counsel in a postconviction proceeding.

Hambrick argues, however, that the June 2023 order is invalid because it relies on the June 2022 order. Hambrick also asserts that "because the court did not provide Hambrick with counsel, he did not know he had the right to appeal the June 2022 order." But this argument ignores the fact that the OMAPD had the opportunity to identify any errors in the district court's June 2022 order and, presumably, to assert any additional

postconviction issues. In its letter to the court dated May 18, 2023, the OMAPD advised the district court that “we do not have anything to add to what [Hambrick] has already filed.” It thus appears that the OMAPD’s review of the file uncovered no errors in the June 2022 order or other issues to assert before the district court, particularly given the fact that Hambrick did not want to withdraw his guilty pleas. On these facts, a reversal and remand is unwarranted because Hambrick already received the relief he is now seeking.

Hambrick further argues that the district court erred by referencing the December 2022 order in its June 2023 order because that order was issued in the controlled-substance case, not in the cases now on appeal. But the controlled-substance case was one of the cases covered in the plea agreement. And, even if the reference was erroneous, we fail to see how that reference prejudiced Hambrick. The December 2022 order was in response to a motion that Hambrick filed only in the controlled-substance case. And, as the OMAPD advised the court, the OMAPD could not represent Hambrick in the controlled-substance case because it was resolved by a stay of adjudication, which does not constitute a “conviction” as defined by Minn. Stat. § 609.02, subd. 5 (2022). *See Johnston v. State*, 955 N.W.2d 908, 913 (Minn. 2021) (“[T]he plain meaning of the phrase ‘a person convicted of a crime’ in section 590.01, subdivision 1, means a person who has a conviction under Minnesota law.”); *see also Lunzer v. State*, 874 N.W.2d 819, 822 (Minn. App. 2016) (concluding a stay of adjudication is not a “conviction” or a “sentence”). Thus, at worst, the reference in the June 2023 order to the December 2022 order was errant, but not prejudicial.

We conclude that, while the district court erred when the district court administrator failed to forward Hambrick's motions to the OMAPD, this error was cured when the OMAPD accepted representation of Hambrick in connection with his postconviction motions in the DANCO and escape cases. The OMAPD had a full opportunity, after reviewing the applicable files, to assert postconviction issues on Hambrick's behalf, including a challenge to the district court's June 2022 order. Hambrick's right to counsel for a postconviction proceeding was thus vindicated.

Affirmed.