

This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2010).

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0122**

Donald Jay Conard, II, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent

**Filed October 1, 2012
Affirmed
Ross, Judge**

Roseau County District Court
File No. 68-K7-06-000613

David W. Merchant, Chief Appellate Public Defender, Michael W. Kunkel, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Karen M. Foss, Roseau County Attorney, Michael P. Grover, Assistant County Attorney, Roseau, Minnesota (for respondent)

Considered and decided by Stoneburner, Presiding Judge; Ross, Judge; and Connolly, Judge.

UNPUBLISHED OPINION

ROSS, Judge

Donald J. Conard II had sexual intercourse with a 15-year-old girl and pleaded guilty to third-degree criminal sexual conduct. While he was in prison, the district court

civily committed Conard as a sexually dangerous person. Conard filed a petition for postconviction relief, requesting to withdraw his guilty plea due to ineffective assistance of counsel because his attorney did not inform him that his guilty plea could lead to civil commitment. The district court denied his petition. Conard appeals, contending that we should extend *Padilla v. Kentucky*, 130 S. Ct. 1473 (2010), which held that an attorney is constitutionally ineffective when failing to advise his client that his guilty plea carries the risk of deportation, to cases like this, in which an attorney allegedly fails to advise about the risk of civil commitment when his client is pleading guilty to a sex crime. Because *Padilla* does not retroactively apply to Conard's case and because its holding is limited to the context of deportation, we affirm.

FACTS

In August 2006, the state charged 21-year-old Donald Conard II with three counts of first-degree criminal sexual conduct for having sexual intercourse with a 15-year-old girl. In a deal with the state, Conard pleaded guilty to a substituted charge of third-degree criminal sexual conduct. *See* Minn. Stat. § 609.344, subd. 1(b) (2006). The district court accepted Conard's guilty plea and sentenced him to 48 months in prison, stayed during 15 years of probation with 365 days in the Roseau County Jail with credit for time served. It also required Conard to register as a sex offender for 10 years, complete a sexual-offender treatment program, and have no contact with the victim, among other things.

After Conard violated the terms of his probation multiple times and for various offenses, including having contact with his underage victim, he failed to appear for a

probation-violation hearing in April 2008, and the court issued a warrant for his arrest. A month later he was arrested in California. Police returned him to Minnesota, where the district court executed his sentence.

While Conard was in prison in December 2009, the state initiated proceedings to civilly commit him as a sexually dangerous person. The district court ordered Conard's initial commitment in October 2010, and it ordered indeterminate civil commitment in January 2011.

Conard filed a petition for postconviction relief requesting to withdraw his 2006 guilty plea, arguing that he received ineffective assistance of counsel because his attorney did not inform him that his guilty plea could lead to civil commitment. The postconviction court denied Conard's petition, holding that the rule announced in *Padilla v. Kentucky*, 130 S. Ct. 1473 (2010), is not applicable outside the context of deportation and did not retroactively apply to Conard's case.

Conard appeals.

DECISION

Conard argues that the postconviction court erred by refusing to allow him to withdraw his guilty plea and by failing to evaluate his claim of ineffective assistance of counsel. The district court rejected Conard's petition as untimely. A convicted person may not file a petition for postconviction relief more than two years after the entry of judgment of conviction or sentence if no direct appeal is filed, unless he is entitled to a statutory exception to the time limit. Minn. Stat. § 590.01, subd. 4(a)(1), (b) (2010). One exception is for "a new interpretation of federal or state constitutional or statutory law by

either the United States Supreme Court or a Minnesota appellate court,” which the petitioner must establish “is retroactively applicable” to his case. *Id.*, subd. 4(b)(3).

Conard argues that the United States Supreme Court’s decision in *Padilla v. Kentucky*, 130 S. Ct. 1473 (2010), which deems ineffective an attorney who fails to advise his client whether his guilty plea carries the risk of deportation, is a new interpretation of law that applies retroactively to his case. The argument has been settled. After Conard filed his brief with this court, the Minnesota Supreme Court issued its decision in *Campos v. State*, 816 N.W.2d 480 (Minn. 2012), and its holding defeats Conard’s appeal. The *Campos* court held that *Padilla* announced a new rule of federal constitutional criminal procedure that did not retroactively apply to a defendant’s conviction on collateral review because it was procedural, not substantive, and it was not a “watershed rule of criminal procedure.” *Id.* at 497–98; *see also Teague v. Lane*, 489 U.S. 288, 310–11, 109 S. Ct. 1060, 1075–76 (1989) (stating conditions required for new rules of criminal procedure to be retroactive). Conard’s retroactivity argument for a time-limit exception fails because Minnesota law at the time that his conviction became final did not require his counsel to inform him that civil commitment might result from pleading guilty. *See Campos*, 816 N.W.2d at 499.

Even if Conard’s petition had been timely, it would still fail on the merits. We recently held that *Padilla* is limited to the context of deportation. *Sames v. State*, 805 N.W.2d 565, 569–70 (Minn. App. 2011), *review denied* (Minn. Dec. 21, 2011). An attorney’s representation does not fall below an objective standard of reasonableness when she fails to inform a defendant client of the collateral consequences of a guilty plea.

Id. Conard's civil commitment is a collateral consequence of a guilty plea because it is remedial and for treatment purposes; it is not preventative detention. *See Call v. Gomez*, 535 N.W.2d 312, 319–20 (Minn. 1995). The district court did not abuse its discretion by denying Conard's untimely petition for postconviction relief.

Affirmed.