STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0298

Russell John Hatton, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed November 13, 2012
Affirmed
Halbrooks, Judge

Beltrami County District Court
File No. 04-K2-04-001094

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

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

Timothy R. Faver, Beltrami County Attorney, David P. Frank, Assistant County Attorney, Bemidji, Minnesota (for respondent)

Considered and decided by Hudson, Presiding Judge; Kalitowski, Judge; and Halbrooks, Judge.

U N P U B L I S H E D O P I N I O N

HALBROOKS, Judge

Appellant challenges the district court's denial of his petition for postconviction relief, arguing that (1) his petition was timely, (2) he received ineffective assistance of counsel, and (3) his guilty plea lacked an adequate factual basis. Because we conclude that the district court properly denied relief, we affirm.

FACTS

Appellant Russell John Hatton was charged in an amended complaint with first-degree criminal sexual conduct for sexually assaulting a child, C.N., from 1999 to 2004 and third-degree criminal sexual conduct for sexually assaulting another child, J.R., in July 2004. Pursuant to a plea agreement, Hatton pleaded guilty to the third-degree charge, and the state dismissed the first-degree charge.

At his plea hearing, Hatton testified that the statements in his petition to enter a guilty plea were accurate. The plea petition laid out the terms of his plea agreement with the state; declared that the information contained in the criminal complaint was true and correct; and stated that Hatton sexually penetrated J.R., who was between 13 and 16 years old, and that he is at least 24 months older than J.R. Before signing the plea petition before the court, Hatton testified that he understood and agreed with the facts in the petition.

The district court sentenced Hatton to 18 months' imprisonment with a stay of execution conditioned on Hatton meeting various probationary terms. After Hatton violated those terms, the district court executed his sentence in October 2006. Prior to

Hatton's scheduled release from the department of corrections, the state initiated civil-commitment proceedings against him, and in October 2007, Hatton was committed as a sexually dangerous person in the Minnesota Sex Offender Program. This court affirmed his civil commitment in 2008. *In re Commitment of Hatton*, No. A08-0648, 2008 WL 4301816 (Minn. App. Sept. 23, 2008), *review denied* (Minn. Dec. 16, 2008).

Hatton petitioned for postconviction relief in May 2011, seeking to withdraw his guilty plea on the ground that he received ineffective assistance of counsel because his attorney never advised him that pleading guilty to criminal sexual conduct might later lead to civil commitment. Hatton also argued that his plea is invalid because it lacked an adequate factual basis. The district court denied Hatton's petition as untimely and concluded that Hatton had effective counsel and that his acknowledgments under oath were sufficient to support his plea. This appeal follows.

D E C I S I O N

In reviewing a postconviction court's decision to grant or deny relief, we review issues of law de novo and issues of fact for sufficiency of the evidence. *Leake v. State*, 737 N.W.2d 531, 535 (Minn. 2007). Petitions for postconviction relief must be filed no more than two years after the later of (1) entry of judgment of conviction or sentence if no direct appeal is filed or (2) an appellate court's disposition of a direct appeal. Minn. Stat. § 590.01, subd. 4(a) (2010). When this provision went into effect on August 1, 2005, the legislature established a filing deadline of August 1, 2007, for any defendant whose convictions became final before that date. *See Roby v. State*, 808 N.W.2d 20, 24 (Minn. 2011) ("The legislation amending [Minn. Stat. § 590.01] is effective as of August

1, 2005, and any person whose conviction became final before August 1, 2005, shall have two years after the effective date of the amendments to file a petition for postconviction relief." (quotation omitted)). Because Hatton did not file a direct appeal, his conviction became final on the date of his sentencing—February 7, 2005. Therefore, absent an exception, the August 1, 2007 deadline applies to Hatton's petition. But the statute provides five exceptions to the two-year deadline for filing petitions for postconviction relief. Minn. Stat. § 590.01, subd. 4(b) (2010). Hatton argues that his petition meets two of the exceptions.

Hatton first argues that his postconviction petition is timely because his ineffective-assistance claim is based on the U.S. Supreme Court's decision in *Padilla v. Kentucky*, 130 S. Ct. 1473 (2010), a new interpretation of law. Under the postconviction statute, a district court may hear a petition beyond the two-year filing period 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." Minn. Stat. § 590.01, subd. 4(b)(3). A new rule has retroactive effect only "(1) when the rule places certain specific conduct beyond the power of the criminal law-making authority to proscribe, or (2) when the rule is a watershed rule of criminal procedure, and is a rule without which the likelihood of an accurate conviction would be seriously diminished." *Danforth v. State*, 761 N.W.2d 493, 496 (Minn. 2009) (quotation omitted).

Hatton contends that the holding in *Padilla*—which deems ineffective an attorney who fails to advise his client of the risk of deportation that a guilty plea carries—changed

the law in Minnesota to require defense counsel to inform clients of the potential civil-commitment consequences of pleading guilty to criminal sexual conduct. But the Minnesota Supreme Court recently held that *Padilla* merely announced a new procedural rule, not a "watershed rule of criminal procedure," and is therefore without retroactive application to a claim of ineffective assistance of counsel raised on collateral review. *Campos v. State*, 816 N.W.2d 480, 499 (Minn. 2012). This holding defeats Hatton's argument that his petition is based on a new interpretation of law as a result of *Padilla*.

Hatton also asserts that his petition meets the interests-of-justice exception to the two-year filing requirement for postconviction petitions in Minn. Stat. § 590.01, subd. 4(b)(5). Although raised for the first time on appeal, we consider the issue of whether Hatton's petition warrants application of this exception. *See Roby v. State*, 787 N.W.2d 186, 191 (Minn. 2010) (requiring courts to liberally construe postconviction petitions to determine whether a subdivision 4(b) timeliness exception is invoked). Interests of justice are implicated only in "exceptional and extraordinary situations." *Carlton v. State*, 816 N.W.2d 590, 607 (Minn. 2012) (quotation omitted). An interests-of-justice exception under section 590.01 "arises when the petitioner knew or should have known that he had a claim[,]" at which point the petitioner has two years to file for postconviction relief. *Sanchez v. State*, 816 N.W.2d 550, 560 (Minn. 2012).

Hatton contends that because *Padilla* was decided in March 2010, his May 2011 petition is timely. But the contention that Hatton's ineffective-assistance claim arose when *Padilla* was decided is without merit because this court has limited the application of *Padilla* to deportation cases. *Sames v. State*, 805 N.W.2d 565, 569-70 (Minn. App.

2011), *review denied* (Minn. Dec. 21, 2011). And the unpublished authority on which Hatton relies in support of his interests-of-justice claim, *El Eid v. State*, No. A11-0898, 2012 WL 539186 (Minn. App. Feb. 21, 2012), *rev'd and remanded* (Minn. July 17, 2012), is not apposite, given the recent reversal and remand of that decision in light of *Campos*. Because Hatton's claim did not arise, as he argues, in 2010, his petition is not rendered timely under the interests-of-justice exception. Because the deadline for Hatton's postconviction petition was in fact August 1, 2007, the district court did not err in denying relief on procedural grounds.

Although the district court determined that neither Hatton's ineffective-assistance-of-counsel nor invalid-plea claim would compel relief had they been timely and determined on the merits, we do not reach those issues on appellate review. The procedural deficiency of Hatton's postconviction petition renders the merits of his claims, and any discussion of those merits, moot.

Affirmed.