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STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0261

Belford William Reitz, III, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed October 21, 2013
Affirmed
Stauber, Judge

Anoka County District Court
File No. 02K291010262

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

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

Anthony C. Palumbo, Anoka County Attorney, Robert D. Goodell, Assistant County Attorney, Anoka, Minnesota (for respondent)

Considered and decided by Hooten, Presiding Judge; Halbrooks, Judge; and Stauber, Judge.

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

STAUBER, Judge

In this postconviction appeal, appellant argues that the district court erred by concluding that his petition to withdraw his 1991 guilty plea was time-barred under Minn.

Stat. § 590.01, subd. 4(a) (2012), and that he failed to establish that any of the statutory exceptions were applicable. We affirm.

FACTS

In September 1991, appellant Belford William Reitz, III was charged with one count of criminal sexual conduct in the second degree in violation of Minn. Stat. § 609.343, subd. 1(g) (1990). Appellant subsequently pleaded guilty to an amended charge of criminal sexual conduct in the fourth degree in violation of Minn. Stat. § 609.345, subd. 1(f) (1990). In providing a factual basis for the guilty plea, appellant acknowledged that he was 18 years old at the time of the offense, that he had a significant relationship with the victim, and that the victim was either 14 or 15 years old at the time of the offense. The district court accepted appellant's guilty plea, stayed imposition of the sentence, and placed appellant on probation for ten years. Appellant did not file a direct appeal.

In 2012, appellant filed a petition for postconviction relief seeking to withdraw his 1991 guilty plea to fourth-degree criminal sexual conduct on the basis that the plea was inadequate and inaccurate. Specifically, appellant claimed that the factual basis for his guilty plea was inaccurate because the victim was *under* the age of 16 when he sexually abused her, but in order to be found guilty of fourth-degree criminal sexual conduct under section 609.345, subdivision 1(f), the victim must have been between the ages of 16 and 18 years of age. The district court found that appellant's petition was time-barred under Minn. Stat. § 590.01, subd. 4(a) (2012), and that he failed to establish that any of the statutory exceptions contained in subdivision 4(b) of that section apply to his case. Thus,

the district court denied appellant's petition for postconviction relief. This appeal followed.

DECISION

When reviewing a postconviction court's decision, we examine only whether the postconviction court's findings are supported by sufficient evidence. *Lussier v. State*, 821 N.W.2d 581, 588 (Minn. 2012). This court "will reverse a decision of a postconviction court only if that court abused its discretion." *Leake v. State*, 737 N.W.2d 531, 535 (Minn. 2007). But we review issues of law de novo. *Id.*

When direct appellate relief is not available, a person convicted of a crime "'may commence a proceeding to secure relief by filing a petition in the district court' for postconviction relief." *Rickert v. State*, 795 N.W.2d 236, 239 (Minn. 2011) (quoting Minn. Stat. § 590.01, subd. 1 (2010)). But "[n]o 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." Minn. Stat. § 590.01, subd. 4(a) (2012). Therefore, unless one of the exceptions in Minn. Stat. § 590.01, subd. 4(b) (2012), applies, a petition for postconviction relief filed after the two-year statute of limitations has run is generally time-barred. *Francis v. State*, 829 N.W.2d 415, 419 (Minn. 2013).

Here, appellant concedes that his postconviction petition was "filed more than 20 years after entry of the judgment of conviction." But appellant contends that he is entitled to consideration of his petition on the merits under the interests-of-justice exception found in Minn. Stat. § 590.01, subd. 4(b)(5).

The exception cited by appellant provides that "a court may hear a petition for postconviction relief if . . . the petitioner establishes to the satisfaction of the court that the petition is not frivolous and is in the interests of justice." Minn. Stat. § 590.01, subd. 4(b)(5). The interests-of-justice exception is implicated only in "exceptional and extraordinary situations." *Carlton v. State*, 816 N.W.2d 590, 607 (Minn. 2012).

Minnesota Statutes section 590.01, subdivision 4(c), "creates the additional requirement that a 'petition invoking an exception provided in [subdivision 4](b) must be filed within two years of the date the claim arises.'" *Sanchez v. State*, 816 N.W.2d 550, 556 (Minn. 2012) (quoting Minn. Stat. § 590.01, subd. 4(c) (2010)). The limitations period begins to run when the appellant "knew or should have known" that he had a claim for postconviction relief. *Id.* at 560. The knew-or-should-have-known standard is an objective standard, under which a petitioner's subjective knowledge is irrelevant. *Id.* at 558.

The state argues that the interests-of-justice exception does not apply to appellant because he did not file his petition within two years of when the claim arose. We agree. The "principal claim raised by appellant . . . was that his guilty plea was inaccurately entered because his factual admissions did not establish his guilt for the crime to which he purported[ly] . . . plead[ed] guilty." But although appellant claims he was not aware of the deficiency at the time of his guilty plea, his knowledge is irrelevant; rather the standard is objective and focuses on whether appellant should have known. *See Sanchez*, 816 N.W.2d at 558. The record reflects that appellant was represented by experienced counsel and that he had conversations with his attorney about the plea agreement.

Moreover, the record reflects that the pre-sentence investigator recognized in her report the very issue appellant now raises. Specifically, the investigator wrote: "Although the charging clause states that [the victim] was at least 16 at the time of the sexual contact, she would have been age 14 or 15." The pre-sentence investigation report was then referred to several times at sentencing. As the state points out, appellant was likely aware of the issue at the time of sentencing, but did nothing in order to take advantage of the favorable plea agreement. Because the record indicates that appellant knew or should have known of his claim at the time he was sentenced in January 1992, but did not file his petition for postconviction relief until 2012, we conclude that under Minn. Stat. § 590.01, subd. 4(c), appellant is barred from invoking the interests-of-justice exception.[1]

Moreover, even if appellant's claim is not time-barred under Minn. Stat. § 590.01, subd. 4(c), appellant's petition for postconviction relief does not fall within the interests-of-justice exception. In *Sanchez*, the supreme court stated that

> the interests-of-justice exception is triggered by an injustice that *caused* the petitioner to miss the primary deadline in subdivision 4(a), not the *substance* of the petition. When the only injustice claimed is identical to the substance of the petition, and the substance of the petition is based on something that happened before or at the time a conviction became final, the injustice simply cannot have caused the

[1] We note that the legislature did not enact Minn. Stat. § 590.01, subd. 4, which added the two-year statute of limitations to the postconviction statute, until 2005. *See* 2005 Minn. Laws ch. 136, art. 14, § 13, at 1097-98. Thus, for defendants like appellant, whose conviction was final before August 1, 2005, the two-year statute of limitations expired on July 31, 2007. *Sanchez*, 816 N.W.2d at 555.

> petitioner to miss the 2-year time limit in subdivision 4(a), and therefore is not the type of injustice contemplated by the interests-of-justice exception in subdivision 4(b)(5).

Id. at 557.

Here, appellant claims that the "injustice that caused [him] to miss the two-year deadline for filing a petition for postconviction relief was the failure of the district court to recognize and inform [him] that the facts he admitted to as part of his guilty plea could not have substantiated his guilt for the offense he was pleading guilty to." But applying the principles discussed in *Sanchez* to appellant's claim, the injustice he claims and the substance of his petition are the same. And the substance of his petition is based on events that occurred at his plea hearing. Thus, appellant knew or should have known of his claim in December 1991, when he entered his guilty plea. Because appellant did not seek postconviction relief until May 2012, his petition does not fall within the interests-of-justice exception.

Finally, we have considered the arguments raised in appellant's pro se supplemental brief and conclude that they are without merit.

Affirmed.