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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0744**

Nathon Wesley White, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed December 2, 2013
Affirmed
Ross, Judge**

Rice County District Court
File No. 66-CR-09-250

Cathryn Middlebrook, Interim Chief Appellate Public Defender, Michael W. Kunkel, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

G. Paul Beaumaster, Rice County Attorney, Terence Swihart, Assistant County Attorney, Faribault, Minnesota (for respondent)

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

UNPUBLISHED OPINION

ROSS, Judge

Appellant Nathon White pleaded guilty to and was convicted of second-degree criminal sexual conduct and petitioned to withdraw his plea forty months later. The

postconviction court denied White's petition, and he appeals. We affirm the postconviction court's order because White filed his petition after the two-year statutory limitation period.

FACTS

In January 2009, Rice County charged Nathon White with two counts of first-degree criminal sexual conduct and one count of second-degree criminal sexual conduct. He reached a plea deal with the state and pleaded guilty to second-degree criminal sexual conduct in July 2009.

On May 24, 2012, the Rice County Attorney's Office received a handwritten letter from White stating that he intended to file a motion to withdraw his guilty plea. He filed a petition for postconviction relief seven months later, represented by counsel. He argued that he should be allowed to withdraw his guilty plea because the district court had improperly induced him into pleading guilty by denying his request for a continuance. The district court denied White's petition. White appeals.

DECISION

White argues that the district court erred in denying his petition for postconviction relief by wrongly concluding that his motion was untimely. He asserts that no evidence indicates that he abused or intentionally delayed the judicial process or that the state would be prejudiced if his withdrawal is granted. The state responds that the district court was correct because, among other reasons, White filed his postconviction petition after the statutory time limit had expired. The state's argument prevails.

We review a postconviction court's decisions for an abuse of discretion and will sustain its findings if the evidence supports them. *Williams v. State*, 760 N.W.2d 8, 11 (Minn. App. 2009), *review denied* (Minn. Apr. 21, 2009). A defendant is not absolutely entitled to withdraw a guilty plea. *State v. Raleigh*, 778 N.W.2d 90, 93 (Minn. 2010). Motions to withdraw a guilty plea after sentencing are subject to the same time restraints as petitions for postconviction relief, which are set out in Minnesota Statutes section 590.01, subdivision 4(a) (2012). *Lussier v. State*, 821 N.W.2d 581, 586 n.2 (Minn. 2012). Under that statute, a defendant may not file a petition for postconviction relief "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).

White was sentenced on August 31, 2009, and he did not appeal directly. He therefore had two years, or until August 30, 2011, to petition for postconviction relief. He waited until nine months after that deadline before he first notified the state that he wanted to withdraw his plea. And he did not file his petition for another seven months, until December 7, 2012. White acted well beyond his two-year deadline. His petition was untimely, and so the postconviction court did not abuse its discretion by denying it.

We have considered the other issues raised in White's original brief and in his pro se supplemental brief, and we are convinced that none warrants further discussion or relief.

Affirmed.