

STATE OF MINNESOTA
IN SUPREME COURT

A19-1897

Ramsey County

Gildea, C.J.

Larry Demetrius Pearson,

Appellant,

vs.

Filed: July 29, 2020
Office of Appellate Courts

State of Minnesota,

Respondent.

Zachary A. Longsdorf, Longsdorf Law Firm, PLC, Inver Grove Heights, Minnesota, for appellant.

Keith Ellison, Attorney General, Saint Paul, Minnesota; and

John J. Choi, Ramsey County Attorney, Alexandra Meyer, Assistant County Attorney, Saint Paul, Minnesota, for respondent.

S Y L L A B U S

The district court did not abuse its discretion when it denied appellant's third petition for postconviction relief without an evidentiary hearing.

Affirmed.

Considered and decided by the court without oral argument.

OPINION

GILDEA, Chief Justice.

A Ramsey County jury found appellant Larry Demetrius Pearson guilty of first-degree premeditated murder and unlawful possession of a firearm in connection with the April 2006 death of Corodarl Merriman. We affirmed his convictions in an appeal that consolidated Pearson’s direct appeal and his appeal from the denial of his first postconviction petition. *State v. Pearson (Pearson I)*, 775 N.W.2d 155, 158 (Minn. 2009). In 2017, we affirmed the denial of Pearson’s second petition for postconviction relief. *Pearson v. State (Pearson II)*, 891 N.W.2d 590, 593 (Minn. 2017). In 2019, Pearson filed a third petition for postconviction relief, which is the petition at issue in this appeal. Concluding that Pearson’s petition was untimely under Minn. Stat. § 590.01, subd. 4(c) (2018), the district court denied the petition without a hearing. Because the district court did not abuse its discretion, we affirm.

FACTS

At trial, the State proved that Pearson met Merriman’s brother on April 22, 2006, in a parking lot while Merriman sat in a nearby van. When the meeting sparked an altercation, Pearson fatally shot Merriman.¹

Pearson was arrested the next day, and on April 25, 2006, he was charged by complaint with one count of second-degree intentional murder (“second-degree murder

¹ The facts relating to Merriman’s murder and Pearson’s trial are detailed in *Pearson I*, 775 N.W.2d at 158–59. We discuss here only those facts relevant to Pearson’s third postconviction petition.

case”). Although Pearson made a speedy trial demand on May 15, 2006, he withdrew the demand on June 28, 2006.

When the parties appeared for trial on August 28, 2006, the State requested a continuance, explaining that it had discovered evidence that required further investigation. The district court judge denied the request and the second-degree murder case was dismissed. The Minnesota Court Information System entry for August 28, 2006, reads: “DISM CHRGS PER PROS. MOTION, DEFT OR’D ON THIS . . . CH MATTER, DEFT HAS A PAROLE HOLD AEJ.”

That same day, a warrant and complaint were issued for the arrest of Pearson charging him with unlawful possession of a firearm (“firearm case”).² Because Pearson was still in custody, the warrant was recalled and a different district court judge set bail at \$50,000.

On November 15, 2006, a Ramsey County grand jury indicted Pearson for first-degree premeditated murder, Minn. Stat. § 609.185(a)(1) (2018), second-degree intentional murder, Minn. Stat. § 609.19, subd. 1(1) (2018), and second-degree attempted murder, Minn. Stat. §§ 609.19, subd. 1(1), 609.17 (2018), for his involvement in the shooting (“first-degree murder case”).³ Bail was set at \$1,000,000.

² The complaint alleged that Pearson unlawfully possessed a firearm on April 23, 2006, the day after Merriman’s death. The firearm case was dismissed after Pearson was indicted for first-degree premeditated murder.

³ The indictment also alleged that on April 23, 2006, the day after Merriman’s death, Pearson unlawfully possessed a firearm, Minn. Stat. § 624.713, subd. 1 (2018).

On December 19, 2006, the parties appeared before a different district court judge. In arguing for bail, Pearson's attorney referenced the August 2006 hearing that was held in the second-degree murder case. More specifically, she said:

Just to give the Court a little background information on this case . . . this case was set for jury trial on August 28 of 2006 . . . and at that time the defense was prepared and ready to proceed with trial that morning. It was on that morning that the State . . . made a request to the Court that they receive a continuance of that jury trial date, and that request was denied. At that time the defense was still prepared to proceed to trial, and at that time *the State moved to dismiss the case.*

The case was dismissed, and . . . we asked that, if this case were to be charged at any point in the future, that it would be charged by summons and complaint rather than a warrant, and [the judge] granted our request and indicated that Mr. Pearson would be released on the matter, and any proceedings that would follow would be issued by summons and complaint.

Unbeknownst to the defense and, I believe, also to [the judge], the State either intended to file or had already filed [the complaint in the firearm case] . . . so Mr. Pearson was never released from custody.

(Emphasis added.) In light of the release order that was issued when the second-degree murder case was dismissed in August 2006, Pearson's attorney argued that the district court should release Pearson on his own recognizance in the first-degree murder case. The State argued that bail should remain at \$1,000,000. As part of the State's argument, the prosecutor said:

I asked [the judge] for a continuance. He denied the motion for a continuance, *so I dismissed the case* so that we could finish our investigation based upon what we thought we had found at the crime scene and based on what we saw in the van.

It was only after the case was dismissed that the defense asked that any recharge . . . be done by summons and complaint. I would submit to the Court that a judge . . . *lacks jurisdiction to order the State to do anything in a dismissed case.*

(Emphasis added.) After considering the parties' arguments, the district court ordered that bail remain at \$1,000,000.

Following a jury trial, the district court convicted Pearson of first-degree premeditated murder, Minn. Stat. § 609.185(a)(1).⁴ The court sentenced Pearson to life in prison without the possibility of release.

Pearson filed a direct appeal and a motion to stay the appeal to allow him to pursue postconviction relief, which we granted. In his first petition for postconviction relief, Pearson alleged that trial counsel was ineffective in part because she failed to fully pursue the suppression of his videotaped statement to police and because she failed to cross-examine Merriman's brother about Merriman's prior bad acts. The district court denied the petition, and Pearson appealed. We consolidated Pearson's appeals and later affirmed his convictions and the district court's denial of his first petition for postconviction relief. *Pearson I*, 755 N.W.2d at 158.

Pearson filed a second petition for postconviction relief in December 2014.⁵ *Pearson II*, 891 N.W.2d at 594. The district court denied the second postconviction petition, and we affirmed. *Id.* at 593.

⁴ In addition, the district court convicted Pearson of unlawfully possessing a firearm on the day after Merriman's death and imposed a concurrent 60-month sentence.

⁵ In his petition, Pearson raised three primary claims. First, he contended that he had newly discovered evidence, an affidavit signed by J.B., who claimed he witnessed the shooting. *Pearson II*, 891 N.W.2d at 594. Second, he argued that "trial counsel was ineffective when she advised him to decline a plea offer for second-degree murder." *Id.* at 594–95. Third, he asserted that the attorney who represented him in his first postconviction

On June 11, 2019, Pearson filed a third postconviction petition, alleging that the district court dismissed the second-degree murder case on August 28, 2006, because the State violated his right to a speedy trial.⁶ To support his allegation, Pearson submitted an affidavit that described his recollection of the August hearing.⁷ Pearson also relied on the recollections of his cousins and the transcript of the December 2006 hearing. According to Pearson and his cousins, the district court dismissed the second-degree murder case because the State violated his right to a speedy trial. Based on his allegation that the district court dismissed the second-degree murder case because the State violated his right to a speedy trial, Pearson asserted three claims.

First, the district court lacked subject-matter jurisdiction over the first-degree murder case because the second-degree murder case was dismissed based on a speedy trial violation, and the dismissal order required that any future charges be filed by summons and complaint. Second, appellate counsel was ineffective in the consolidated appeal when she failed to order a transcript of the August 2006 hearing and challenge the district court's subject-matter jurisdiction. Third, counsel was ineffective in the second postconviction proceeding because he was unable to raise issues based upon the transcript of the August

proceeding was ineffective when she failed to call Merriman's brother to establish a claim of ineffective assistance of trial counsel and when she advised him to withdraw a conflict-of-interest claim against his trial attorney. *Id.* at 595.

⁶ This allegation ignores the undisputed fact that Pearson waived his right to a speedy trial on June 28, 2006.

⁷ It was no longer possible to order a transcript from the August 2006 hearing because, under the relevant document retention policy, the court reporter destroyed her recording of the hearing.

hearing. Acknowledging that the 2-year statute of limitations, Minn. Stat. § 590.01, subd. 4(a) (2018), had expired, Pearson tried to invoke the interests-of-justice exception, Minn. Stat. § 590.01, subd. 4(b)(5) (2018).

The district court denied the third postconviction petition without a hearing. According to the district court, Pearson's attempt to invoke the interests-of-justice exception was untimely under Minn. Stat. § 590.01, subd. 4(c), because his claims arose more than 2 years before he filed the third petition in June 2019.⁸ The court explained that Pearson's claims for relief were not grounded in the existence, or lack, of a transcript. Instead, his claims were grounded in his assertion that the dismissal at the August 2006 hearing somehow precluded his subsequent indictment and conviction for the murder of Merriman.

The district court determined that Pearson knew or should have known about his first claim no later than December 19, 2006, when the parties discussed the impact, if any, of the August 2006 dismissal of the second-degree murder case on the first-degree murder case. As for his claim that appellate counsel was ineffective in the consolidated appeal when she failed to order a transcript of the August hearing, the district court determined that Pearson knew or should have known about the claim no later than September 26, 2008, when his first postconviction petition was denied. Finally, the district court determined that Pearson knew or should have known about his third claim no later than April 2016,

⁸ The district court also concluded that Pearson's claims were procedurally barred under *State v. Knaffla*, 243 N.W.2d 737 (Minn. 1976). Because we conclude that the claims are untimely under Minn. Stat. § 590.01, subd. 4(c), we do not address whether they are procedurally barred under *Knaffla*.

when his second postconviction petition was denied. Because Pearson filed his third postconviction petition in June 2019, more than 3 years after the second postconviction petition was denied, the district court concluded that Pearson’s attempt to invoke the interests-of-justice exception was untimely under Minn. Stat. § 590.01, subd. 4(c), and denied Pearson’s petition. Pearson appeals.

ANALYSIS

Pearson argues that the district court erred in denying his petition. Under Minn. Stat. § 590.01, subd. 1 (2018), a person convicted of a crime who claims that his or her conviction was obtained in violation of a constitutional or statutory right may file a petition for postconviction relief. The postconviction statute requires that petitions be filed within 2 years of the “appellate court’s disposition of petitioner’s direct appeal.” Minn. Stat. § 590.01, subd. 4(a)(2). The statute contains exceptions to the 2-year time bar, *id.*, subd. 4(b), but “[a]ny petition invoking an exception . . . must be filed within two years of the date the claim arises,” *id.*, subd. 4(c). The statute also requires that the district court hold an evidentiary hearing on the petition “[u]nless the petition and the files and records of the proceeding conclusively show that the petitioner is entitled to no relief.” Minn. Stat. § 590.04, subd. 1 (2018). A district court accepts “the facts alleged in the petition as true and construes them in the light most favorable to the petitioner” to determine whether an evidentiary hearing is required. *Brown v. State*, 895 N.W.2d 612, 618 (Minn. 2017). We review the denial of a postconviction petition for abuse of discretion and any issues of law de novo. *Reed v. State*, 793 N.W.2d 725, 729 (Minn. 2010).

The district court determined that Pearson’s attempt to invoke the interests-of-justice exception to the 2-year statute of limitations, Minn. Stat. § 590.01, subd. 4(a), was untimely under Minn. Stat. § 590.01, subd. 4(c). Pearson argues that the district court abused its discretion, making two primary arguments. First, he argues that challenges to a court’s subject-matter jurisdiction are never untimely. Second, he asserts that he did not personally learn about any of his claims until January 11, 2018, and therefore the invocation of the interests-of-justice exception in his June 2019 petition for postconviction relief was timely.⁹ We consider each argument in turn.

A.

The district court concluded that Pearson’s alleged subject-matter jurisdiction claim was untimely under Minn. Stat. § 590.01, subd. 4(c). Pearson argues that a challenge to subject-matter jurisdiction is never untimely, and therefore the district court abused its discretion.

⁹ Pearson also argues that we should exercise our supervisory powers over the administration of justice and grant a new trial based upon cumulative error. Because we conclude that no cumulative error occurred, we will not do so. And while Pearson relies on *Vang v. State*, 788 N.W.2d 111 (Minn. 2010), and *Montanaro v. State*, 802 N.W.2d 726 (Minn. 2011), to support his contention that we can reach the merits of his claim even if it is untimely, these cases are inapposite. In *Vang*, we reviewed the convictions and sentences of an indigent 14-year-old defendant. 788 N.W.2d at 113–15. Even though the claim was untimely, because of the case’s “exceptional and extraordinary circumstances, we exercise[d] our inherent authority to directly review the juvenile court’s actions.” *Id.* at 114–15. Similarly, in *Montanaro*, we reached the merits of a postconviction appeal that was untimely under section 590.01 “for reasons of judicial economy.” 802 N.W.2d at 731–32 (reaching the merits “without deciding that [the defendant] ha[d] satisfied one of the time bar exceptions in [section 590.01]”). Pearson has not shown that his case is exceptional like *Vang* or that it presents judicial economy concerns like *Montanaro*.

Even if Pearson is correct that challenges to subject-matter jurisdiction are never untimely under the postconviction statute, his argument is unavailing because his allegation cannot be viewed as one challenging the district court's subject-matter jurisdiction over the first-degree murder case. Pearson's claim is not that the district court lacked the power to hear the criminal case arising from the death of Merriman. Rather, Pearson argues that, because the second-degree murder case was purportedly dismissed due to a speedy trial violation, the later charges were improper. That is not a claim challenging the district court's power to hear the later-filed charges. *See Reed*, 793 N.W.2d at 731 (explaining that challenges to subject-matter jurisdiction "relate to 'the courts' statutory or constitutional power to adjudicate the case'" (quoting *United States v. Cotton*, 535 U.S. 625, 630 (2002))); *see also Johnson v. State*, 916 N.W.2d 674, 680 (Minn. 2018) ("A district court has subject-matter jurisdiction to convict a defendant of all crimes cognizable under the laws of the State of Minnesota."). Instead, it is a claim that the district court ought not to have exercised its statutory or constitutional power based on the events that allegedly occurred at the August 2006 hearing. Accordingly, the district court did not abuse its discretion in concluding that Pearson's first claim was untimely.

B.

Next, Pearson argues that even if the alleged subject-matter jurisdiction claim could be time-barred, the district court erred because Pearson did not personally learn that his attorney failed to order a transcript of the August 2006 hearing until January 11, 2018. Therefore, he asserts, his petition should have been heard under the interests-of-justice exception, which provides that a court may hear an untimely petition when "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). We disagree.

The interests-of-justice exception in subdivision 4(b)(5) is subject to the 2-year statute of limitations in Minn. Stat. § 590.01, subd. 4(c). *Sanchez v. State*, 816 N.W.2d 550, 558 (Minn. 2012). Under subdivision 4(c), “[a]ny petition invoking [the interests-of-justice exception] must be filed within two years of the date the claim arises.” Minn. Stat. § 590.01, subd. 4(c). And such a claim accrues “based on an objective ‘knew or should have known’ standard.” *Sanchez*, 816 N.W.2d at 558 (quoting *D.M.S. v. Barber*, 645 N.W.2d 383, 387 (Minn. 2002)). It is not a “subjective, actual knowledge standard.” *Id.* There is no question in this case that, under the objective standard, Pearson’s claims arose more than 2 years before he brought them in June 2019.

In support of his third postconviction petition, Pearson signed an affidavit that alleged the following facts. He attended the August 2006 hearing. The district court dismissed the charges because the court believed that the prosecution was trying to do “an end-around” the legal process. He was then held on an illegal-possession-of-a-firearm charge. A few months later, he was indicted for first-degree premeditated murder.

Even if we view these facts in a light most favorable to Pearson, he is conclusively entitled to no relief. A person objectively should have known about the purported claim no later than December 19, 2006, when the parties discussed the impact, if any, of the August 2006 dismissal of the second-degree murder case on the first-degree murder case. As the district court observed, the existence, or lack, of a transcript of the August 2006 hearing did not preclude Pearson from raising his claim. *See Brown v. State*, 863 N.W.2d

781, 788 (Minn. 2015) (explaining that the interests-of-justice exception “is triggered by an injustice that *caused* the petitioner to miss the primary postconviction deadline, not the substantive merits of the petition”).

We reach the same conclusion for Pearson’s claims that his appellate counsel was ineffective both for the consolidated direct appeal and first postconviction petition and for his second postconviction petition. As to his consolidated appeal, Pearson knew or should have known about his claim of ineffective assistance of appellate counsel no later than the date of oral argument, which was May 12, 2009, because he would have known that appellate counsel failed to make any argument based upon the August 2006 hearing.

As to his claim of ineffective assistance of appellate counsel on his second postconviction appeal, Pearson knew or should have known about the claim no later than September 15, 2016, the date that the reply brief was filed, because at that time it was clear that appellate counsel did not raise the argument.¹⁰ As with the first claim, the existence, or lack, of a transcript of the August 2006 hearing did not preclude Pearson from raising his claims of ineffective assistance of appellate counsel.

Accordingly, we hold that the district court did not abuse its discretion in concluding that Pearson’s attempt to invoke the interests-of-justice exception was untimely under section 590.01, subdivision 4(c).¹¹

¹⁰ Pearson’s second postconviction appeal was heard on our nonoral calendar.

¹¹ The State argues that Pearson’s claim of ineffective assistance of appellate counsel on his second postconviction appeal fails as a matter of law because neither the United States Constitution nor the Minnesota Constitution affords him effective assistance of

CONCLUSION

For the foregoing reasons, we affirm the decision of the district court.

Affirmed.

counsel on a second appeal. We need not address that issue because the claim is time-barred.