STATE OF MINNESOTA

IN SUPREME COURT

A19-0672

Court of Appeals

McKeig, J.
Dissenting, Thissen, J.

Gary Paul Johnston,

Appellant,

vs.

Filed: March 10, 2021
Office of Appellate Courts

State of Minnesota,

Respondent.

Cathryn Middlebrook, Chief Appellate Public Defender, Sara J. Euteneuer, Assistant State Public Defender, Saint Paul, Minnesota, for appellant.

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

Mark A. Ostrem, Olmstead County Attorney, Jennifer D. Plante, Assistant Olmstead County Attorney, Rochester, Minnesota, for respondent.

S Y L L A B U S

The plain meaning of the phrase "a person convicted of a crime" in Minn. Stat. § 590.01, subd. 1 (2020), means a person who has a conviction as defined under Minnesota law.

Affirmed.

O P I N I O N

McKEIG, Justice.

The issue presented in this appeal is whether a person who received a stay of adjudication and has been discharged from probation can seek postconviction relief for a claim of ineffective assistance of counsel under *Padilla v. Kentucky*, 559 U.S. 356, 368–69 (2010). To seek postconviction relief, a person must be "convicted of a crime." Minn. Stat. § 590.01, subd. 1 (2020). The district court denied appellant Gary Johnston's petition for postconviction relief after determining that his stay of adjudication and discharge from probation was not a conviction. The court of appeals affirmed. Because we hold that the plain meaning of the phrase "a person convicted of a crime" in Minn. Stat. § 590.01, subd. 1, means a person who has a conviction under Minnesota law, and Johnston's stay of adjudication does not meet this definition, we affirm.

FACTS

In February 2017, appellant Gary Johnston's nine-year-old son reported that Johnston punched him in the face and gave him a black eye. Johnston admitted to a police investigator that he "lost control," punched his son in the eye, and slapped him multiple times in the head and body. The State of Minnesota charged Johnston with one count of malicious punishment of a child, Minn. Stat. § 609.377, subd. 1 (2020), and one count of domestic assault, Minn. Stat. § 609.2242, subd. 1(2) (2020).

Johnston is a citizen of Ireland, is a lawful permanent resident,[1] and has resided in the United States for approximately 7 years. Because of Johnston's immigration status, his defense attorney recommended that he obtain advice from an immigration attorney regarding any potential immigration consequences of pleading guilty. The defense attorney wrote questions for the immigration attorney on a piece of paper. Johnston then consulted with the immigration attorney and gave her the paper from his defense attorney. The paper had the following written on it:

> If plead guilty to:
> (gross misdemeanor) (1) Malicious Punishment of Child; or
> (misdemeanor) (2) Domestic assault
>
> What are consequences?
> a. Deportation?
> b. Re-entry?
> c. Citizenship?

Next to deportation, the immigration attorney wrote the numbers 1 and 2 and "no"; next to re-entry she wrote the number 2 and "no"; and next to citizenship she wrote the number 2, "yes." After reviewing the paper with the immigration attorney's notes, Johnston's defense attorney advised him to enter a plea of guilty in exchange for a stay of adjudication.

Johnston and the State entered into a plea agreement. Johnston agreed to plead guilty to domestic assault–intentional infliction of bodily harm and complete a domestic violence inventory. The State agreed to dismiss the malicious punishment charge, stay adjudication of his domestic assault charge, and place Johnston on probation for 1 year.

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[1] A lawful permanent resident, also known as a green card holder, is a non-citizen who is lawfully authorized to live permanently within the United States. *See* https://www.dhs.gov/immigration-statistics/lawful-permanent-residents.

At the plea hearing, Johnston pleaded guilty to domestic assault pursuant to the terms of the plea agreement. The district court questioned Johnston. The judge asked Johnston if he understood that he could face immigration consequences, including deportation, if he violated his probation and was then convicted. Johnston replied that he understood, and did not have any questions about any immigration issues or consequences. Johnston's defense attorney and the State also questioned him regarding his understanding of possible immigration consequences to his plea deal. The district court accepted Johnston's plea of guilty without adjudicating him guilty, stayed adjudication pursuant to the parties' agreement, and placed Johnston on probation.

On June 23, 2018, Johnston successfully completed and was discharged from probation. Three days later, he received a notice from immigration court that he was scheduled for immigration removal proceedings. Johnston filed a petition for postconviction relief and requested an evidentiary hearing. He sought to withdraw his guilty plea, claiming that he received ineffective assistance of counsel when the immigration attorney he consulted advised him that he would not be subject to presumptively mandatory deportation if he pleaded guilty.

The postconviction court found that, because Johnston pleaded guilty and successfully completed his probation, the disposition of the misdemeanor charge was amended to a dismissal without an adjudication of guilt and the case was closed. *See* Minn. Stat. § 609.095(b) (2020) (providing that, under certain circumstances, a court may refuse to adjudicate the guilt of a defendant who tenders a guilty plea). The court denied

Johnston's petition for postconviction relief, concluding that he had not been convicted of a crime and therefore was not eligible for postconviction relief.

Johnston appealed the denial of his petition for postconviction relief. The court of appeals, in a divided unpublished opinion, affirmed. *Johnston v. State*, No. A19-0672, 2020 WL 290452, at *1 (Minn. App. Jan. 21, 2020). Relying on our analysis in *State v. Dupey*, 868 N.W.2d 36 (Minn. 2015), the court of appeals held that Johnston cannot seek relief under Minn. Stat. § 590.01, subd. 1, because he "received a stay of adjudication and has since been discharged from probation without having had the stay of adjudication vacated." *Johnston*, 2020 WL 290452, at *1–2. We granted Johnston's petition for review.

ANALYSIS

In this appeal, we must determine if Minn. Stat. § 590.01, subd. 1, authorizes Johnston to file a petition for postconviction relief. We review issues of statutory interpretation de novo. *In re Welfare of J.J.P.*, 831 N.W.2d 260, 264 (Minn. 2013).

The first step in statutory interpretation "is to determine whether the statute's language, on its face, is unambiguous." *State v. Jama*, 923 N.W.2d 632, 636 (Minn. 2019). When the language of a statute is susceptible to only one reasonable interpretation, it is unambiguous and we must apply its plain meaning. *State v. Culver*, 941 N.W.2d 134, 139 (Minn. 2020). In determining whether the language of a statute is subject to more than one reasonable interpretation, we use the canons of interpretation in Minn. Stat. § 645.08 (2020). *State v. Riggs*, 865 N.W.2d 679, 682 (Minn. 2015). "[T]echnical words and phrases and such others as have acquired a special meaning . . . are construed according to such special meaning . . . ." Minn. Stat. § 645.08(1).

We begin with the relevant statutory language. "[A] person convicted of a crime . . . may commence a proceeding to secure relief" by filing a petition for postconviction relief in district court. Minn. Stat. § 590.01, subd. 1. A conviction is "the following accepted and recorded by the court: (1) a plea of guilty; or (2) a verdict of guilty by a jury or a finding of guilty by the court." Minn. Stat. § 609.02, subd. 5 (2020).

We previously considered whether a stay of adjudication was a conviction for purposes of the postconviction statute in *State v. Dupey*, 868 N.W.2d 36 (Minn. 2015). Dupey received a stay of adjudication under Minn. Stat. § 152.18, subd. 1 (2014), which was later revoked when he violated the terms of his probation. *Dupey*, 868 N.W.2d at 38. We held that "a stay of adjudication under Minn. Stat. § 152.18, subd. 1, is not a judgment of conviction or a sentence under" the 2-year statute of limitations for postconviction petitions, Minn. Stat. § 590.01, subd. 4(a)(1) (2020). *Dupey*, 868 N.W.2d at 37. In considering whether a stay of adjudication was a sentence, we defined a sentence as punishment that is imposed "*following* a criminal conviction or adjudication of guilt." *Id.* at 40. An order staying adjudication, we concluded, did not meet this definition because it "does not result in . . . a conviction." *Id.*

We then went on to explain why a person has not been convicted when there is a stay of adjudication. *Id.* at 40 n.2. We noted that "[a] conviction requires a district court to 'accept[ ] and record[ ]' the guilty plea, guilty verdict, or finding of guilt by the court." *Id.* (quoting Minn. Stat. § 609.02, subd. 5). A district court records a guilty plea "when the court 'adjudicat[es] the defendant guilty on the record.' " *Id.* (emphasis omitted) (quoting *State v. Martinez-Mendoza*, 804 N.W.2d 1, 6 (Minn. 2011)). If adjudication is stayed "a

guilty plea is not 'recorded' because there is, by definition, no adjudication of guilt," and therefore no conviction. *Id.*

Our analysis from *Dupey* for determining if a person has a conviction can be used to determine if a person has been "convicted of a crime" and is authorized by section 590.01, subdivision 1, to file a petition for postconviction relief. The verb "convicted" and its related noun "conviction" should be given similar meanings when interpreting different subdivisions of section 590.01. *See State v. Schmid*, 859 N.W.2d 816, 823–24 (Minn. 2015) (holding that the statutory definition of "taking" from the fish and game laws applied to the word "take" in a specific statute about deer hunting). Thus, to be a "person convicted of a crime," for purposes of section 590.01, subdivision 1, a person must have a conviction, as defined by section 609.02, subdivision 5. And just like the appellant in *Dupey*, Johnston's stay of adjudication does not meet that definition of conviction because his guilty plea was not recorded by the district court.[2]

Johnston argues that we should not apply our analysis from *Dupey* to his case, noting that the stay of adjudication in that case was imposed under section 152.18, subdivision 1. Johnston is correct that the stay of adjudication in *Dupey* was imposed pursuant to section 152.18, subdivision 1, which applies to certain drug cases, while the stay of adjudication in his case was permitted under Minn. Stat. § 609.095(b) (2020), which authorizes a stay of adjudication after a defendant pleads guilty "upon agreement of the parties." Nothing in *Dupey* or section 152.18, subdivision 1, explicitly limits the analysis

[2] Johnston concedes that he does not have a "conviction" as defined in Minn. Stat. § 609.02, subd. 5.

from *Dupey* to stays of adjudication under that exact statutory section. A different source of authority for the stay of adjudication is not a meaningful reason to distinguish or limit *Dupey*.

Johnston also claims the plain meaning of the phrase "a person convicted of a crime" in section 590.01, subdivision 1, includes a person who is considered to have a "conviction" as defined by federal immigration law.[3] Johnston argues that he should be allowed to file a postconviction petition because the postconviction statute authorizes a person to argue in a postconviction petition that their rights were violated "under the Constitution or laws of the United States." Minn. Stat. § 590.01, subd. 1(1). According to Johnston, if we interpret the postconviction statute to be limited to persons who have been convicted of a crime as defined by Minnesota law, then a person who received a stay of adjudication and successfully completed probation cannot seek postconviction review of a *Padilla* claim, while a person who received a stay of adjudication but had the stay revoked after violating probation and was then convicted could seek postconviction review of such a claim.

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[3] Under federal immigration law, a "conviction":

> means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where— (i) a judge or jury has found the alien guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

8 U.S.C. § 1101(a)(48)(A).

Nothing in section 590.01 suggests that the definition of "conviction" for postconviction relief includes instances when a person has a conviction for purposes of federal immigration law, but not state law. The language Johnston cites from section 590.01 is not helpful because it relates to the types of claims that may be raised in a postconviction petition, and not who may raise such claims. Johnston does not provide any Minnesota case law, or cite to any Minnesota rules or statutes, to support his proposition that a conviction as defined by Minnesota law should include a conviction for purposes of federal immigration law.[4]

It may be possible that Johnston received ineffective assistance of counsel under *Padilla*. *See Padilla*, 559 U.S. at 369, 374 (requiring that counsel inform a client whether a plea carries a risk of deportation "when the deportation consequence is truly clear"). But even if Johnston received ineffective assistance of counsel, the Legislature has only

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[4] Johnston cites opinions from two other states as persuasive evidence that we should read the term "conviction" more broadly—*State v. Guerrero*, 400 S.W.3d 576 (Tex. Crim. App. 2013), and *Rivera v. State*, 973 A.2d 218 (Md. 2009). The Texas Court of Criminal Appeals, however, only addressed whether the appellee was authorized to file a habeas petition because his "deferred-adjudication misdemeanor judgment" was not a conviction; it did not consider a postconviction petition based on a dismissal after a stay of adjudication. *Guerrero*, 400 S.W.3d at 588–90. And the Maryland Court of Appeals addressed the scope of a common law writ, not a postconviction statute. *Rivera*, 973 A.2d at 228–29. Other courts have held that a person who received the equivalent of a stay of adjudication cannot file a petition for postconviction relief because they do not have a conviction. *See, e.g.*, *Daughenbaugh v. State*, 805 N.W.2d 591, 591, 598–99 (Iowa 2011) (holding that a "person who pled guilty to criminal charges, received a deferred judgment, and had the charges dismissed after successful completion of probation" did not have a conviction that can be challenged in a postconviction proceeding); *State v. Young*, 242 S.W.3d 926, 928–29 (Tex. App. 2008) (holding that appellant who pleaded guilty, was placed on deferred adjudication probation and successfully completed probation could not file a motion for forensic DNA testing because the relevant statute applied to a "convicted person" and appellant had not been convicted for the purposes of Texas law).

authorized persons with a conviction to petition for postconviction relief. Section 590.01 does not contain language regarding a conviction for purposes of federal immigration law, nor does it carve out an exception for the situation where a defendant may have a conviction for purposes of federal immigration law but not under state law. *See Genin v. 1996 Mercury Marquis*, 622 N.W.2d 114, 117 (Minn. 2001) (stating that a court cannot "add[] words or meaning to a statute that were intentionally or inadvertently left out"). There simply is no statutory basis for Johnston to seek postconviction relief.[5]

Instead, we conclude that the plain meaning of the phrase "a person convicted of a crime" in section 590.01, subdivision 1, means a person who has a conviction under Minnesota law. Because Johnston's stay of adjudication is not a conviction under this definition, we hold that he is not authorized to file a petition for postconviction relief.

CONCLUSION

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

Affirmed.

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[5] The dissent would allow Johnston to seek relief under section 590.01. Under section 590.01, a petitioner may ask the court "to vacate and set aside the judgment and to discharge the petitioner or to resentence the petitioner or grant a new trial or correct the sentence or make other disposition as may be appropriate." However, Johnston does not have a conviction, but a vacated stay of adjudication, and there is no procedural mechanism for the district court to vacate a vacated stay of adjudication. As the dissent suggests, if a Rule 15.05 motion was available to Johnston, the district court could have addressed that motion under section 590.01. This issue is not before us.

D I S S E N T

THISSEN, Justice (dissenting).

Minnesota Statutes § 590.01, subd. 1 (2020), provides in relevant part:

> Except at a time when direct appellate relief is available, a person convicted of a crime, who claims that: (1) the conviction obtained or the sentence or other disposition made violated the person's rights under the Constitution or laws of the United States or of the state . . . may commence a proceeding to secure relief by filing a petition in the district court in the county in which the conviction was had to vacate and set aside the judgment and to discharge the petitioner or to resentence the petitioner or grant a new trial or correct the sentence or make other disposition as may be appropriate.

The question before us is whether the phrase "a person convicted of a crime" in section 590.01, subdivision 1, is limited to persons subject to judicial acts that constitute convictions under Minnesota law or whether it more broadly allows persons to seek relief under the statute who are subject to judicial acts that are not considered convictions under Minnesota law but are considered convictions under federal law and carry the consequences of convictions for purposes of federal law.

Here, the question arises in an unusual procedural context. The State charged appellant Gary Johnston with malicious punishment of a child, Minn. Stat. § 609.377, subd. 1 (2020), and domestic assault, Minn. Stat. § 609.2242, subd. 1(2) (2020). Johnston is a citizen of Ireland who is a permanent legal resident. As he considered whether to enter into a plea agreement, he sought and received advice from an immigration lawyer who told him that he would not be subject to deportation or barriers to reentry into the United States if he pleaded guilty to either of the two charges. The advice was wrong.

Relying on the advice, Johnston pleaded guilty to domestic assault. The State agreed that Johnston would receive a stay of adjudication, serve 1 year on probation, and complete a domestic violence inventory. The State also agreed to dismiss the malicious punishment charge. Johnston completed and was discharged from probation on June 23, 2018.

On June 26, 2018, the immigration court notified Johnston that he was scheduled for immigration removal proceedings. Under federal immigration law, a noncitizen who has been "convicted" of a crime of domestic violence is deportable and shall be removed from the country. 8 U.S.C. § 1227(a)(2)(E)(i). Further, federal immigration law defines "conviction" to include not only a "formal judgment of guilt . . . entered by a court" but also judicial acts where adjudication of guilt is withheld but

> where (i) a judge or jury has found the [person] guilty or the [person] has entered a plea of guilty or nolo contendere or has admitted certain facts to warrant a finding of guilt, *and* (ii) the judge has ordered some form of punishment, penalty, or restraint on the [person's] liberty to be imposed.

8 U.S.C. § 1101(a)(48)(A) (emphasis added). Under the federal immigration law, Johnston's stay of adjudication with probation conditions following his guilty plea is a conviction and carries with it the same immigration consequences of deportation or removal as if he actually had been adjudicated guilty.

It is also important to the consideration of this case that if a state conviction that subjects a person to deportation or removal under federal immigration law is vacated on the merits for procedural or substantive defects (as opposed to reasons unrelated to the merits of the case, such as to avoid immigration consequences or for rehabilitative reasons),

then the conviction cannot be used as a ground for removal or deportation. *See, e.g.*, *Andrade-Zamora v. Lynch*, 814 F.3d 945, 948 (8th Cir. 2016) (citing *In re Pickering*, 23 I. & N. Dec. 621, 624 (B.I.A. 2003), *rev'd on other grounds*, *Pickering v. Gonzalez*, 465 F.3d 263, 271 (6th Cir. 2006)). Here, Johnston filed a postconviction petition seeking to withdraw entry of his guilty plea—the basis for the judicial act of a stay of adjudication with probation conditions—on the ground that he received ineffective assistance of counsel in violation of the Sixth Amendment to the United States Constitution when his lawyer wrongly instructed him that pleading guilty to domestic assault would not subject him to removal proceedings. *See Padilla v. Kentucky*, 559 U.S. 356, 374 (2010) (holding that because changes to immigration law have dramatically raised the stakes of a noncitizen's criminal conviction, counsel engaged in constitutionally deficient performance by failing to advise defendant that his plea of guilty subjected him to automatic deportation). A conviction based on constitutionally insufficient legal counsel, if proven, would qualify as a vacation of the conviction on the merits and such a conviction could not provide a basis for Johnston's removal.

But here is the rub at the heart of this case. In contrast to federal law, which treats successfully completed stays of adjudication as "convictions" for purposes of imposing serious immigration consequences like removal and deportation, we have previously stated that a stay of adjudication is not a "conviction" under Minnesota law. *See State v. Dupey*, 868 N.W.2d 36, 40 n.2 (Minn. 2015). Accordingly, if section 590.01, subdivision 1, is limited to convictions as defined under Minnesota law, a person may not challenge a successfully completed stay of adjudication under the statute because he is not a "person

convicted of a crime."[1] Consequently, limiting relief under section 590.01 to persons subject to a judicial act considered a conviction under Minnesota law further means that a person in Johnston's shoes is left in a Kafkaesque position: he is subject to a serious immigration consequence of removal from the country based on a judicial act that followed a constitutionally flawed proceeding and he has no way to challenge that judicial act.[2]

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[1] We should not overlook that if a person subject to a stay of adjudication successfully completes the conditions of probation, it is as if the guilty plea and conviction never occurred and no future consequences may flow from the judicial action. *See* 9 Henry W. McCarr & Jack S. Nordby, *Minnesota Practice—Criminal Law and Procedure* § 36.5.F. (4th ed. 2012); Minn. Sent. Guidelines 2.B.1.g. (("Assign no weight to an offense for which a judgment of guilty has not been entered . . . such as a stay of adjudication or continuance for dismissal.")), 2.D.1, cmt. 2.D.106 ("The Guidelines do not apply to a stay of adjudication because it is not a conviction."). In other words, for purposes of Minnesota law, concluding that a person subject to a stay of adjudication who successfully satisfies (or has the potential to satisfy) the conditions of probation cannot seek relief under section 590.01 is truly a case of "no harm, no foul." As we have seen, that is not true with regard to the immigration consequences of a stay of adjudication for purposes of federal law.

[2] At the prompting of the court during oral argument, the parties discussed whether Johnston could have moved to withdraw his guilty plea under Minn. R. Crim. P. 15.05, subd. 1. The rule provides that "*[a]t any time* the court must allow a defendant to withdraw a guilty plea upon a timely motion and proof to the satisfaction of the court that withdrawal is necessary to correct a manifest injustice." *Id.* (emphasis added). Constitutionally ineffective assistance of counsel may support a motion to withdraw a guilty plea under Rule 15.05. *See Hill v. Lockhart*, 474 U.S. 52, 56 (1985) (explaining that a defendant's guilty plea may be constitutionally invalid if the defendant received ineffective assistance of counsel, rendering his guilty plea involuntary); *State v. Ecker*, 524 N.W.2d 712, 718 (Minn. 1994) ("When an accused is represented by counsel, the voluntariness of the plea depends on whether counsel's advice was within the range of competence demanded of attorneys in criminal cases." (citations omitted) (internal quotation marks omitted)). Whether a motion to withdraw a guilty plea was available to Johnston to challenge a guilty plea that resulted in a stay of adjudication *after* he had completed the conditions of his probation and the stay (and case) disappeared is a question we have not answered, and the court does not reach the issue in this case. But if a Rule 15.05 motion were available to Johnston, the district court readily could have treated Johnston's postconviction motion under section 590.01 seeking to vacate the guilty plea as a Rule 15.05 motion and addressed the merits accordingly. *Cf. Powers v State*, 731 N.W.2d 499, 501 n.2 (Minn. 2007) (stating

The court concludes that the Legislature intended that result. It holds that, "[n]othing in section 590.01 suggests that the definition of 'conviction' for postconviction relief includes instances when an appellant has a conviction for purposes of federal immigration law, but not state law." The court reasons that "[s]ection 590.01 does not contain language regarding a conviction for purposes of federal immigration law, nor does it carve out an exception for a situation where a defendant may have a conviction under federal immigration law but not under state law," citing *Genin v. 1996 Mercury Marquis*, 622 N.W.2d 114, 117 (Minn. 2001), for the proposition that a court cannot add meaning or words to a statute that were intentionally or inadvertently left out.

But precisely the same reasoning supports the alternative conclusion. Nothing in the language of section 590.01 suggests that the definition of "conviction" for postconviction relief is limited to convictions as defined by state law; the statute simply says "a person convicted of a crime" without qualification. The court effectively adds the words "for purposes of state law" after the phrase "a person convicted of a crime;" something the court itself acknowledges is impermissible. At the very least, the language of section 590.01 is ambiguous on the question of whether a person facing the serious consequences of a judicial act deemed a conviction under federal immigration law may avail himself of postconviction remedies under section 590.01.

I dissent because the court's decision presumes that the Legislature intended that there is no remedy for a person facing serious consequences flowing from a judicial act

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that a motion to correct a sentence under Minn. R. Crim. P. 27.03, subd. 9, may be treated as a postconviction petition under Minn. Stat. § 590.01).

tainted by constitutional error. That cannot be—and certainly not in the absence of any clear language that the Legislature so intended. I would hold that the Legislature did not intend the cramped view of the relief available under section 590.01 that the court adopts today. The purpose of enacting a postconviction statute like section 590.01 was to allow persons in criminal cases to raise challenges to judicial acts tainted by constitutional error that carry serious consequences. *See generally* 1966 Unif. Post-Conviction Proc. Act prefatory note (withdrawn 1980), 11A U.L.A. 269–72 (1995) (explaining that the corrective process for state postconvictions should be broad enough to allow persons to challenge denials of federal constitutional rights); Minn. Stat. § 645.16 (2020) (providing that statutes should be construed in view of "the mischief to be remedied" and "the object to be attained"). Under section 590.01, Johnston should be allowed to challenge as constitutionally deficient a stay of adjudication that is deemed a "conviction" under federal law and that may result in removal or deportation.

As a court, we often speak in our opinions as if we are compelled to reach the conclusions we draw—even if those conclusions are unjust—and have no choice in the matter. And that is sometimes true where the language of a statute is clear. But in this case, the court is making an uncompelled choice about how to interpret section 590.01. In the final analysis, my question is this: what possible harm can come from interpreting 590.01 consistent with its plain text (no limiting words modifying the term "conviction") and the purpose of the Legislature (to enable persons to raise challenges to constitutionally flawed criminal proceedings) and allowing Johnston a procedural avenue to challenge a judicial act that followed a constitutionally flawed process? Added work for courts cannot

be the answer. I believe we should read the statute to provide a remedy for what is plainly a violation of Johnston's constitutional rights.