STATE OF MINNESOTA

IN SUPREME COURT

A20-0205
A20-0206
A20-0228
A20-0229

Court of Appeals Thissen, J.

Keith Jacob Aili,

Respondent/Cross-Appellant,

Randall Duaine Bemis,

Respondent/Cross-Appellant,

Mark Allen Dziuk,

Respondent/Cross-Appellant,

Zachary Lourence Sheehy,

Respondent/Cross-Appellant,

vs.

Filed: August 18, 2021
Office of Appellate Courts

State of Minnesota,

Appellant/Cross-Respondent.

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

Kathleen Heaney, Sherburne County Attorney, George R. Kennedy, Tim Sime, Assistant County Attorneys, Elk River, Minnesota, for appellant/cross-respondent.

Cathryn Middlebrook, Chief Appellate Public Defender, Sharon E. Jacks, Chelsie M. Willett, Assistant State Public Defenders, Saint Paul, Minnesota, for respondents/cross-appellants.

S Y L L A B U S

1. The 2-year time limit prescribed by Minn. Stat. § 590.01, subd. 4(c) (2020), which applies to a claim asserted in a postconviction petition brought under Minn. Stat. § 590.01, subd. 4(b)(3) (2020), runs from the date the Supreme Court of the United States or a Minnesota appellate court announces an interpretation of law that forms the basis for a claim that the interpretation is a new rule of law that applies retroactively to the postconviction petitioner's conviction.

2. Application of the 2-year time limit in Minn. Stat. § 590.01, subd. 4(c), to bar respondents' postconviction petitions neither implicates separation of powers concerns nor violates the Due Process Clauses of the United States Constitution and the Minnesota Constitution.

Reversed.

O P I N I O N

THISSEN, Justice.

We must decide when the 2-year time limit prescribed by Minn. Stat. § 590.01, subd. 4(c) (2020), for postconviction petitions asserting a claim for relief based on a new, retroactive, interpretation of law, *see* Minn. Stat. § 590.01, subd. 4(b)(3) (2020), begins to run. We conclude that the 2-year time limit in subdivision 4(c) runs from the date the Supreme Court of the United States or a Minnesota appellate court announces an interpretation of law that forms the basis for a claim that the interpretation is a new rule of

law that applies retroactively to the postconviction petitioner's conviction. Because the postconviction petitions at issue here were filed more than 2 years after that date, they are untimely. Accordingly, we reverse the decision of the court of appeals.

FACTS

This case involves a consolidated appeal of four district court orders that denied postconviction petitions brought by respondents Keith Jacob Aili, Randall Duaine Bemis, Mark Allen Dziuk, and Zachary Lourence Sheehy (collectively respondents). Between October 17, 2012 and August 28, 2015, each respondent was charged with felony test refusal under Minn. Stat. § 169A.20, subd. 2 (2014). In each case, following respondents' arrests for suspected driving while impaired, the State, without first obtaining a warrant, demanded that respondents submit to a blood or urine test. Respondents refused to consent to either test. Respondents pleaded guilty to test refusal and were convicted and sentenced between February 7, 2014 and December 21, 2015.[1]

On June 23, 2016, the Supreme Court decided *Birchfield v. North Dakota*, holding that blood test refusal convictions are valid under the Fourth Amendment only when the requesting officer had a warrant or a warrant exception applied. 579 U.S. ___, 136 S. Ct. 2160, 2185–86 (2016). On October 12, 2016, we decided *State v. Thompson*, 886 N.W.2d 224 (Minn. 2016), and *State v. Trahan*, 886 N.W.2d 216 (Minn. 2016), and applied the rule

[1] Respondents were charged and convicted under prior versions of section 169A.20, the test refusal statute, which criminalized a refusal to submit to a blood, breath, or urine test in accordance with Minn. Stat. §§ 169A.51–.52 (2020). *See* Minn. Stat. § 169A.20, subd. 2 (2014). In 2017, the Legislature amended section 169A.20. *See* Act of July 1, 2017, ch. 83, art. 2, § 2, 2017 Minn. Laws 351, 355 (codified as amended at Minn. Stat. § 169A.20, subd. 2 (2020)).

announced in *Birchfield* to hold that the warrantless blood and urine test refusal convictions under Minnesota's test refusal statute were unconstitutional. We refer to the rule of law distilled from these three cases collectively as the *Birchfield* rule. *Johnson v. State* (*Johnson I*), 916 N.W.2d 674, 678 n.2 (Minn. 2018); *see also Johnson v. State (Johnson II)*, 956 N.W.2d 618, 621 (Minn. 2021) ("[T]he *Birchfield* rule says that test refusal by a suspected impaired driver may be criminalized consistent with the Fourth Amendment only when there is a warrant for the test or a warrant exception applies."). On August 22, 2018, we held that *Birchfield* announced a new rule that applied retroactively, noting that "there will need to be case-by-case determinations to assess whether there was a warrant or an exception to the warrant requirement sufficient to sustain test-refusal convictions under" the rule. *Johnson I*, 916 N.W.2d at 684.

In late 2019, respondents filed postconviction petitions, asserting that the *Birchfield* rule rendered their test refusal convictions unconstitutional because the requesting officers in their cases did not have warrants and no warrant exceptions applied. Respondents acknowledged that their petitions fell outside of the time limit prescribed by Minn. Stat. § 590.01, subd. 4(a) (2020), which bars the filing of postconviction petitions more than 2 years after the later of: (1) the entry of judgment of conviction or sentence or (2) disposition of the petitioner's direct appeal. *Id.* Nevertheless, respondents asserted that their petitions were timely under the subdivision 4(b)(3) retroactive new interpretation of law exception. They interpreted Minn. Stat. § 590.01, subd. 4(c), to mean that they had 2 years from the date we decided *Johnson I* (August 22, 2018), in which we announced that the *Birchfield* rule was a new rule of law that applied retroactively, to bring their

postconviction claims under subdivision 4(b)(3). Respondents' claims in district court concerning the timeliness of their postconviction petitions under subdivision 4(b)(3) were limited to statutory interpretation arguments. None challenged the constitutionality of the statute on procedural or substantive due process grounds.[2]

Between December 2019 and February 2020, the district courts summarily denied all four postconviction petitions as untimely. The district court judges concluded that respondents had 2 years from the date we decided *Thompson* and *Trahan* (October 12, 2016), when we first applied the *Birchfield* rule in Minnesota, to file a petition for postconviction relief under subdivision 4(b)(3).

In a consolidated appeal, the court of appeals reversed all four orders. *Aili v. State*, No. A20-0205, Order at 4 (Minn. App. filed Nov. 12, 2020). The court concluded that its decision in *Edwards v. State*, 950 N.W.2d 309 (Minn. App. 2020), *rev. granted/stayed* (Minn. Dec. 15, 2020), controlled. *Aili*, No. A20-0205, Order at 3. *Edwards* held that the 2-year time limit in subdivision 4(c) for postconviction claims invoking the exception for a new interpretation of law based on the *Birchfield* rule began to run on August 22, 2018, when we decided *Johnson I* and determined that the rule applied retroactively, rather than October 12, 2016, when we decided *Thompson* and *Trahan*. *Edwards*, 950 N.W.2d at 315–18. Accordingly, the court of appeals concluded that respondents had timely filed their petitions. *Aili*, No. A20-0205, Order at 3. After reversing the district court's decisions, the court of appeals remanded for assessment of respondents' claims in accordance with

[2] Respondents have never expressly asserted a substantive due process claim in this case.

the *Birchfield* pleading standard that we established in *Fagin v. State*, 933 N.W.2d 774 (Minn. 2019). *Aili*, No. A20-0205, Order at 3–4.

We granted the State's petition for review of the court of appeals' decision reinstating respondents' petitions.[3]

ANALYSIS

I.

Respondents assert that their postconviction petitions are timely under the retroactive new interpretation of law exception set forth in Minn. Stat. § 590.01, subd. 4(b)(3). Therefore, we must decide when the 2-year time limit prescribed by Minn. Stat. § 590.01, subd. 4(c), began to run on claims asserting the exception in subdivision 4(b)(3). This question requires us to interpret the language of Minnesota's postconviction statute, an issue of law, which we review de novo. *Vill. Lofts at St. Anthony Falls Ass'n v. Hous. Partners III-Lofts, LLC*, 937 N.W.2d 430, 435 (Minn. 2020); *see Riley v. State*, 792 N.W.2d 831, 833 (Minn. 2011) ("In reviewing a postconviction court's denial of relief, issues of law are reviewed de novo.").

A.

Resolving this question requires an understanding of the time limit provisions of Minnesota's postconviction statute and our jurisprudence on the retroactivity of new rules

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[3] We also granted respondents' cross-petition for review of the court's remand order. Respondents observed that, in its answer, the State failed to assert that a warrant or warrant exception existed at the time the State demanded that respondents undergo blood or urine tests. Thus, respondents claimed, the State waived its ability to contest the merits of the petitions by failing to satisfy the *Birchfield* pleading standard outlined in *Fagin* and that, consequently, no remand was warranted as a matter of law. Because of our resolution of the case, however, we do not reach the issues raised in respondents' cross-appeal.

of law following the Supreme Court's decision in *Teague v. Lane*, 489 U.S. 288 (1989). *See Danforth v. State*, 761 N.W.2d 493, 498 (Minn. 2009) (electing to apply the *Teague* standard to assess the finality of Minnesota state court convictions).

We begin with Minnesota's postconviction statute. *See generally* Minn. Stat. §§ 590.01–.11 (2020). In 2005, the Legislature imposed time limits on when an individual may petition for postconviction relief. *See* Act of Aug. 1, 2005, ch. 136, art. 14, § 13, 2005 Minn. Laws 901, 1097–98 (codified as amended at Minn. Stat. § 590.01, subd. 4 (2020)). The principal time limit requires that a petition for postconviction relief be filed within 2 years after a conviction becomes final. Minn. Stat. § 590.01, subd. 4(a) (providing that postconviction petition must be filed within 2 years after the later of "the entry of judgment of conviction or sentence if no direct appeal is filed" or "an appellate court's disposition of petitioner's direct appeal").

The Legislature, however, carved out a series of exceptions from this principal time limit. *See id.*, subd. 4(b). One of those exceptions—the retroactive new interpretation of law exception—is at issue here. It provides that a district court may hear a postconviction petition filed later than 2 years after the initial judgment of conviction or sentence becomes final 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." *Id.*, subd. 4(b)(3). The Legislature also specified that "[a]ny petition invoking an exception provided in [subdivision 4(b)] must be filed within two years of the date the claim arises." *Id.*, subd. 4(c).

In *Sanchez v. State*, we stated that the 2-year time limit in subdivision 4(c) "clearly and unambiguously" applies to "all of the exceptions in subdivision 4(b)," which includes subdivision 4(b)(3), the retroactive new interpretation of law exception. 816 N.W.2d 550, 556 (Minn. 2012). We further stated that the subdivision 4(c) time limit begins to run when a petitioner objectively "knew or should have known" that his claim under a subdivision 4(b) exception arose. *Id.* at 558–59. We have not, however, directly addressed the issue of when a petitioner knows or should know that a subdivision 4(b)(3) "claim arises," thus triggering the 2-year time limit in subdivision 4(c). Minn. Stat. § 590.01, subd. 4(c).

Importantly, the 2-year time limit in subdivision 4(c) runs from "the date the *claim* arises." *Id.* (emphasis added). That standard does not mean that a postconviction petitioner knew or should have known he would *prevail* in establishing one of the five exceptions set forth in subdivision 4(b), but rather that the petitioner knew or should have known of the information that would allow him to *assert* a claim that an exception applied. For instance, a petitioner seeking to invoke the exception set forth in Minn. Stat. § 590.01, subd. 4(b)(5), must establish "to the satisfaction of the court that the petition is not frivolous and is in the interests of justice." A petitioner knows or should know about that claim when he has information that allows him to make such an argument. In *Sanchez*, we held that the petitioner knew or should have known about his interests-of-justice claim—based on ineffective assistance of counsel because his lawyer failed to file his appeal—on the date he learned that the appeal had not been filed. 816 N.W.2d at 560.

The fact that the petitioner knew or should have known that he could file a postconviction petition under the interests-of-justice exception (notwithstanding the 2-year

time limit in Minn. Stat. § 590.01, subd. 4(a)) as of the date he learned that his lawyer did not file his appeal, however, was not dispositive of whether he would actually prevail on the merits of his postconviction petition. It merely meant that, as of that date and for 2 years going forward, the petitioner could have filed his subdivision 4(b)(5) interests-of-justice claim in accordance with the time limit applicable to subdivision 4(b) exceptions without the district court dismissing his petition as untimely. *See* 816 N.W.2d at 560; *see also Miles v. State*, 800 N.W.2d 778, 783–84 (Minn. 2011) (interpreting the "newly discovered evidence" exception in Minn. Stat. § 590.01, subd. 4(b)(2), to require a petitioner "to sufficiently allege *the existence* of evidence which, if true, would establish" his innocence, not introduce evidence "that actually proves his innocence").

We now turn to our jurisprudence on whether a new rule of law applies retroactively to convictions or sentences that became final before the decision announcing the new rule was announced. The *Teague* Court set forth a general standard for analyzing whether a rule of federal constitutional law announced in a court decision applies retroactively to final convictions. *See* 489 U.S. at 301, 310–12. We follow this approach, which proceeds in two steps. First, "we ask whether the rule in question is a new rule or an old rule." *Johnson I*, 916 N.W.2d at 681. Second, if we decide that a court announced a new rule of law, we assess whether the law is substantive or procedural.[4] *Id.* Substantive rules apply

[4] For several decades, the Supreme Court also recognized a second exception to the general presumption against retroactive application of new rules: "watershed" rules of criminal procedure. *See Teague*, 489 U.S. at 311. The Supreme Court recently eliminated the watershed rule of criminal procedure exception for federal court convictions. *See Edwards v. Vannoy*, __ U.S. __, 141 S. Ct. 1547, 1560 (2021). That exception is not at issue in this case. *See Johnson I*, 916 N.W.2d at 681 (noting that the watershed rule of

retroactively to convictions or sentences that became final before the new rule was announced, while procedural rules do not. *Id.*

Finally, we address the meaning of the disputed postconviction exception in this case: a new interpretation of constitutional or statutory law that is retroactively applicable to the petitioner's case, *see* Minn. Stat. § 590.01, subd. 4(b)(3). A straightforward reading of the plain language to this exception makes clear that the provision applies to claims asserting that a court decision issued after a petitioner's conviction has become final has announced a new rule of law that applies retroactively under the *Teague* standard.[5] Once again, the language of subdivision 4(b)(3) states: "[T]he 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

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criminal procedure exception was not at issue in determining whether the *Birchfield* rule applied retroactively). Because the issue is not before us, we express no opinion on whether the watershed rule of criminal procedure exception applies when determining whether a new rule applies retroactively to Minnesota state court convictions and sentences. *See Danforth v. Minnesota*, 552 U.S. 264, 279–81 (2008) (holding that *Teague* does not limit the authority of state courts, when reviewing state criminal convictions, to fashion their own remedies in determining whether a new rule should apply retroactively).

[5] As noted, the Legislature adopted time limits for postconviction petitions and accompanying exceptions to those limits, including the exception for a new interpretation of law that applies retroactively, in 2005. Act of Aug. 1, 2005, ch. 136, art. 14, § 13, 2005 Minn. Laws 901, 1097–98 (codified as amended at Minn. Stat. § 590.01, subd. 4 (2020)). The year before the Legislature amended the postconviction statute, we adopted the *Teague* standard for assessing whether a new rule applies retroactively to Minnesota state court convictions and sentences. *See O'Meara v. State*, 679 N.W.2d 334, 339 (Minn. 2004), *overruled by Danforth v. Minnesota*, 552 U.S. 264 (2008). Accordingly, *Teague* was the law in Minnesota when the Legislature adopted the exception for a retroactive new interpretation of law. We reaffirmed that we would apply the *Teague* standard to assess the finality of Minnesota state court convictions in *Danforth*, 761 N.W.2d at 498, and have continued to employ the standard since then. *See, e.g.*, *Campos v. State*, 816 N.W.2d 480, 488–99 (Minn. 2012); *Johnson II*, 956 N.W.2d at 622–23.

interpretation is retroactively applicable to the petitioner's case." Minn. Stat. § 590.01, subd. 4(b)(3). The language tracks the two-step analysis we carry out under *Teague*: (1) did the court decision adopt a new rule of law and (2) is the new rule substantive and thus retroactive? *Johnson I*, 916 N.W.2d at 681. Accordingly, subdivision 4(b)(3) creates an exception to the 2-year time limit for postconviction petitions in subdivision 4(a) when the petition asserts that a judicial opinion issued after a conviction is final announced a new substantive rule that applies retroactively.

B.

With this background in mind, we turn to the question before us: When should a postconviction petitioner know that he has a claim for postconviction relief based on a judicial opinion issued after his conviction became final that announced a new rule that applies retroactively to his conviction? We conclude that the answer to the core question in this case is self-evident. A postconviction petitioner knows or should know he has a claim on the date that a court decision announces an interpretation of law that provides the basis for a claim that the petitioner is entitled to relief because the interpretation is a new rule of law that applies retroactively to the petitioner's conviction. Here, the decisions that respondents claim announced a new retroactive rule of law are the opinions that announced the *Birchfield* rule. Consequently, respondents' postconviction petitions, filed in 2019, fell beyond the 2-year time limit prescribed by subdivision 4(c), which elapsed on October 12,

2018—2 years from the date we decided *Thompson* and *Trahan*.[6] Thus, the district court correctly dismissed respondents' postconviction petitions as untimely.

Respondents argue that, even accepting this conclusion, application of the subdivision 4(c) time limit to bar their claims is manifestly unjust because *Johnson I*, the decision that announced that the *Birchfield* rule was a new rule of law that applied retroactively, was decided only about 6 weeks before the 2-year window following our decisions in *Thompson* and *Trahan* closed. They urge use to invoke our supervisory powers to extend or toll the 2-year time limit so that their postconviction petitions may proceed.

We may invoke our supervisory powers to ensure the fair administration of justice, but do so only in rare cases *See, e.g.*, *State v. Windish*, 590 N.W.2d 311, 319 (Minn. 1999). Respondents' circumstances here are neither rare nor extraordinary. Their argument holds no weight for the reasons set forth above. The plain text of subdivision 4(b)(3) says that the subdivision 4(c) time limit begins to run when a court decides a case upon which a

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[6] The State proceeded in this case on the assumption that the *Birchfield* rule was announced—and the 2-year time limit started to run—when we decided *Thompson* and *Trahan*, not when the Supreme Court decided *Birchfield*. The *Birchfield* Court held that an individual can be constitutionally convicted for refusing a warrantless breath test but not a warrantless blood test (unless a valid warrant exception applied). ___ U.S. at ___, 136 S. Ct. at 2185–86. It did not address the constitutionality of warrantless urine test refusal convictions because none of the petitioners in *Birchfield* had refused a urine test. *See id.* at ___, 136 S. Ct. at 2168 n.1. In *Thompson*, we extended the logic in *Birchfield* to prohibit warrantless urine test refusal convictions. 886 N.W.2d at 231–33.

Here, respondents refused both blood *and* urine tests and were convicted under Minn. Stat. § 169A.20, subd. 2 (2014), which at the time criminalized refusal of blood, breath, and urine tests. Because *Birchfield* did not address urine test refusal convictions, the 2-year time limit in Minn. Stat. § 590.01, subd. 4(c), did not begin to run on respondents' new interpretation of law claims under subdivision 4(b)(3) until we decided *Thompson* and *Trahan*, applying the *Birchfield* rule in Minnesota.

postconviction petitioner may rely to claim that a new rule of law was announced and applies retroactively to his conviction. Respondents had clear notice of their obligation to bring a claim within two years of the decisions in *Trahan* and *Thompson*.

Indeed, *Johnson I* is the ultimate refutation of respondents' argument and demonstrates that we need not invoke our supervisory powers here to ensure the fair administration of justice. Johnson's two test refusal convictions from 2010 and 2015 were final before we announced our decisions in *Thompson* and *Trahan*. *Johnson I*, 916 N.W.2d at 677–78. His 2010 conviction fell outside of the 2-year time limit set forth in subdivision 4(a). Relying on the exception in subdivision 4(b)(3), Johnson filed a postconviction petition within 2 years of the decisions in *Thompson* and *Trahan*, asserting that *Birchfield*/*Thompson/Trahan* announced a substantive new rule that applied retroactively to his convictions. *Id.* at 678. Even though Johnson filed his postconviction petition before we had determined whether the *Birchfield* rule was a new, substantive rule that applied retroactively, we still considered the postconviction claim.[7] Here, respondents could have proceeded in precisely the same fashion but failed to do so.[8]

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[7] In *Johnson I*, we spent little time answering the question of whether the *Birchfield* rule was a new rule because the State conceded that it was a new rule. 916 N.W.2d at 681.

[8] Respondents alternatively argue that *Johnson I* itself announced a new interpretation of law, which triggered the subdivision 4(c) 2-year time limit and rendered their petitions relying on the *Birchfield* rule timely. To support their argument, respondents rely on the Supreme Court's decision in *Montgomery v. Louisiana*, 577 U.S. 190 (2016), reasoning that "an opinion announcing a new substantive rule has announced a new interpretation of constitutional law [because the Constitution] deprives the state of the power to punish the individual." In other words, respondents assert that a *Teague* determination that a new rule is substantive and therefore retroactive qualifies as a new interpretation of law under subdivision 4(b)(3). We disagree with respondents' assertion.

II.

Setting aside their interpretation of the plain text of paragraphs (b)(3) and (c) of subdivision 4, respondents also argue that interpreting the provisions as we do today is unconstitutional. Respondents make two related constitutional arguments.

First, respondents claim that our interpretation "raises a possible separation-of-powers violation." More specifically, they argue that a 2-year time limit running from the date of the decision that a postconviction petitioner claims is a new rule of law that applies retroactively impermissibly limits our judicial authority to determine whether respondents' convictions were unconstitutional under the *Birchfield* rule.

We rejected a similar argument in *Sanchez*, stating that "the Legislature did not intrude unto a judicial function when it enacted the time limitations provisions in the postconviction statute. We therefore hold that the statute is not unconstitutional as a violation of the separation of powers doctrine." 816 N.W.2d at 566. We observed that our

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Montgomery affirms the fundamental *Teague* substantive versus procedural distinction; that is, substantive rules apply retroactively because "they set forth categorical constitutional guarantees that place certain criminal laws and punishments altogether beyond the State's power to impose." 577 U.S. at 201. *Montgomery* also mandated that states may not deny retroactive effect of new substantive rules in their postconviction proceedings. *See id.* at 200. But *Montgomery* does not support respondents' contention that a decision announcing the retroactivity of a new rule can also function as a new rule that itself applies retroactively.

Respondents also argue that *Montgomery* stands for the proposition that because (under their logic) a *Teague* retroactivity determination amounts to a new interpretation of law, dismissing a claim brought under that new interpretation of law as untimely may violate the petitioner's due process rights. But *Montgomery* did not concern—nor did the Supreme Court discuss—whether a state may impose reasonable time limits on postconviction claims asserting retroactive application of a new rule. In other words, *Montgomery* did not bar states from imposing timely filing requirements to petition for postconviction relief when a new substantive, retroactive claim arises. We discuss respondents' constitutional arguments in more detail in section II, *infra*.

case law "consistently recognizes that the creation of statutes of limitations is strictly a legislative function" and that "we 'will not inquire into the wisdom of the exercise of this discretion by the legislature in fixing the period of legal bar, unless the time allowed is manifestly so short as to amount to a practical denial of justice.' " *Id.* at 564 (quoting *Wichelman v. Messner*, 83 N.W.2d 800, 817 (Minn. 1957)). Accordingly, respondents' separation of powers argument is without merit.

Second, respondents claim that dismissing their postconviction petitions as untimely—based on our conclusion in this case that a subdivision 4(b)(3) claim arose as of the date we decided *Thompson* and *Trahan*—"would violate [their] due process rights by penalizing them for lawful conduct—conduct the district court lacked authority to punish." According to respondents, because "[a] challenge involving the application of a new substantive rule disputes the district court's earlier subject-matter jurisdiction to convict, . . . [a] defendant cannot waive that challenge by raising it too late." Respondents essentially argue that the subdivision 4(c) time limit can never apply to claims arising under subdivision 4(b)(3) that challenge the district court's underlying jurisdiction to convict. Once again, we disagree.[9]

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[9] To the extent that respondents are making a constitutional avoidance statutory interpretation argument—that we should interpret Minn. Stat. § 590.01, subd. 4(b)(3), to mean that the subdivision 4(c) 2-year time limit begins to run when an appellate court states that a new rule is retroactive in order to avoid a constitutional problem of penalizing conduct that is not criminal—that argument proves too much. The avoidance argument is that no statute of limitations can ever constitutionally apply when the petitioner's conduct is simply not a crime. Taking this argument at face value would render respondents' own interpretation of the language of subdivision 4(b)(3) (that it runs from the time *Johnson I* was announced) irrelevant. According to respondents constitutional analysis, applying the subdivision 4(c) 2-year time limit to bar a retroactive new interpretation of law claim would

It is true that "a court is without jurisdiction to convict a defendant of conduct that is not criminal." *Johnson I*, 916 N.W.2d at 680. And a conviction under an unconstitutional statute "is illegal and void, and cannot be a legal cause of imprisonment." *Id.* (quoting *Ex parte Siebold*, 100 U.S. 371, 376–77 (1879)). But the question in this case is not whether Minnesota law allows a defendant to challenge a conviction on the ground that, subsequent to a final conviction, a court announced a new rule of law that places particular conduct beyond the State's power to punish. It plainly does. That is precisely what is allowed under the *Teague* standard and Minn. Stat. § 590.01, subd. 4(b)(3).

Rather, the question is whether the Legislature has the power to place a procedural limit on petitioners who seek to challenge their convictions on these grounds using the remedy that the *Legislature* created. The answer to that question is yes. *See Carlton v. State*, 816 N.W.2d 590, 615–16 (Minn. 2012) (rejecting a due process challenge to applying the 2-year time limit in Minn. Stat. § 590.01, subd. 4(a), and concluding "that any right to review"—including postconviction review—"is not unlimited, and, like other constitutional rights, can be forfeited and subjected to reasonable legislative limitations,"

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violate due process regardless of whether the time limit begins to run from the date a new rule originally arises or the date a court later expressly states that the rule applies retroactively.

At any rate, we need not decide this issue on constitutional avoidance grounds for two reasons. First, we hold today that the plain text of subdivision 4(b)(3) unambiguously supports the conclusion that the subdivision 4(c) 2-year time limit runs from the date a court issues a decision upon which a postconviction petitioner has a claim that the decision announced a new rule that applies retroactively. Accordingly, we need not consider the canon of constitutional avoidance. *See State v. Robinson*, 921 N.W.2d 755, 761 (Minn. 2019) (noting that when "the plain meaning of the statute controls and . . . the statutory language is not ambiguous, we need not consider the canon of constitutional avoidance"). Second, and more fundamentally, respondents' subject matter jurisdiction argument lacks merit for the reasons stated below.

such as the time limits in Minnesota's postconviction statute); *Sanchez*, 816 N.W.2d at 563 (rejecting a due process claim asserting that subdivision 4 time limits unconstitutionally denied petitioner "his right to one review of his criminal conviction under the Minnesota Constitution").

The fact that a postconviction petitioner claims that the court that entered the original judgment of conviction lacked subject matter jurisdiction to do so because the conduct on which the conviction was based was later determined to be beyond the power of the State to criminalize does not change this analysis. We have placed limits on the ability of a party to raise lack of subject matter jurisdiction as a basis for attacking a final judgment. *See, e.g.*, *In re Petition for Instructions to Construe Basic Resol. 876 of the Port Auth. of St. Paul*, 772 N.W.2d 488, 495 (Minn. 2009) (stating that a motion to set aside judgment as void for lack of subject matter jurisdiction must be brought within reasonable time, which "is determined by considering the attendant circumstances"); *Bode v. Minn. Dep't of Nat. Res.*, 612 NW.2d 862, 866–68 (Minn. 2000) (noting "that total reliance on a judgment's validity produces problematic results when attacks on subject matter jurisdiction are initiated long after a final judgment is entered" and balancing the judicial system's competing interests in validity versus finality of judgments).[10]

[10] Respondents cite to *Williams v. Smith*, 820 N.W.2d 807 (Minn. 2012), to support their claim that a postconviction petitioner may challenge the underlying district court's subject matter jurisdiction to convict at any time, regardless of the time limits imposed by Minn. Stat. § 590.01, subd. 4. In *Williams*, we stated that a party may raise subject matter jurisdiction issues at any time during the course of litigating a dispute and that the right to do so "cannot be waived." 820 N.W.2d at 813; *see also Nelson v. Schlener*, 859 N.W.2d 288, 291 (Minn. 2015) ("[D]efects in subject matter jurisdiction can be raised at any time and cannot be waived by the parties."); *McCullough & Sons, Inc., v. City of Vadnais*

Consequently, based on the record and respondents' articulated due process theories, we hold that applying the subdivision 4(c) time limit to bar respondents' use of the legislatively created exception in subdivision 4(b)(3) for the retroactive new interpretation of law does not implicate due process concerns.

CONCLUSION

For the foregoing reasons, the decision of the court of appeals is reversed.

Reversed.

Heights, 883 N.W.2d 580, 585 (Minn. 2016) ("Courts can question subject-matter jurisdiction at any time, even if the parties to a case have not done so.").

In *Williams*, *Nelson*, and *McCullough*, we were deciding whether the district courts in each respective case had subject matter jurisdiction to decide *that* case. Those cases did not involve a collateral attack on the validity of a final judgment or conviction, like in the postconviction context, and the notion that one has an unlimited right to file a postconviction petition attacking the underlying subject matter jurisdiction of the district court is not supported in our case law. *See Carlton*, 816 N.W.2d at 614 (quoting *Wichelman*, 83 N.W.2d at 817, for the proposition that a statute of limitations "will bar any right . . . provided that a reasonable time is given [to] a party to enforce" the right); *Pearson v. State*, 946 N.W.2d 877, 883–84 (Minn. 2020) (declining to address a petitioner's argument "that challenges to subject-matter jurisdiction are never untimely under the postconviction statute").