STATE OF MINNESOTA

IN SUPREME COURT

A20-0396

Stearns County Moore, III, J.

Kevin Terrance Hannon,

Appellant,

vs. Filed: April 7, 2021
Office of Appellate Courts

State of Minnesota,

Respondent.

Kevin Terrance Hannon, Rush City, Minnesota, pro se.

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

Janelle P. Kendall, Stearns County Attorney, Michael J. Lieberg, Assistant Stearns County Attorney, Saint Cloud, Minnesota, for respondent.

S Y L L A B U S

The district court did not abuse its discretion when it denied appellant's fourth petition for postconviction relief without a hearing because his sentence was lawful, his restitution claim is untimely under the restitution statute, his remaining claims are untimely under the postconviction statute, and no exception to the statute of limitations applies.

Affirmed.

Considered and decided by the court without oral argument.

O P I N I O N

MOORE, III, Justice.

This case is an appeal from the denial of Kevin Terrance Hannon's fourth petition for postconviction relief. After we reversed Hannon's first conviction on direct appeal, he was tried a second time and convicted of first-degree murder while committing or attempting to commit a kidnapping, under Minn. Stat. § 609.185(a)(3) (2020). The district court sentenced him to life in prison without the possibility of release under Minn. Stat. § 609.106, subd. 2(2) (2002). We affirmed Hannon's conviction. In 2006, 2009, and 2015, Hannon filed petitions for postconviction relief, and we affirmed the district court's denial of these petitions each time. In January 2020, Hannon filed a fourth petition for postconviction relief.[1] The district court denied this petition without holding a hearing, concluding that Hannon's sentence is lawful, the challenge to his restitution was untimely under the restitution statute, and the remaining claims were untimely under the postconviction statute. Because the district court did not abuse its discretion in summarily denying Hannon's petition on those grounds, we affirm.

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[1] Before filing this fourth petition with the district court, Hannon filed documents captioned "Appeal of Illegal Sentence" and a "Motion to Correct Illegal Sentence." These filings were nearly, if not entirely, identical. Though it is unclear whether the State or the district court addressed these filings directly, the arguments made in each are repeated in Hannon's fourth postconviction petition and received review as a result.

Soon after he filed his fourth postconviction petition, Hannon filed a notice that his petition should have been captioned as a "Request for Retrial," rather than a "Motion for Post Conviction Relief." The substance of the document was otherwise unchanged. Because Hannon's January 2020 filing includes challenges to his underlying conviction, it is treated as a petition for postconviction relief and the postconviction procedural requirements apply. *Munt v. State*, 920 N.W.2d 410, 414–15 (Minn. 2018).

FACTS

On the evening of September 21, 1999, Deborah Tolhurst was found dead in the apartment she shared with Hannon when the Saint Cloud Fire Department responded to a fire originating in their unit.[2] Officers found Hannon the next day, hiding in the closet of a back bedroom of an acquaintance's apartment. Hannon was interrogated at the police station and he made several statements pointing to his guilt. Among the evidence collected by law enforcement was a bloodstained shirt identified as the one Hannon had been wearing on September 21. A scientist at the Bureau of Criminal Apprehension (BCA) tested the blood on the shirt and reported that Tolhurst's DNA profile matched the DNA profile from the blood on the shirt. Hannon was indicted on five counts of murder.

After a jury trial, Hannon was convicted of first-degree murder while committing or attempting to commit a kidnapping, under Minn. Stat. § 609.185(a)(3). The district court sentenced Hannon to life without the possibility of release under Minn. Stat. § 609.106, subd. 2(2). On direct appeal, we reversed Hannon's conviction and remanded the case back to the district court for a new trial because the district court erred by admitting statements during the trial that the police had obtained from Hannon in violation of his Fifth Amendment right to counsel. *State v. Hannon* (*Hannon I*), 636 N.W.2d 796, 804–07 (Minn. 2001).

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[2] The facts underlying the murder and Hannon's conviction are set forth in greater detail in *State v. Hannon* (*Hannon I*), 636 N.W.2d 796 (Minn. 2001), and *State v. Hannon* (*Hannon II*), 703 N.W.2d 498 (Minn. 2005).

Before the second trial, a scientist at the BCA tested skin cells found on the collar of the bloodstained shirt. The predominant DNA profile in the sample of skin cells collected matched Hannon's DNA profile. The scientist also reported that the profile would not be expected to occur more than once in the world population among unrelated individuals.[3] *State v. Hannon (Hannon II)*, 703 N.W.2d 498, 503-04 (Minn. 2005). Meanwhile, Hannon made a motion to remove the trial judge from his case for alleged bias. After a hearing, that motion was denied.

During Hannon's second trial, Hannon called only one witness, who was removed from the stand during testimony after twice disobeying the district court's instruction not to reference Hannon's first trial; the court prepared and read a summary of the witness's testimony instead. *Id.* at 504. The district court also refused Hannon's request to instruct the jury on first-degree heat-of-passion manslaughter and second-degree unintentional felony murder.[4] *Id.* The jury found Hannon guilty as charged.

A presentence investigation report was prepared following the first jury verdict, which included restitution affidavits from four different victims. The total restitution ordered at that time was $59,516.64. Over 90 percent of the restitution was claimed by the

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[3] Hannon moved to suppress the DNA evidence and the district court granted this motion. The court of appeals reversed, holding that the evidence was admissible. *State v. Hannon*, No. C8-02-904, 2003 WL 21500311, at *1, 4 (Minn. App. July 1, 2003), *rev. denied* (Minn. Sept. 16, 2003).

[4] The district court's removal of Hannon's witness, act of preparing and reading a summary of that testimony to the jury, and denial of Hannon's request to instruct the jury on the alternative offenses were all included in the claims Hannon raised in his direct appeal of the conviction resulting from the second trial. *Hannon II*, 703 N.W.2d at 504–05.

apartment owner's insurance company for the costs of restoring the building from the damage caused by the fire, which affected Hannon's apartment unit and 7 nearby units as well as sections of hallway and a stairwell. Attached to the affidavit submitted by the insurance company was an itemization of the repair costs broken down by: (1) cleaning costs in each space within the affected units; (2) repairing damage done to electrical and plumbing in those units; (3) replacing damaged appliances, carpet, and window treatments; and (4) painting. The other three victims, Tolhurst's family members, also submitted itemized affidavits with supporting documentation for their requested restitution amounts. The costs for those victims consisted of funeral and travel expenses.

An updated presentence investigation report was ordered following the 2003 trial. There was no change in the amount of restitution claimed by the victims. The updated pre-sentencing report reflected that $170.96 of restitution had been paid and the remaining restitution amount owed at that time was $59,345.68.

At the sentencing hearing, the district court entered Hannon's conviction for first-degree murder while committing or attempting to commit kidnapping, under Minn. Stat. § 609.185(a)(3). The district court imposed a sentence of life without the possibility of release under Minn. Stat. § 609.106, subd. 2(2). Hannon appealed, and we affirmed. *Hannon II*, 703 N.W.2d at 513.

In December 2006, Hannon filed his first petition for postconviction relief. The district court held an evidentiary hearing limited to Hannon's claim that he was denied the right to testify at his second trial. After the hearing, the district court denied Hannon's petition in its entirety in an exhaustive, 65-page order addressing each of Hannon's claims.

We affirmed the denial of this petition. *Hannon v. State* (*Hannon III*), 752 N.W.2d 518, 523 (Minn. 2008).

In January 2009, Hannon filed a second petition for postconviction relief. The district court denied this petition without a hearing, concluding that all of Hannon's claims were untimely filed under Minn. Stat. § 590.01, subd. 4(a)(2) (2020), and were procedurally barred under *State v. Knaffla*. 243 N.W.2d 737, 741 (Minn. 1976) ("[W]here direct appeal has once been taken, all matters raised therein, and all claims known but not raised, will not be considered upon a subsequent petition for postconviction relief."). We affirmed the court's summary denial. *Hannon v. State* (*Hannon IV*), 781 N.W.2d 887, 892 (Minn. 2010).

In September 2015, Hannon filed his third petition for postconviction relief. The district court summarily denied the petition. The court concluded that Hannon's sentence was authorized under Minn. Stat. § 609.106, subd. 2(2). The court also concluded that all of Hannon's remaining claims were untimely filed because they were brought more than 2 years after our disposition of his direct appeal and none of the statutory exceptions to the 2-year statute of limitations applied. We again affirmed. *Hannon v. State* (*Hannon V*), 889 N.W.2d 789, 796 (Minn. 2017).

This appeal involves Hannon's fourth petition for postconviction relief, which he filed in January 2020. The petition claimed that Hannon was sentenced for two offenses, in violation of Minn. Stat. § 609.035, subd. 1 (2020). Hannon also requested that his restitution be suspended until he is provided an itemized statement of it, which he believed he was entitled to under Minn. Stat. § 611A.04, subd. 1 (2020). Hannon's petition sought

a new trial "in the Interest of Justice" and asserted a host of claims challenging his conviction, almost all of which had been raised in one or more of his prior petitions for relief. The various claims alleged: (1) prosecutorial misconduct; (2) errors of law at trial; (3) *Brady* violations; (4) a sentence imposed in violation of law; (5) a lack of competence to stand trial; (6) false or misleading evidence, specifically the testimony on the DNA evidence; (7) ineffective assistance of counsel; (8) judicial bias and prejudice; and (9) actual innocence.

Hannon made an additional claim challenging his conviction, the only one that was not clearly raised in any of his previous petitions, arguing that the jury received improper instructions during his 2003 trial because the instructions given referenced assault in the third degree, an offense with which Hannon was never charged. Hannon attached several documents to the petition, all but one of which were documents that he submitted with his prior petitions. The new document was Hannon's own affidavit, dated November 25, 2019, which detailed his efforts to obtain trial documents from his trial counsel.

Without holding a hearing, the district court concluded that Hannon's sentence was lawful and that his request to challenge his restitution obligation was untimely under the restitution statute. The court also determined that Hannon's remaining claims were untimely under the postconviction statute of limitations and that the interests of justice exception was not applicable. The court further noted that claims known or that should have been known on direct appeal or in previous petitions are barred by the rule announced in *State v. Knaffla*, that all claims raised on direct appeal and all claims known but not

raised cannot be considered in a subsequent petition for postconviction relief. 243 N.W.2d at 741. Therefore, the court denied the petition. Hannon then filed this appeal.[5]

On appeal, Hannon continues to challenge both his sentence, asserting that he was unlawfully sentenced for two offenses, and his restitution order, demanding that it be suspended until he receives an itemization of it. He also challenges his conviction, alleging that: (1) the prosecutor engaged in misconduct by failing to disclose deals that were made with witnesses, coercing witnesses into falsely testifying, and making improper statements during closing arguments; (2) the trial judge was biased and engaged in misconduct; (3) he was improperly charged because there was no kidnapping; (4) he was not competent to stand trial; (5) the jury was given improper instructions; and (6) the conviction was based on false evidence, including the DNA evidence and related testimony.

ANALYSIS

We review the denial of a petition for postconviction relief under an abuse of discretion standard.[6] *Zumberge v. State*, 937 N.W.2d 406, 411 (Minn. 2019). The district court will not be reversed unless it has "exercised its discretion in an arbitrary or capricious manner, based its ruling on an erroneous view of the law, or made clearly erroneous factual

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[5] During this appeal, a service issue arose. The issue was resolved when we allowed the State to rely on the response it filed to Hannon's petition in district court. *See* Minn. R. Civ. App. P. 128.01, subd. 2 (providing that the appellate court may authorize an informal brief that relies on the memorandum filed with the trial court).

[6] This standard of review also applies to the denial of a motion to correct a sentence. *Munt v. State*, 920 N.W.2d 410, 414 (Minn. 2018).

findings." *Reed v. State*, 793 N.W.2d 725, 729 (Minn. 2010). A petitioner bears the burden of establishing that relief is warranted. *Wilson v. State*, 726 N.W.2d 103, 106 (Minn. 2007).

In our review of Hannon's claims, we are required to "liberally construe the [postconviction] petition." Minn. Stat. § 590.03 (2020); *Fox v. State*, 913 N.W.2d 429, 433 (Minn. 2018); *see also Roby v. State*, 787 N.W.2d 186, 191 (Minn. 2010) (applying this pleading provision to consideration of postconviction petitions on appeal). With these principles in mind, we begin by considering Hannon's sentencing and restitution claims, and then address his remaining claims.

A.

We first address Hannon's claim that the sentence imposed by the district court was unlawful. Hannon argues that the district court sentenced him for the offense of first-degree murder while committing or attempting to commit a kidnapping, Minn. Stat. § 609.185(a)(3), and also the offense of kidnapping, Minn. Stat. § 609.25 (2020). If the district court had done so, that sentence might violate Minn. Stat. § 609.035, subd. 1, which states that "if a person's conduct constitutes more than one offense under the laws of this state, the person may be punished for only one of the offenses." For the reasons that follow, we conclude that Hannon has misread the district court's sentencing order, and that the sentence imposed in this case does not violate section 609.035.[7]

[7] Although we conclude that the district court did not convict Hannon of kidnapping, we note that Minn. Stat. § 609.035, subd. 1, provides a number of specific instances when a court is permitted to impose sentences for multiple offenses arising out of a single behavioral incident and, therefore, the statute does not necessarily prohibit the imposition of a sentence for kidnapping and another offense when both arise from a single behavioral incident. *See State v. Williams*, 771 N.W.2d 514, 520 (Minn. 2009)

Under Minnesota Rule of Criminal Procedure 27.03, subdivision 9, a court may "correct a sentence not authorized by law" "at any time." A court's authority under Rule 27.03, subdivision 9, is restricted to modifying a sentence. *State v. Coles*, 862 N.W.2d 477, 480 (Minn. 2015). "For a sentence to be unauthorized, it must be contrary to law or applicable statutes." *State v. Schnagl*, 859 N.W.2d 297, 301 (Minn. 2015). The defendant bears the burden of proving the facts necessary to show that a sentence was unauthorized. *See Williams v. State*, 910 N.W.2d 736, 742 (Minn. 2018).

Hannon's argument focuses on language in the upper right hand corner of the district court's December 2003 sentencing order, which reads, "Murder 1st°- Kidnapping." Under that language, two statutes are listed "609.185(3)" and "609.106, subd. 2(2)." In his fourth petition for postconviction relief, Hannon writes, "The order clearly states him being sentenced on two separate charges, Murder 1st Degree 609.185(3); and Kidnapping 609.106 subd. 2." This argument reflects a misunderstanding regarding the nature of statutes that create substantive offenses and statutes that create mandatory sentencing provisions. Section 609.106 does not create the substantive crime of kidnapping. Instead, the offense of kidnapping is created by Minn. Stat. § 609.25. Rather than create any substantive crimes, section 609.106 establishes a mandatory sentence for certain substantive crimes that are created by other statutes.

The December 2003 sentencing order shows that the district court convicted Hannon on count two, first-degree murder while committing or attempting to commit kidnapping,

under Minn. Stat. § 609.185(a)(3).[8] Section 609.185(a)(3) provides that "[w]hoever does any of the following is guilty of murder in the first degree and shall be sentenced to imprisonment for life: . . . (3) causes the death of a human being with intent to effect the death of the person or another, while committing or attempting to commit burglary, aggravated robbery, kidnapping . . . ." And then the order provides that the court sentenced Hannon to life imprisonment under Minn. Stat. § 609.106, subd. 2(2) (2002). Section 609.106, subdivision 2(2) provides that "[t]he court shall sentence a person to life imprisonment without the possibility of release under the following circumstances: . . . (2) the person is convicted of committing first degree murder in the course of a kidnapping under section 609.185, clause (3)."

Hannon was sentenced on only one offense, Minn. Stat. § 609.185(a)(3), for his conduct of causing the death of a human being while committing or attempting to commit kidnapping. He received the correct sentence of life without the possibility of release for that offense under Minn. Stat. § 609.106, subd. 2(2). In other words, section 609.185(a)(3) established the substantive crime Hannon was convicted of for his conduct on September 21, 1999, and section 609.106, subdivision 2(2), provided the sentence that the district court was required to impose for that crime. Hannon's sentence was, therefore, not

[8] Between the time Hannon was convicted and sentenced, the Legislature amended section 609.185 by adding subsection designations. Because that change does not affect our analysis here, we continue to refer to the current version of this statute.

contrary to law or applicable statutes.[9] Thus, it was not an abuse of discretion for the district court to summarily deny Hannon's claim that his sentence was unlawful.

B.

We next address Hannon's claim that the restitution order should be suspended until he receives an itemized statement of the restitution requests under Minn. Stat. § 611A.04, subd. 1. The provision Hannon cites does not allow a defendant to ask for an itemized statement of restitution at any time. Instead, it says, "The court administrator shall provide copies of [a request for restitution] to the prosecutor *and the offender or the offender's attorney* at least 24 hours before the sentencing or dispositional hearing." Minn. Stat. § 611A.04, subd. 1 (emphasis added). Hannon's reliance on section 611A.04, subdivision 1, is misplaced because his petition does not allege that neither he nor his attorney received copies of the itemized statements that were included in his presentence investigation report.

Minnesota Statutes § 611A.045, subd. 3(b) (2020), sets forth the procedure by which an offender may challenge a restitution order. Specifically, it requires an offender to request a hearing in writing within 30 days of receiving notice of the amount of restitution or of sentencing, whichever is later. Minn. Stat. § 611A.045, subd. 3(b). A district court does not err in denying an untimely challenge to a restitution award. *See Evans v. State*, 880 N.W.2d 357, 362 (Minn. 2016).

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[9] To the extent that Hannon argues that his sentence was unlawful because there was no kidnapping, he is challenging his underlying conviction of first-degree murder while committing or attempting to commit kidnapping. This challenge is beyond the scope of a Rule 27.03 motion and is, therefore, subject to the postconviction statute's 2-year limitations period, *Munt*, 920 N.W.2d at 414–15, which is addressed by Section C below.

After we reversed Hannon's first conviction in *Hannon I*, 636 N.W.2d at 807, he received a second trial and was again convicted of causing the death of a human being while committing or attempting to commit kidnapping, under Minn. Stat. § 609.185(a)(3). Hannon was sentenced for this conviction on December 18, 2003. Restitution was ordered that same day. During the sentencing proceeding, Hannon signed the sentencing order, which listed the amount of his restitution on line (2). Therefore, Hannon's 30-day period in which to challenge his restitution order began on December 18, 2003. *See* Minn. Stat. § 611A.045, subd. 3(b). Accordingly, Hannon had until January 17, 2004 to challenge this order. Based on our review of the record, the first letter discussing the restitution order was filed in April 2009 (more than 5 years after the 30-day period expired). Because Hannon's reliance on section 611A.04, subdivision 1, is misplaced and any challenge to the restitution order is plainly untimely, the district court did not abuse its discretion when it summarily denied Hannon's restitution claim.

C.

Finally, we turn to Hannon's remaining claims, which challenge his underlying conviction on various grounds and are, therefore, subject to the procedural requirements of postconviction claims. *Munt*, 920 N.W.2d at 414–15. The district court dismissed these claims without a hearing on the grounds that the claims were untimely and procedurally barred.

The availability of postconviction relief and the procedures for seeking it are governed by Minnesota Statutes §§ 590.01–.11 (2020). In particular, section 590.04, subdivision 1, requires courts to hold a 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." An evidentiary hearing on a postconviction petition is required "when there are material facts in dispute that were not resolved at trial and must be resolved to rule on the merits of the issues raised." *Rhodes v. State*, 875 N.W.2d 779, 786 (Minn. 2016). "Any doubts about whether to conduct an evidentiary hearing are resolved in favor of the petitioner. But a postconviction evidentiary hearing is not required when the petitioner alleges facts that, if true, are legally insufficient to grant the requested relief." *Id.* (internal citation omitted). In particular, claims that have been previously decided by the supreme court in the same case are procedurally barred under Minn. Stat. § 590.04, subd. 3. Thus, a court may summarily deny a petition when the issues are procedurally barred by section 590.04, subdivision 3. *Gail v. State*, 888 N.W.2d 474, 477 (Minn. 2016). In addition, a court may summarily deny a petition that is untimely under the postconviction statute. *Rhodes,* 875 N.W.2d at 787.

All of Hannon's postconviction claims, except for a claim that we address separately below alleging improper jury instructions during his second trial, have been raised in identical or very similar iterations in his previous petitions, the denial of which we upheld in all three instances.[10] *Hannon III*, 752 N.W.2d at 520; *Hannon IV*, 781 N.W.2d at 892;

[10] Hannon's claim of prosecutorial misconduct dealing with alleged fabricated evidence, including the DNA evidence, and coerced witness testimony was raised in his first petition. His claim that he was not competent to stand trial was raised in his third petition. His claim of judicial bias was raised in his first and third petitions. His claim that his conviction was based on false or misleading DNA testimony and other false witness testimony was raised in his second and third petitions. His claim of ineffective assistance of counsel for failing to raise his incompetency, failing to inform him of a plea offer, and failing to investigate the DNA evidence was raised in his second and third petitions. And

Hannon V, 889 N.W.2d at 792–93. Therefore, the district court did not abuse its discretion when it summarily denied the previously raised claims.

As for Hannon's jury instruction claim, he argues that the jury received improper instructions during his 2003 trial because the jury instructions contained a reference to assault in the third degree even though Hannon was not charged with this offense. We conclude that this claim is untimely for the following reasons.

Minnesota Statutes § 590.01, subd. 4(a)(2), imposes a 2-year time limit on filing petitions for postconviction relief that begins when an appellate court's disposition of a petitioner's direct appeal becomes final. A conviction is final under this statute when the time for filing a petition for a writ of certiorari with the United States Supreme Court has expired.[11] *See Berkovitz v. State*, 826 N.W.2d 203, 207 (Minn. 2013).

In an opinion issued on August 18, 2005, we upheld Hannon's conviction on direct appeal from his second trial. Hannon did not file a petition for a writ of certiorari with the United States Supreme Court after our decision. Therefore, Hannon's limitations period began 90 days later, on November 13, 2005, and his 2-year time limit for filing a postconviction petition expired in November 2007. Hannon filed this fourth petition for postconviction relief over 12 years later, in January 2020—long after the limitations period ended.

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his claim of actual innocence based on all of the above arguments was raised in his third petition. *See Hannon III*, 752 N.W.2d at 520–23; *Hannon IV*, 781 N.W. at 890–92; *Hannon V*, 889 N.W.2d at 794–96.

[11] The Supreme Court's rule sets the time limit to file a petition for a writ of certiorari as 90 days from the entry of judgment by a state court of last resort. Sup. Ct. R. 13(1).

Though we conclude that Hannon's fourth postconviction petition is untimely because the postconviction statute of limitations expired before petitioner filed his petition, our analysis does not end there. Minnesota Statutes § 590.01, subd. 4(b), allows a court to hear a postconviction petition despite expiration of the 2-year limitations period if the petitioner satisfies one of the exceptions specified in the statute.

Hannon's petition asserts that the interests of justice exception should apply to his claims. This exception allows a court to hear an untimely 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 focuses on why the petition was filed after the 2-year time limit. *Sanchez v. State*, 816 N.W.2d 550, 557 (Minn. 2012). To establish the exception a petitioner "must allege an injustice that caused the delay in filing the petition." *Hooper v. State*, 888 N.W.2d 138, 142 (Minn. 2016).

But a separate limitations period exists for the subdivision 4(b) exceptions, and it requires that a petitioner invoking any of the 4(b) exceptions file their petition "within two years of the date the claim arises." Minn. Stat. § 590.01, subd. 4(c). A claim arises under subdivision 4(c) "when the petitioner knew or should have known that he had a claim." *Sanchez*, 816 N.W.2d at 560. Thus, under the interests of justice exception, Hannon was required to allege an act or omission that prevented him from filing his petition before the 2-year limitations period expired in 2007 *and* that he did not know, or have reason to know, about the act or omission more than 2 years before he filed his fourth petition, in January 2020.

Hannon does not argue that anything prevented him from filing a petition asserting his jury instruction claim before November 2007. Therefore, Hannon failed to establish that the interests of justice exception applies to his claims.[12]

Even if Hannon had filed his jury instruction claim in a timely manner or an exception to the statute of limitations was warranted, the petition and the files and records of the proceeding conclusively show that he is entitled to no relief. Hannon's jury instruction claim is based on a misunderstanding of the charges in his case. Count II of the indictment alleged that Hannon intentionally caused the death of Tolhurst "while committing or attempting to commit Kidnapping by confining . . . Tolhurst without her consent for the purpose of facilitating the commission of a felony, [specifically]: Assault in the Third Degree." *See* Minn. Stat. §§ 609.185(a)(3), 609.25, subd. 1(2). Assault in the third degree was not referenced in the jury instructions as a separate charge against Hannon, but rather as the felony crime that the kidnapping or attempted kidnapping was purportedly facilitating. Accordingly, the district court did not err when it referenced third-degree

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[12] Hannon did not assert any of the other exceptions to the postconviction statute of limitations. *See* Minn. Stat. § 590.01, subd. 4(b). The only other exception that *could* be read as being invoked by Hannon's petition is the newly discovered evidence exception. *Id.*, subd. 4(b)(2) ("[T]he petitioner alleges the existence of newly discovered evidence . . . that could not have been ascertained . . . within the two-year time period for filing a postconviction petition."). The petition clearly did not establish this exception because Hannon does not claim that he discovered any new evidence since his third postconviction petition, and the only new document attached to Hannon's fourth petition was a November 2019 affidavit of himself, which details various efforts to obtain boxes of trial documents from his trial attorney. Nowhere does Hannon allege any facts that were not known to him at the time of his third postconviction petition and, therefore, even this affidavit cannot be construed as establishing this exception.

assault in the jury instructions. Thus, the district court did not abuse its discretion when it summarily denied the jury instruction claim.

In sum, it was not an abuse of discretion for the district court to summarily deny Hannon's fourth petition for postconviction relief.

CONCLUSION

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

Affirmed.