

STATE OF MINNESOTA

IN SUPREME COURT

A20-1449

Hennepin County

Hudson, J.

Diamond Lee Jamal Griffin,

Appellant,

vs.

Filed: July 7, 2021  
Office of Appellate Courts

State of Minnesota,

Respondent.

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Diamond Lee Jamal Griffin, Rush City, Minnesota, pro se.

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

Michael O. Freeman, Hennepin County Attorney, Linda M. Freyer, Assistant County Attorney, Minneapolis, Minnesota, for respondent.

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S Y L L A B U S

The district court did not abuse its discretion when it summarily denied appellant's third petition for postconviction relief.

Affirmed.

Considered and decided by the court without oral argument.

## OPINION

HUDSON, Justice.

Appellant Diamond Lee Jamal Griffin appeals the district court's summary denial of his third petition for postconviction relief. Griffin filed the petition more than 2 years after his direct appeal. The petition did not invoke an exception to the 2-year statute of limitations. Consequently, the district court concluded that the petition was untimely. Because the district court did not abuse its discretion in denying the untimely petition, we affirm.

### FACTS

On July 8, 2013, Griffin attempted to rob three men.<sup>1</sup> When the men resisted, Griffin fatally shot one of the men. The police arrested Griffin the next day. The medical examiner provided the victim's finger and palm prints to the police. The prints matched fingerprint cards issued to Francisco Benitez and Joseph Bernardo Lopez. Both cards listed the same date of birth.

One month later, a grand jury heard testimony from the two men who survived the robbery (P.Y.-E. and L.B.-H.) and a law enforcement officer. All three witnesses identified the shooting victim as Francisco Benitez-Hernandez. The grand jury returned an indictment charging Griffin with six offenses, including first-degree felony-murder.<sup>2</sup>

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<sup>1</sup> A full recitation of the facts underlying Griffin's conviction can be found in *State v. Griffin (Griffin I)*, 887 N.W.2d 257, 260–61 (Minn. 2016).

<sup>2</sup> The five other charges were second-degree intentional murder, attempted first-degree felony murder, attempted second-degree intentional murder, second-degree assault, and first-degree aggravated robbery.

At trial, the jury found Griffin guilty of first-degree felony murder in connection with the shooting victim. The jury also found him guilty of attempted first-degree felony murder and second-degree assault in connection with the two men who survived the robbery. The district court sentenced Griffin to life in prison with possibility of release after 30 years for the conviction of first-degree felony murder.<sup>3</sup> We affirmed Griffin's conviction and sentence on direct appeal. *State v. Griffin (Griffin I)*, 887 N.W.2d 257, 265 (Minn. 2016).

Representing himself, Griffin filed his first petition for postconviction relief in April 2017. In it, Griffin claimed he received ineffective assistance of trial counsel because his attorneys told him not to accept the State's 2014 plea offer. After a limited evidentiary hearing, the district court denied Griffin's first petition for postconviction relief. Griffin appealed, but later asked that we stay his appeal to allow him to file a second petition for postconviction relief. We stayed his appeal.

Griffin then filed his second petition for postconviction relief in March 2019, more than 2 years after his conviction became final. His second petition for postconviction relief alleged (1) a *Brady* violation,<sup>4</sup> (2) a claim of ineffective assistance of appellate counsel, and (3) a failure to safeguard his right to a fair trial.

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<sup>3</sup> The district court also imposed a 153-month sentence for the conviction of attempted first-degree felony murder, to be served consecutively to the sentence for first-degree felony murder, and a 36-month sentence for the conviction of second-degree assault, to be served consecutively to the 153-month sentence.

<sup>4</sup> A *Brady* violation occurs when the State does not produce material evidence favorable to the defendant despite a request for production by the defense. *Brady v. Maryland*, 373 U.S. 83, 87 (1963).

Regarding the *Brady* claim, Griffin alleged that newly discovered evidence showed the State withheld material evidence. More specifically, he claimed that the State failed to disclose the aliases of Francisco Benitez-Hernandez and P.Y.-E. To support his claim, Griffin provided affidavits signed by a private investigator. In the first affidavit, dated March 4, 2019, the private investigator said, “[H]e was unable to locate anyone in the country using the name [P.Y.-E.] anywhere in the country.” In the second affidavit, dated March 6, 2019, the private investigator said, “[H]e was unable to verify that the within-named Francisco Benitez-Hernandez . . . also went by the name of Joseph Bernardo-Lopez.” The district court summarily denied the second postconviction petition for relief. Griffin appealed. We lifted the stay and consolidated his two appeals.

In April 2020, we affirmed the district court’s denial of Griffin’s first and second petitions for postconviction relief. *Griffin v. State (Griffin II)*, 941 N.W.2d 404, 410 (Minn. 2020). We held that the district court did not abuse its discretion in denying Griffin’s first petition. *Id.* at 409. As part of our analysis of the claim for ineffective assistance of trial counsel, we wrote, “[t]he district court considered [the] conflicting testimony, made detailed findings regarding the respective claims, and did not clearly err when it credited the trial attorneys’ testimony and rejected Griffin’s testimony.” *Id.* Then, turning to the claims raised in Griffin’s second petition for postconviction relief, we held that district court did not abuse its discretion in summarily denying the petition as time-barred under Minn. Stat. § 590.01, subd. 4(a) (2020). 941 N.W.2d at 410.

We recognized that Griffin’s second petition had invoked an exception to the 2-year time-bar by alleging newly discovered evidence<sup>5</sup> of a *Brady* violation. *Id.* But, even taking Griffin’s factual allegations as true, we concluded that the use of aliases by Benitez-Hernandez and P.Y.-E. did not prove that Griffin was innocent of any of the offenses for which he was convicted. *Id.* Thus, we concluded that Griffin’s *Brady*-violation claim did not satisfy the newly-discovered-evidence exception and the district court did not abuse its discretion when it denied the second petition as time-barred. *Id.*

In July 2020, Griffin filed his third petition for postconviction relief. In his third petition, Griffin claimed the State violated his right to due process during the grand jury proceedings. More specifically, he claimed the State’s witnesses provided “falsified evidence” when they used the name Francisco Benitez-Hernandez when referring to the shooting victim.<sup>6</sup> Griffin also claimed P.Y.-E. lied to the grand jurors when he told the

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<sup>5</sup> The newly-discovered-evidence exception allows a court to consider the merits of a petition for postconviction relief despite the 2-year time bar if the “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, and the evidence . . . establishes by a clear and convincing standard that the petitioner is innocent of the offense . . . for which the petitioner was convicted.” Minn. Stat. § 590.01, subd. 4(b)(2) (2020).

<sup>6</sup> As part of his argument, Griffin cites Minn. Stat. § 634.051 (2020), which provides, “No person shall be convicted of murder . . . unless the death of the person alleged to have been killed, and the fact of the killing by the defendant, as alleged, are each established as independent facts beyond a reasonable doubt.” Here, the petit jury found that the death of the shooting victim and the fact of the killing by Griffin were each proven beyond a reasonable doubt.

grand jurors his name was P.Y.-E.<sup>7</sup> The district court summarily denied Griffin's third petition because, among other things, it determined that the claim was time-barred under Minn. Stat. § 590.01, subd. 4(a). Griffin appealed.

### ANALYSIS

We review the district court's denial of a postconviction petition for an abuse of discretion. *Griffin II*, 941 N.W.2d at 408. A district court "abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record." *Riley v. State*, 792 N.W.2d 831, 833 (Minn. 2011). In reviewing the summary denial of a postconviction petition, we review the facts alleged in the petition in the light most favorable to the petitioner. *See Fox v. State*, 913 N.W.2d 429, 433 (Minn. 2018).

A district court must grant a postconviction evidentiary hearing "[u]nless the petition and the files and records of the proceeding conclusively show that the petitioner is entitled to no relief." Minn. Stat. § 590.04, subd. 1 (2020). But a "hearing is not required when the petitioner alleges facts that, if true, are legally insufficient to grant the requested relief." *Rhodes v. State*, 875 N.W.2d 779, 786 (Minn. 2016). Accordingly, a district court may summarily deny an untimely claim. *Id.* at 787.

In Griffin's case, the 2-year limitations period in the postconviction statute expired in February 2019. *Griffin II*, 941 N.W.2d at 409. Griffin filed his third petition for postconviction relief 17 months later in July 2020. Accordingly, his petition is time-barred

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<sup>7</sup> Griffin argues his right to confrontation was violated when P.Y.-E. allegedly used an alias during the grand jury proceedings.

unless he invoked and then established one of the five exceptions in Minn. Stat. § 590.01, subd. 4(b).

We liberally construe the petition in determining whether the petitioner has invoked one of the statutory exceptions. *See Wallace v. State*, 820 N.W.2d 843, 849 (Minn. 2012); *see also* Minn. Stat. § 590.03 (2020) (instructing courts when reviewing postconviction petitions to “liberally construe the petition” and to “look to the substance thereof and waive any irregularities or defects in form”). The petition does not need to “include [a] specific citation to a subdivision 4(b) exception to invoke it.” *Roby v. State*, 787 N.W.2d 186, 191 (Minn. 2010). But if the petitioner does not invoke any of the time-bar exceptions in the petition, we need not consider them. *Griffin II*, 941 N.W.2d at 410.

Even when liberally construed, Griffin’s petition does not invoke any of the time-bar exceptions in Minn. Stat. § 590.01, subd. 4(b). Unlike Griffin’s second petition, which alleged newly discovered evidence of a *Brady* violation, his third petition does not allege any newly discovered evidence. Instead, Griffin relies on the same evidence he submitted in connection with his second postconviction petition. A new legal argument based on old evidence does not satisfy the newly-discovered-evidence exception.<sup>8</sup> We therefore

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<sup>8</sup> Even if the evidence submitted with Griffin’s third petition was newly discovered, none of the evidence establishes by a clear and convincing standard that Griffin is innocent of the offense for which he was convicted. *See* Minn. Stat. § 590.01, subd. 4(b)(2) (requiring petitioners show, among other things, that newly discovered evidence establishes their innocence by a “clear and convincing standard” to satisfy the exception).

conclude that Griffin has not invoked the newly-discovered-evidence exception, nor any of the other subdivision 4(b) exceptions, to support his due process claim.<sup>9</sup>

Because Griffin’s third petition for postconviction relief was untimely, the district court did not abuse its discretion when it summarily denied the petition.

### CONCLUSION

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

Affirmed.

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<sup>9</sup> Griffin uses the phrase “interest of justice” on pages 11 and 16 of his brief. Because Griffin failed to invoke the interest-of-justice exception in the district court, he has forfeited appellate review of such an argument. *Brocks v. State*, 753 N.W.2d 672, 676 (Minn. 2008) (holding that petitioner forfeited a claim for ineffective assistance of counsel by failing to include the issue in his postconviction petition). In addition, the petition does not contain any facts explaining the reason for the delay in filing his petition. *See Sanchez v. State*, 816 N.W.2d 550, 557 (Minn. 2012) (explaining that “the interests-of-justice referred to in subdivision 4(b)(5) relate to the *reason* the petition was filed after the 2-year time limit in subdivision 4(a)”).