

STATE OF MINNESOTA
IN SUPREME COURT

A21-0511

Kanabec County District Court

Moore, III, J.

Jason Lee Bolstad

Appellant,

vs.

Filed: November 10, 2021
Office of Appellate Courts

State of Minnesota,

Respondent.

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

Keith Ellison, Attorney General, Angela Helseth Kiese, Assistant Attorney General, Saint Paul, Minnesota; and

Barbara McFadden, Kanabec County Attorney, Mora, Minnesota, for respondent.

S Y L L A B U S

1. The district court did not err when it treated appellant's motion to correct his sentence under Minn. R. Crim. P. 27.03, subd. 9 as a third petition for postconviction relief because his motion implicated more than just his sentence.

2. The district court did not abuse its discretion in concluding that the appellant's third petition for postconviction relief was untimely.

Affirmed.

Considered and decided by the court without oral argument.

OPINION

MOORE, III, Justice.

In this case, we are asked to determine whether the district court erred when it construed appellant Jason Lee Bolstad's motion to correct his sentence as an untimely third postconviction petition. Because Bolstad's motion implicates more than his sentence and was not brought within the timeframe required by the postconviction statute of limitations, we affirm.

FACTS

On the evening of April 2, 1996, Bolstad's father was shot several times and ultimately killed by blunt trauma to the head.¹ He was found with the lining of his front pants pocket, where he typically carried large amounts of cash, turned out and his wallet missing from his back pocket. The initial investigation revealed that Bolstad allegedly offered a friend money to kill his father and had on a few occasions stated that he wished his father dead. After his father's death, Bolstad inherited a total of \$87,222.02. Bolstad told investigators that on the date of the offense, he was in an apartment in Hudson, Wisconsin, the entire day, and two alibi witnesses corroborated his story.

The investigation stalled for several years until the police received information that one of Bolstad's alibi witnesses had been lying. In January of 2002, the witness admitted to investigators that Bolstad left the Hudson apartment for several hours on the date of the

¹ Only the facts relevant to this appeal are recited here. More details about Bolstad's conviction are set forth in his direct appeal, *State v. Bolstad (Bolstad I)*, 686 N.W.2d 531, 534–38 (Minn. 2004), and in his second postconviction petition appeal, *Bolstad v. State (Bolstad II)*, 878 N.W.2d 493, 494–95 (Minn. 2016).

offense. This revelation led investigators to contact Bolstad’s second alibi witness, who, after negotiating an offer of immunity, retracted his statement from 1996 and delivered the gun used to kill Bolstad’s father to investigators. Analysis by the Bureau of Criminal Apprehension revealed that the bullets and casings recovered at the scene of the crime were fired by the gun delivered by the second alibi witness and contained traces of blood that matched the DNA profile of Bolstad’s father.

A Kanabec County grand jury indicted Bolstad on March 13, 2002 on four counts:² first-degree felony murder (while committing or attempting to commit aggravated robbery), *see* Minn. Stat. § 609.185(a)(3) (2020); first-degree premeditated murder, *see* Minn. Stat. § 609.185(a)(1) (2020); second-degree intentional murder, *see* Minn. Stat. § 609.19(1) (2020); and second-degree felony murder (while committing or attempting to commit assault in the second degree), *see* Minn. Stat. § 609.19(2) (2020). Bolstad’s jury trial began March 18, 2003.

During deliberations, the jury came back with a question about the fourth element of the first-degree felony murder charge: “Can the robbery of the victim take place after the death and take place as a second thought, not as motive to kill?” The State and Bolstad made arguments about how to respond to the question; ultimately the district court agreed

² Because the murder occurred in April 1996, Bolstad was charged under the 1995 version of each statute that was in effect at the time of the offense. The legislature has since amended and reorganized each of the statutes Bolstad was convicted of violating. *See, e.g.*, Act of Apr. 2, 1996, ch. 409, art. 4, § 8, 1996 Minn. Laws 605, 655–56. However, because the portions of each statute relevant to this case remain substantively unchanged, we cite the current version of each statute. *Compare, e.g.*, Minn. Stat. § 609.185(a)(1) (2020), *with* Minn. Stat. § 609.185(1) (Supp. 1995).

with the State and added a sentence to the instruction explaining that “the aggravated robbery and the murder [must be] parts of a single continuous transaction.” The jury found Bolstad guilty on all four counts. On April 2, 2003, the court convicted Bolstad of first-degree premeditated murder and imposed a sentence of life without the possibility of release. The court did not convict him of any other offense. On direct appeal, we affirmed Bolstad’s conviction of first-degree premeditated murder. *Bolstad I*, 686 N.W.2d at 534.

Between 2007 and 2014, Bolstad filed two petitions for postconviction relief, both of which the district court denied. We affirmed the denial of his second postconviction petition in 2016. *Bolstad II*, 878 N.W.2d at 495–98. In December 2020, Bolstad filed a motion to correct his sentence. The district court construed the motion to correct his sentence as a third postconviction petition that was untimely.³ Bolstad now appeals.

ANALYSIS

Bolstad asserts a three-part argument in support of his contention that the district court erred in denying his motion to correct his sentence. First, Bolstad contends that the jurors’ question regarding the first-degree felony murder charge allegedly shows that reasonable doubt existed about the degree of murder of which he was guilty. As result, he argues, Minnesota Statutes § 611.02 (2020)—which provides that when “there exists a reasonable doubt as to which of two or more degrees the defendant is guilty, the defendant shall be convicted only of the lowest”—required the district court to convict him of second-degree

³ In the alternative, the district court found that the postconviction petition was procedurally barred by *Knaffla* and a meritless second or successive petition for similar relief. Because we conclude that the third postconviction petition is untimely, we need not address these alternative theories or reach the merits of Bolstad’s claim.

murder, the lowest degree of murder alleged in the complaint. Second, Bolstad argues that a sentence of life without the possibility of release is not authorized for the offense of second-degree murder. Third, Bolstad claims that the district court erred when it treated his motion to correct his sentence as a third postconviction petition because he was merely challenging his sentence. For the following reasons, we conclude that the district court properly treated Bolstad's motion to correct his sentence as a postconviction petition that was untimely.

I.

We first address the district court's treatment of Bolstad's motion to correct his sentence as a postconviction petition. The standard for reviewing a district court's decision to treat a motion to correct a sentence under Rule 27.03 as a postconviction petition under Minnesota Statutes Chapter 590 remains an open question. In *State v. Coles*, 862 N.W.2d 477, 479 (Minn. 2015), we applied the de novo standard of review when considering the issue because the arguments of the parties required that we interpret the text of a statute and a procedural rule. But in *Wayne v. State*, we declined "to adopt a definitive standard of review because, regardless of the amount of deference, if any," the district court was entitled to, we decided "that the court did not err when it treated Wayne's motion as a petition for postconviction relief." 870 N.W.2d 389, 391 n.2 (Minn. 2015); *see also Johnson v. State*, 877 N.W.2d 776, 779 n.3 (Minn. 2016) (declining to adopt a standard of review because we would have affirmed "regardless of the standard of review that applies").

Like the argument in *Coles*, Bolstad's argument requires that we consider the language of statute, namely section 611.02. Consequently, the standard of review is arguably de novo. But as in *Wayne* and *Johnson*, Bolstad's argument fails regardless of the standard of review and, therefore, we need not resolve the issue here.

A "court may at any time correct a sentence not authorized by law." Minn. R. Crim. P. 27.03, subd. 9. A sentence is unauthorized when it is "contrary to law or applicable statutes." *State v. Schnagl*, 859 N.W.2d 297, 301 (Minn. 2015). The two-year time limit in the postconviction statute does not apply to a motion to correct a sentence. *Reynolds v. State*, 888 N.W.2d 125, 133 (Minn. 2016). Rule 27.03, subdivision 9, however, "is limited to sentences, and the court's authority under the rule is restricted to modifying a sentence." *Coles*, 862 N.W.2d at 480. A motion to correct a sentence that in fact challenges the *underlying conviction* cannot "circumvent the procedural requirements of the postconviction statute" simply because a defendant labeled it differently. *Wayne*, 870 N.W.2d at 391. If the motion "implicates more than simply [the] sentence," it is properly treated as a postconviction petition. *Coles*, 862 N.W.2d at 482.

In his motion to correct his sentence, Bolstad argued that under section 611.02, he could not be convicted of first-degree premeditated murder and therefore his sentence of life without the possibility of release was unlawful. Observing that his motion "does not challenge the validity of the guilty verdict," Bolstad asserts that his motion falls within the

scope of Rule 27.03, subdivision 9.⁴ But as explained below, the plain language of section 611.02 contradicts Bolstad’s assertion.

Section 611.02 deals with *convictions*; it states that when reasonable doubt exists as to which of two or more degrees of an offense a defendant is guilty, the defendant “shall be *convicted* only of the lowest offense.” Minn. Stat. § 611.02 (emphasis added). And on more than one occasion, we have treated a motion under Rule 27.03, subdivision 9, that raises a claim under section 611.02 as a postconviction petition because the statute deals with convictions and therefore implicates more than sentencing. *See, e.g., Munt v. State*, 920 N.W.2d 410, 415–16 (Minn. 2018); *Rossberg v. State*, 932 N.W.2d 6, 9 (Minn. 2019).

Bolstad argues that section 611.02 can be used to correct a sentence, citing *State v. Moore*, 458 N.W.2d 90 (Minn. 1990). Bolstad’s reliance on *Moore* is misplaced. In *Moore*, we stated that we “might be inclined to *reduce the conviction* to second degree manslaughter” pursuant to section 611.02 had a new trial not been the “more appropriate remedy.” *Id.* at 95 (emphasis added). Nothing in *Moore* suggests that the defendant’s sentence could be reduced without first reducing his conviction. Thus, even if we applied section 611.02 as contemplated in *Moore*, we would still have to reduce Bolstad’s *conviction*, not merely modify or correct his sentence.

⁴ Minnesota Statutes § 609.02, subd. 5 (2020), defines “conviction” as a guilty verdict that the district court accepts and records. The parties do not dispute that the district court accepted and recorded the guilty verdict in this case. By referring to the “guilty verdict,” Bolstad tries to obscure the fact that his section 611.02 claim necessarily challenges his conviction of first-degree premeditated murder.

In sum, even if we apply the standard of review most favorable to Bolstad, the district court properly treated his motion to correct his sentence as a third postconviction petition because his section 611.02 claim necessarily challenges his conviction, not merely his sentence.

II.

Having determined that the district court did not err in treating Bolstad's motion as a third postconviction petition, we consider next whether the court erred in summarily denying the petition. We review a district court's denial of a petition for postconviction relief for an abuse of discretion. *Hannon v. State*, 957 N.W.2d 425, 432 (Minn. 2021). The district court abuses its discretion when it "exercise[s] its discretion in an arbitrary or capricious manner, base[s] its ruling on an erroneous view of the law, or [makes] clearly erroneous factual findings." *Reed v. State*, 793 N.W.2d 725, 729 (Minn. 2010).

The availability of and procedure for postconviction relief is governed by Minn. Stat. §§ 590.01–.11 (2020). Particularly, section 590.04, subdivision 1, requires courts to set 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 "where 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). "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.* Therefore, a petition asserting claims that are untimely and not

subject to an exception may be summarily denied. *Bolstad II*, 878 N.W.2d at 496.

The postconviction statute requires petitions to be filed within two years of the entry of a judgment of conviction or sentence, or an appellate court’s disposition on direct appeal, whichever comes later. Minn. Stat. § 590.01, subd. 4(a). Bolstad’s conviction became final before August 1, 2005, the date the statute of limitations went into effect, so he had two years from that date—until July 31, 2007—to file a petition.⁵ *Bolstad II*, 878 N.W.2d at 496.

Bolstad argues that his claim is not subject to the time bar because it falls properly within the scope of a motion to correct his sentence, and such motions are not subject to the postconviction statute or its restrictions. He does not make any arguments in the alternative that his claims are timely, or that any exception to the time bar applies. Bolstad’s argument fails because, as explained above, his section 611.02 claim falls outside the scope of a motion to correct a sentence. Moreover, because Bolstad filed his third postconviction petition in December 2020, more than 15 years after the date the 2-year statute of limitations went into effect, we conclude that the district court did not abuse its discretion when it summarily denied Bolstad’s petition as untimely.

CONCLUSION

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

Affirmed.

⁵ The 2-year limitations period imposed by Minn. Stat. § 590.01 subd. 4(a) became effective on August 1, 2005; the law gave defendants whose convictions were final before that date “two years after the effective date of [the] act to file a petition for postconviction relief.” Act of June 2, 2005, ch. 136, art. 14, § 13, 2005 Minn. Laws 901, 1098.