

STATE OF MINNESOTA

IN SUPREME COURT

A20-1441

Court of Appeals

Hudson, J.

Bunny Annette Byington,

Appellant,

vs.

Filed: October 26, 2022  
Office of Appellate Courts

State of Minnesota,

Respondent.

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Cathryn Middlebrook, Chief Appellate Public Defender, Michael McLaughlin, Assistant Public Defender, Saint Paul, Minnesota, for appellant.

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

Brian J. Melton, Clay County Attorney, Michael D. Leeser, Assistant County Attorney, Moorhead, Minnesota, for respondent.

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S Y L L A B U S

In a postconviction proceeding, a district court has the authority to order the State to refund restitution that the defendant has paid because of a conviction when that conviction has been invalidated, and no retrial will occur.

Reversed and remanded.

## OPINION

HUDSON, Justice.

This appeal requires us to determine whether a district court in a postconviction proceeding may order the refund of restitution that the defendant has paid because of a conviction when that conviction has been invalidated, and no retrial will occur. In 2009, appellant Bunny Annette Byington was convicted of one count of coercion—threat to expose a secret or disgrace, Minn. Stat. § 609.27, subd. 1(4) (2020). As part of Byington’s sentence, the district court ordered her to pay fines, fees, and restitution.

Byington later filed a petition for postconviction relief. When Minn. Stat. § 609.27, subd. 1(4) was declared facially overbroad and unconstitutional in another case, *State v. Jorgenson*, 946 N.W.2d 596, 600 (Minn. 2020), Byington asked the district court to vacate her conviction and sentence. Relying on *Nelson v. Colorado*, 581 U.S. \_\_\_, 137 S. Ct. 1249, 1257–58 (2017), which held that “a State may not impose anything more than minimal procedures on the refund of exactions dependent upon a conviction subsequently invalidated,” she further asserted that she was entitled to a refund of all restitution payments made because of her invalid conviction. The district court granted Byington’s petition in part by vacating her conviction and sentence. But it denied her request for a refund of restitution, concluding that it lacked authority to do so, in part because “there is no legal vehicle under Minnesota law, in the context of a criminal case, to provide reimbursement of restitution.” The court of appeals affirmed, holding that “nothing in the postconviction statute governing this matter authorizes a court to refund restitution,” and that “the source of a court’s authority to return restitution is the Minnesota Incarceration and Exoneration

Remedies Act,” (MIERA), Minn. Stat. §§ 611.362–.368 (2020), which requires a timely petition—which Byington never filed—seeking an order that the person is eligible for compensation based on exoneration.

We granted review on whether a postconviction court has authority to refund restitution that a defendant paid on an unconstitutional conviction, or whether MIERA is the only procedure for receiving a refund of restitution paid. We conclude that in a postconviction proceeding, a district court has the authority under the postconviction statute, Minn. Stat. § 590.04, subd. 1 (2020), to order the State to refund restitution that the defendant has paid because of a conviction when that conviction has been invalidated, and no retrial will occur. We therefore reverse the court of appeals and remand to the district court for further proceedings consistent with this opinion.

### **FACTS**

On July 1, 2009, respondent State of Minnesota charged Byington with two felony counts of coercion, Minn. Stat. § 609.27, subd. 1(4), and one felony count of attempted coercion, Minn. Stat. §§ 609.27, subd. 1(4), 609.275 (2014). The State alleged that Byington obtained \$7,000 from the victim under the threat of revealing their relationship to his wife and local church leadership. During the same time, Clay County Social Services (CCSS) conducted a fraud investigation, which revealed that Byington received \$5,831.44 in fraudulent overpayments of public assistance benefits when she did not report the money that she had received from the victim as income.

On September 4, 2009, Byington pleaded guilty to one felony count of coercion. Under the terms of the plea agreement, the State agreed to dismiss the remaining charges

and not to pursue fraud charges, and Byington agreed to pay restitution to both the victim and CCSS. The victim and CCSS submitted affidavits of loss and requests for restitution. The district court sentenced Byington to 1 year and 1 day in prison, with execution stayed for 10 years, and placed her on probation. It also ordered her to pay \$585 in fines, \$7,000 in restitution to the victim, and \$5,831.44 in restitution to CCSS. Byington made periodic restitution payments and satisfied her fines with community service. On October 30, 2019, Byington was discharged from probation.

After Byington completed probation, the court of appeals held that Minn. Stat. § 609.27, subd. 1(4) was facially overbroad, in violation of the First Amendment. *State v. Jorgenson (Jorgenson I)*, 934 N.W.2d 362, 375 (Minn. App. 2019). Following the court of appeals decision, Byington filed a pro se petition for postconviction relief seeking to vacate her conviction and sentence. We affirmed the court of appeals, agreeing that subdivision 1(4) of section 609.27 is facially overbroad, in violation of the First Amendment, and thus invalid. *State v. Jorgenson (Jorgenson II)*, 946 N.W.2d 596, 600 (Minn. 2020).

After we issued our decision in *Jorgenson II*, Byington, with the assistance of counsel, amended her postconviction petition to request that the district court vacate her conviction and sentence and “refund any restitution payments made by her pursuant to the illegal and void sentence.” Byington asserted that *Nelson v. Colorado*, 581 U.S. \_\_\_, 137 S. Ct. 1249, 1257 (2017), creates a substantive right to the refund of restitution she paid because of a conviction that was later invalidated, and that the court is thus obligated

to order her a restitution refund. The State agreed that Byington's conviction should be vacated, but it argued that she was not entitled to a refund of restitution.

The district court granted in part and denied in part Byington's petition for postconviction relief. In light of *Jorgenson II*, the district court granted Byington's request to vacate her conviction and sentence. Regarding her request for a refund of restitution, the district court acknowledged that under *Nelson*, "it would appear that [Byington] is entitled to a refund of all fines, fees, and restitution paid in this case, as these obligations were all imposed as part of the sentence stemming from [Byington]'s conviction." Nevertheless, the district court concluded that "the issue of who specifically must pay back the restitution money, and how that payment is secured, is beyond the scope of this case and beyond the authority of this court."

The district court found it "important to note that the *Nelson* case focused on Colorado's statutory scheme" for exonerated defendants to obtain restitution. But according to the district court, "[u]nder Minnesota law, there is no such statutory scheme," nor was there any "legal vehicle under Minnesota law, in the context of a criminal case, to provide reimbursement of restitution." Although the district court agreed that it had the authority to require a "refund of fines, fees, and other judicial branch retained monies," it concluded that it "lack[ed] the authority to impose any legal obligations on the part of non-parties (i.e. the victims), or Order a party in the case (the prosecuting authority) to pay out monies it never received in the first place." As a result, the court vacated Byington's restitution order and ordered the refund of any monies paid by her that were applied "to fines, fees, or judicial branch retained monies." The district court also vacated any "civil

judgment” that “has been entered solely by virtue of the Restitution Order in this matter.” The court, however, denied Byington’s request that she receive a refund of the amounts that she paid to the victims in restitution.

In a nonprecedential opinion, the court of appeals affirmed the district court. *Byington v. State*, No. A20-1441, 2021 WL 2406681, at \*1 (Minn. App. June 14, 2021). First, the court of appeals determined that nothing in the postconviction statutes, Minn. Stat. §§ 590.01–.06 (2020), under which Byington’s present action was brought, authorizes a court to refund fines, fees, or restitution. *Byington*, 2021 WL 2406681, at \*1.

Second, the court of appeals rejected Byington’s contention that *Nelson* “unequivocally grants a district court the authority” to refund restitution. *Id.* at \*2. Instead, the court of appeals stated that *Nelson*’s “conclusion was premised on the determination that Colorado’s exoneration-compensation statute imposed too many procedural hurdles to comport with due process” and thus “did not establish a broad substantive right to the automatic refund of restitution payments made pursuant to an invalidated conviction.” *Id.* Accordingly, the court of appeals reasoned, “[*Nelson*] is not an independent source of authority upon which a district court may order the return of restitution.” *Id.*

Third, the court of appeals instead identified the Minnesota Incarceration and Exoneration Remedies Act (MIERA), Minn. Stat. §§ 611.362–.368, as “the source of a court’s authority to return restitution.” *Byington*, 2021 WL 2406681, at \*2. But the court of appeals observed that “Byington did not obtain or even seek an order that she is eligible for compensation based on exoneration.” *Id.* The court of appeals thus declined to consider the constitutionality of MIERA, finding that “[t]he district court did not have the

opportunity to consider [Byington’s] eligibility under the act, or to consider any arguments as to whether the act passes constitutional muster.” *Id.* Because Byington had not established that she was eligible for MIERA compensation, and because the court of appeals concluded that “nothing in the postconviction statute governing this matter authorizes a court to refund restitution,” the court of appeals saw no error in the district court denying her request for a restitution refund. *Id.*

We granted Byington’s petition for further review.

### ANALYSIS

Byington asserts that she is entitled to a refund of all the money, including restitution, that she paid because of her invalidated conviction. The crux of her argument is that *Nelson* establishes a substantive, constitutional right to a refund of restitution when a defendant’s conviction has been invalidated and no retrial will occur. She further argues that the court of appeals construed the postconviction statute too narrowly and that courts have the authority in a postconviction proceeding to order the State to refund restitution the defendant paid because of such an invalidated conviction. To evaluate Byington’s arguments, we begin with a discussion of *Nelson* and then consider whether Byington has a right to receive a refund of the restitution she paid because of her invalidated conviction.

#### A.

*Nelson* addressed the consolidated petitions of two defendants, Nelson and Madden, who petitioned for a return of the court costs, fees, and restitution they paid as a condition

of their respective convictions that were later overturned.<sup>1</sup> 581 U.S. at \_\_\_\_, 137 S. Ct. at 1253. After the Colorado Court of Appeals concluded that both defendants were entitled to seek refunds, the Colorado Supreme Court reversed, reasoning that there must be a statute that authorizes the refund of the funds, that Colorado’s Exoneration Act provided the “exclusive process” for refunds, and that the petitioners’ failures to file a claim under that Act rendered the courts without authority to order refunds. *Id.* at \_\_\_\_, 137 S. Ct. at 1254.

The U.S. Supreme Court determined that “[w]hen a criminal conviction is invalidated by a reviewing court and no retrial will occur, . . . the State [is] obliged to refund fees, court costs, and restitution exacted from the defendant upon, and as a consequence of, the conviction.” *Id.* at \_\_\_\_, 137 S. Ct. at 1252. Applying the procedural due process test from *Mathews v. Eldridge*, 424 U.S. 319 (1976), the Court held that Colorado’s Exoneration Act did not comport with the Fourteenth Amendment’s guarantee of due process. *Nelson*, 581 U.S. at \_\_\_\_, 137 S. Ct. at 1255–58. The Court concluded that “[t]o comport with due process, a State may not impose anything more than minimal procedures on the refund of exactions dependent upon a conviction subsequently invalidated.” *Id.* at \_\_\_\_, 137 S. Ct. at 1258. The Supreme Court reversed the judgments of the Colorado Supreme Court and “remanded for further proceedings not inconsistent with this opinion.” *Id.*

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<sup>1</sup> Nelson had her convictions overturned on direct appeal, and she was acquitted of all charges after a retrial. *Nelson*, 581 U.S. at \_\_\_\_, 137 S. Ct. at 1252–53. Madden had one of his convictions reversed on direct appeal and the other reversed in a postconviction proceeding; the State elected not to retry him. *Id.* at \_\_\_\_, 137 S. Ct. at 1253.



Byington asserts that, based on *Nelson*, she has a constitutional right to a refund of the restitution she paid pursuant to her now invalidated conviction. She argues that *Nelson* entitles a person to a refund of conviction-related monetary assessments if three requirements are met: (1) the assessments were imposed solely because of a conviction, (2) the state exacted the money to be refunded from the defendant, and (3) the conviction has been invalidated with no prospect of retrial. Byington asserts that she has satisfied each element of a “*Nelson* refund claim,” arguing that the court-ordered restitution was a monetary assessment that the State imposed solely because of her conviction, that the record shows that she paid restitution, and that her conviction was invalidated under *Jorgenson II* with no prospect of retrial since the conduct underlying the invalidated conviction is constitutionally protected. She further argues that the court of appeals incorrectly concluded that she could not receive this refund in a postconviction proceeding.

The State disagrees and argues that the court of appeals correctly determined that *Nelson* does not create a broad substantive right to an automatic refund of restitution payments made pursuant to an invalidated conviction. According to the State, *Nelson* simply held that “[t]o comport with due process, a State may not impose anything more than minimal procedures on the refund of exactions dependent upon a conviction subsequently invalidated.” 581 U.S. at \_\_\_, 137 S. Ct. at 1258. The State further argues that the court of appeals correctly concluded that Byington must use the procedures of MIERA to receive a refund of restitution.

## B.

We do not need to decide whether there is a constitutional right to a refund of restitution. We do not reach constitutional issues if there is an alternative path to resolving the case. *State v. Bourke*, 718 N.W.2d 922, 926 (Minn. 2006) (noting that “[o]ur general practice is to avoid a constitutional ruling if there is another basis on which a case can be decided” (alteration in original) (quoting *Erlandson v. Kiffmeyer*, 659 N.W.2d 724, 732 n.7 (Minn. 2003))).

There is such an alternative here—a postconviction petition. Determining whether an alternative path exists involves the interpretation of a statute, which is a question of law that we review de novo. *State v. Jones*, 678 N.W.2d 1, 23 (Minn. 2004).

Postconviction proceedings are governed by Minnesota Statutes chapter 590 (2020). They authorize a person convicted of a crime to “secure relief” by petitioning the district court “to vacate and set aside the judgment and to discharge the petitioner or to resentence the petitioner or grant a new trial or correct the sentence or make other disposition as may be appropriate.” Minn. Stat. § 590.01, subd. 1. After a petition is filed, the district court must “determine the issues, make findings of fact and conclusions of law with respect thereto, and either deny the petition or enter an order granting appropriate relief.” Minn. Stat. § 590.04, subd. 1.

The purpose of statutory interpretation is to “ascertain and effectuate” the Legislature’s intent. Minn. Stat. § 645.16 (2020). When interpreting a statute, the threshold question is whether the statute’s language is ambiguous. *State v. Gibson*, 945 N.W.2d 855, 857 (Minn. 2020). We “construe[]” statutory “words and

phrases . . . according to their common and approved usage.” Minn. Stat. § 645.08(1) (2020). When a statute does not define a word or phrase, we often determine plain meaning by looking to dictionary definitions and applying them in the context of the statute. *State v. Haywood*, 886 N.W.2d 485, 488 (Minn. 2016). “If the Legislature’s intent is clear from the statute’s plain language, then we interpret the statute according to its plain meaning . . . .” *State v. Alarcon*, 932 N.W.2d 641, 645 (Minn. 2019) (citation omitted) (internal quotation mark omitted). If, however, the disputed language is subject to more than one reasonable interpretation, then the statute is ambiguous, and we can employ canons of construction to resolve the ambiguity. *State v. Thonesavanh*, 904 N.W.2d 432, 435 (Minn. 2017).

Thus, we first consider the language of the statute. By its plain meaning, a district court can make a disposition other than what is specifically listed in the statute. The statute provides that a person convicted of a crime can “secure relief” by petitioning the district court “to vacate and set aside the judgment and to discharge the petitioner or to resentence the petitioner or grant a new trial or correct the sentence or *make other disposition* as may be appropriate.” Minn. Stat. § 590.01, subd. 1 (emphasis added). What this phrase means is a matter of first impression. On its face, the plain meaning of “other disposition” is a final determination of the court different from what is implied or specified in the statute.

The statutory language does, however, require that any disposition or relief a district court orders be “appropriate.” *Id.* (stating a person can petition the district court to “make other disposition as may be appropriate”); Minn. Stat. § 590.04, subd. 1 (stating that the district court must “either deny the petition or enter an order granting appropriate relief”).

“[A]ppropriate” is defined as “[s]uitable for a particular person, condition, occasion, or place.” *The American Heritage Dictionary of the English Language* 88 (5th ed. 2011). Accordingly, a district court’s ability to grant “other disposition as may be appropriate” plainly means a final determination of the court other than what is specifically listed, which is suitable for a particular person or occasion.

Applied here, the statutory language gives a district court the authority to grant a remedy such as the refund of restitution a petitioner paid because of a conviction that is later invalidated. Such a remedy is a disposition other than what is listed. And this remedy is certainly appropriate. We have long recognized that when a judgment is reversed, the parties are to be returned to the positions that they were in before the judgment, including having property restored to the initial owner. *See Carl v. De Toffol*, c, 483 (Minn. 1946) (explaining that if a person’s “property is taken under a judgment” and that judgment is reversed, the person is “entitled to restitution of the property,” and that “[t]he plain reason for the rule is that reversal of a judgment nullifies it and restores the parties to the same situation in which they were prior to its rendition”); *Fisk v. Toner*, 41 N.W. 972, 972 (Minn. 1889) (“Upon the dismissal of the action the judgment could no longer stand, and the property, which had been delivered to the plaintiff only by force of the judgment, should be restored.”); *see also Balt. & Ohio R.R. Co. v. United States*, 279 U.S. 781, 786 (1929) (“The right to recover what one has lost by the enforcement of a judgment subsequently reversed is well established.”).

This restoration is essentially the relief Byington requests. Byington was required to pay restitution because she was convicted of a crime. *See* Minn. Stat. § 611A.04, subd. 1

(2020) (“A victim of a crime has the right to receive restitution as part of the disposition of a criminal charge . . . against the offender if the offender is convicted . . .”). A restitution order is enforceable “in the same manner as a judgment in a civil action.” *Id.*, subd. 3 (2020). Byington asks to have the funds she was required to pay because of her conviction restored to her because her judgment of conviction has been reversed and no retrial will occur.<sup>2</sup>

We hold that in a postconviction proceeding, a district court has the authority to order the refund of restitution when the monetary assessments the defendant paid were imposed solely because of the conviction, the State exacted those assessments, and the conviction was invalidated with no prospect of retrial.

### C.

In determining that Byington has a right to relief, we must necessarily decide the scope of that relief. Byington asserts that we should rule that she is entitled to recover a specific amount, stating that she has paid \$10,070.84, which was credited toward her financial obligations in the criminal case, including restitution. The State suggests that if

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<sup>2</sup> Here, the court of appeals determined that MIERA was the sole mechanism for a defendant like Byington to recoup her restitution payments, and because she did not file her claim under MIERA, she was not entitled to relief. *Byington*, 2021 WL 2406681, at \*2. The Supreme Court’s analysis in *Nelson* that Colorado’s Exoneration Act did not comport with due process was in part predicated on that state’s use of that act as the “exclusive remedy” for a defendant to pursue the return of monetary exactions. *See* 581 U.S. \_\_\_, 137 S. Ct. at 1256 (“Is there a risk of erroneous deprivation of defendants’ interest in return of their funds if, as Colorado urges, the Exoneration Act is the exclusive remedy? Indeed yes . . .”). Because we hold that the postconviction statute provides another mechanism for a defendant to receive the repayment of restitution, we decline to consider whether MIERA denies procedural due process by imposing more than minimal procedures on a defendant’s request for a refund of restitution.

there is a right to relief, we should remand to the district court to determine the proper amount of any refund.

We conclude that a remand to the district court is appropriate for an accounting of what Byington is owed. It is unclear from the record how much Byington actually paid in restitution. For example, CCSS credits Byington with having paid \$2,725.84 in restitution, but there is no accounting for the amount paid to the other victim, the amount paid in fines and fees, or whether the balance owed to CCSS is accurate. While Byington asserts that “most” of the \$10,078.84 went toward restitution, she does not point to anything specific in the record to account for how much of that total was specifically credited toward restitution. Further, the district court made no determination on the amount that she paid. Payments Byington made to CCSS and the victim should be credited toward restitution on remand because she was ordered to pay this restitution as part of her sentence for a conviction that has been invalidated and no retrial will occur.<sup>3</sup> The State of Minnesota will be responsible to pay this amount.

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<sup>3</sup> The State asserts that Byington’s repayment agreement with CCSS was outside the sentencing order and entirely not connected with the criminal file. Because the State failed to argue this claim before the district court, it is forfeited. *See Brocks v. State*, 753 N.W.2d 672, 676 (Minn. 2008) (stating that claims raised for the first time on appeal, where a district court did not consider it, are forfeited for the purposes of the appeal). Even if the issue were properly preserved, however, the record shows that Byington was ordered to pay restitution to CCSS as part of her sentence for her coercion conviction. As part of her sentence, Byington was ordered to pay fines, fees, and restitution, including restitution to CCSS. CCSS requested restitution as a victim of the crime that led to Byington’s prosecution, and the plea agreement included that Byington would pay this restitution. The record also includes a probation violation report that lists the conditions of her offense as including restitution to CCSS and correspondence from CCSS reflecting payments Byington made were to be credited toward restitution Byington owed. Together, the record

## CONCLUSION

For the foregoing reasons, we reverse the decision of the court of appeals and remand to the district court for further proceedings consistent with this opinion.

Reversed and remanded.

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shows that Byington paid restitution as part of her sentence, and her payments to CCSS were appropriately credited as restitution.