STATE OF MINNESOTA

IN SUPREME COURT

A22-0662

St. Louis County

Gildea, C.J.

Tyrone James White,

Appellant,

vs.

Filed: February 1, 2023
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, Saint Paul, Minnesota; and

Kimberly J. Maki, St. Louis County Attorney, Nathaniel T. Stumme, Assistant County Attorney, Duluth, Minnesota, for respondent.

S Y L L A B U S

Appellant's postconviction claims are barred by the 2-year time limit in Minn. Stat. § 590.01, subd. 4(a) (2022), and do not satisfy the interests-of-justice exception in Minn. Stat. § 590.01, subd. 4(b)(5) (2022).

Affirmed.

Considered and decided by the court without oral argument.

O P I N I O N

GILDEA, Chief Justice.

In 2003, a jury found Tyron James White guilty of several offenses, including first-degree felony murder, and attempted first-degree premeditated murder. In this appeal, White asserts that the district court abused its discretion by summarily denying his second postconviction petition, which alleges that the jury foreperson was biased because she and one of the potential witnesses worked at the same place. Because the district court did not abuse its discretion, we affirm.

FACTS

Our opinions in White's previous direct and postconviction appeals set forth the facts underlying his convictions. *State v. White* (*White I*), 684 N.W.2d 500, 502–04 (Minn. 2004); *White v. State* (*White II*), 711 N.W.2d 106, 108–09 (Minn. 2006). In this case, we focus on the facts and procedure relevant to the claims made in White's second postconviction petition.

In April 2001, White and three others traveled from Minneapolis to White's friend T.C.'s apartment in Duluth. White and two others went to the apartment while the fourth person waited in the car. White joined T.C. and a man, M.W., in the kitchen. White and M.W. argued. On signal from White, the two others entered the kitchen. One of them shot M.W. several times. M.W. died. T.C. pleaded for her life, but on a signal from White the shooter shot her in the face. She survived.

T.C.'s roommate, T.H., worked at the Fond-Du-Luth Casino at the time of the shooting and was a potential witness. At work, T.H. went by a nickname.

The jury foreperson also worked at the Fond-Du-Luth Casino. When asked by White's counsel during voir dire, the jury foreperson denied knowing anyone on the witness list, even though T.H.'s full name appeared on the list. White's attorney did not inquire further. But White's attorney could have known that T.H. worked at the Fond-Du-Luth Casino because the State disclosed a police report that included information about T.H., including where she worked.

White's lawyer asked the jury foreperson questions about her work. He asked questions about her ability to work on a team and resolve disputes. When White's attorney asked if she "tr[ies] to listen to both sides" in a dispute, the jury foreperson responded, "Yeah. We – there's – everybody's been there in that department for a number of years, so we're kind of all real close, you know, know each other pretty well and each other's habits and stuff."

T.H.'s name came up during T.C.'s testimony. During her testimony, T.C. mentioned T.H.'s nickname twice. And at one point, she identified T.H. by her legal name. T.H.'s name did not come up again, and she did not testify.

The jury found White guilty of several offenses, including first-degree felony murder, and attempted first-degree murder. The district court entered convictions on those two counts and imposed consecutive sentences of life and 180 months, respectively.

White appealed his convictions. He raised four claims on direct appeal, but none related to alleged misconduct by the jury foreperson. *See White I*, 684 N.W.2d at 502. We affirmed. *Id.* at 509.

Shortly after, White filed a petition for postconviction relief alleging, among other claims, that the district court erred by failing to excuse the jury foreperson on the ground that she was not impartial and that his trial counsel was ineffective when he failed to request a *Schwartz* hearing regarding the connection between the foreperson and T.H.[1] The district court rejected those claims, and we affirmed. *White II*, 711 N.W.2d at 108–12.

We rejected White's ineffective assistance claim because White failed to produce any evidence to show the jury foreperson was not impartial. *Id.* We acknowledged White's allegation that a police report stated that T.H. worked at the casino but found "no statement or report mentioning such a statement in the district court record," and White did not attach the report.[2] *Id.* at 112. But we observed that "[i]f [T.H.] was in fact employed at the casino and the foreperson knew her, it is possible that the foreperson had previous knowledge about the case that prevented her from being impartial." *Id.* In addition, we concluded that White's claim of juror misconduct was procedurally barred because White "knew or should have known of these claims at the time of his direct appeal." *Id.* at 109.

White's federal habeas petition was denied in 2014, after which White hired a private investigator. *See White v. Dingle* (*White III*)*,* 757 F.3d 750, 756 (8th Cir. 2014). That investigator did little to no work for White, but White's attorney refused to return the

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[1] The hearing procedure and the name *Schwartz* come from the case *Schwartz v. Minneapolis Suburban Bus Co.*, 104 N.W.2d 301, 303 (Minn. 1960).

[2] In its decision rejecting White's federal habeas claim, the Eighth Circuit later concluded that even with the police report, "[t]he trial record contained no evidence that [the foreperson] and [T.H.] knew each other, that [the foreperson] had prior knowledge of the case, or that [the foreperson] could not be impartial." *White v. Dingle* (*White III*), 757 F.3d 750, 756 (8th Cir. 2014).

investigative fee to White. White found a new investigator, but he was unable to contact the jury foreperson, and the investigation stalled during the COVID-19 pandemic.

The investigation eventually restarted, however, and on March 12, 2021, the investigator briefly spoke with the jury foreperson over the phone about T.H. The conversation suggests that the jury foreperson may have known T.H. and White argues that the jury foreperson seemed irritated with the investigator at times.

In 2022, White filed the postconviction petition at issue here and requested an evidentiary hearing and a new trial. In this petition, he asserted that he was denied his Sixth Amendment right to a trial before an impartial jury and received ineffective assistance of trial and appellate counsel. White argued that his investigator's interview of the jury foreperson establishes that the foreperson knew T.H., and her agitation with his private investigator is evidence of the foreperson's hostility toward White. White also asserted that his trial counsel was ineffective because counsel did not try to remove the foreperson from the jury and that his appellate counsel was ineffective for failing to raise an issue about the juror's impartiality on appeal.

The district court summarily denied the second postconviction petition as time-barred and procedurally barred.[3]

[3] Claims are procedurally barred if they were raised on direct appeal, or if they were known or should have been known but were not raised on direct appeal. *State v. Knaffla,* 243 N.W.2d 737, 741 (Minn. 1976). Because we conclude that White's petition is time-barred, we do not reach the district court's alternative conclusion that the petition was procedurally barred.

White appeals the denial of his second postconviction petition, arguing that the district court abused its discretion when it summarily denied the petition.

ANALYSIS

We review a district court's summary denial of a postconviction petition for an abuse of discretion. *Martin v. State*, 969 N.W.2d 361, 363 (Minn. 2022). In so doing, we review the district court's factual findings for clear error and its legal conclusions de novo. *Eason v. State*, 950 N.W.2d 258, 264 (Minn. 2020).

On appeal, White's argument focuses on whether the district court abused its discretion in dismissing his petition without an evidentiary hearing. But no hearing is required if the claims are time-barred. *Griffin v. State*, 961 N.W.2d 773, 776 (Minn. 2021). White was convicted in 2003, and we affirmed White's conviction on August 6, 2004. His conviction became final 90 days later—on November 4, 2004. *See Moua v. State*, 778 N.W.2d 286, 288 (Minn. 2010) (discussing finality of convictions). In 2005, the Legislature enacted Minn. Stat. § 590.01, subd. 4(a) (2022), which set forth the 2-year time bar and provided that convictions that were final before the date of the amendment would be subject to a 2-year limitation effective August 1, 2005. *See* Act of June 2, 2005, ch. 136, art. 14, § 13, 2005 Minn. Laws 901, 1097–98. Thus, July 31, 2007 was the last date that White could have filed a timely postconviction petition. The parties agree that White missed this deadline, making his petition untimely under subdivision 4(a).

Section 590.01, subdivision 4(b) (2022), however, provides five exceptions to the 2-year time bar in subdivision 4(a), including the interests-of-justice exception, which

White invokes.[4] This exception applies to petitions that are not "frivolous" and when the untimely consideration of the petition is in the "interests of justice." *Caldwell v. State*, 976 N.W.2d 131, 141 (Minn. 2022); *see also* Minn. Stat. § 590.01, subd. 4(b)(5) (requiring that the petitioner establish "to the satisfaction of the court that the petition is not frivolous and is in the interests of justice"). But the exception "relate[s] to the *reason* the petition was filed after the 2–year time limit in subdivision 4(a), not the *substantive claims* in the petition." *Sanchez v. State*, 816 N.W.2d 550, 557 (Minn. 2012); *Caldwell*, 976 N.W.2d at 141. Put differently, to establish the interests of justice referred to in subdivision 4(b)(5), the petitioner "must allege an injustice that caused the delay in filing the petition." *Hooper v. State*, 888 N.W.2d 138, 142 (Minn. 2016).

The district court found that White had not "identif[ied] an injustice that caused him to miss subdivision 4(a)'s deadline." We agree. The trial record contained evidence of the potential connection between the jury foreperson and T.H. And White relied on his theory that the two knew each other in his first petition for postconviction relief. Fifteen years later, White renewed this theory, supported now with his investigator's report. But he has not identified an injustice that caused that delay. *See Rickert v. State*, 795 N.W.2d 236, 242 (Minn. 2011) (concluding that the interests-of-justice exception was met when the trial

[4] Under Minn. Stat. § 590.01, subd. 4(c) (2022), the interests-of-justice exception must have been invoked within 2 years of the date White knew or should have known of the claim. *Sanchez v. State*, 816 N.W.2d 550, 558–60 (Minn. 2012). White first raised this claim in his 2006 postconviction petition. *See White II*, 711 N.W.2d at 109, 112. But the State did not invoke subd. 4(c), so it has forfeited the argument. *Carlton v. State*, 816 N.W.2d 590, 601 (Minn. 2012) ("[T]he statute of limitations in Minn. Stat. § 590.01, subd. 4(c), is not jurisdictional and therefore is subject to [forfeiture] by the State.").

transcript was not delivered until 2 days before the statute of limitations expired).

To be sure, White complains that he was denied a *Schwartz* hearing and that without a *Schwartz* hearing, he has been unable to prove his claim of juror misconduct. But nothing in the record suggests that those denials were improper or otherwise unjust.[5]

Similarly, White's reliance on his struggles with previous counsel and private investigators is also misplaced because nothing in the record suggests that conduct of counsel or the investigators was improper or unjust. *See Hooper*, 888 N.W.2d at 142. Because White failed to establish an injustice that caused the delay in filing of his petition, we hold that the district court did not abuse its discretion when it summarily denied White's second postconviction petition as untimely.

CONCLUSION

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

Affirmed.

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[5] White argues that it was not his fault that he lacked evidence to show juror misconduct because courts have repeatedly denied him a *Schwartz* hearing. White argues that *Schwartz* creates a circular standard: it requires White to show evidence of juror misconduct while also declining him a hearing to explore juror misconduct. The *Schwartz* hearing balances the interests of litigants while also disincentivizing juror harassment. *See Schwartz*, 104 N.W.2d at 303; *see also Olberg v. Minneapolis Gas Co.*, 191 N.W.2d 418, 425 (Minn. 1971) ("Many cases may arise where there is utterly no suspicion of jury misconduct. It may be argued that in such situations a Schwartz hearing is possible only after a juror has been contacted by the losing party. The answer to this argument is simply that attorneys should not be allowed to contact and harass jurors who render verdicts of a nonsuspicious nature."). White's failure to meet his burden to show prima facie evidence of juror misconduct does not render the standard circular; it merely suggests that there was no juror misconduct. *See White III*, 757 F.3d at 756 (concluding that there was no evidence of bias when considering the police report). It is not unjust for a court to deny a *Schwartz* hearing when the hearing is not warranted.