

STATE OF MINNESOTA
IN SUPREME COURT
A22-1020

Hennepin County

Hudson, J.

Kawaskii Antonio Blanche,

Appellant,

vs.

Filed: April 12, 2023
Office of Appellate Courts

State of Minnesota,

Respondent.

Stephen V. Grigsby, Northfield, Minnesota, for appellant.

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

Mary F. Moriarty, Hennepin County Attorney, Anna R. Light, Assistant County Attorney,
Minneapolis, Minnesota, for respondent.

S Y L L A B U S

The district court did not abuse its discretion when it determined that appellant's second postconviction petition is time-barred because appellant's postconviction claim fails to satisfy the newly discovered evidence or the interests-of-justice exceptions.

Affirmed.

OPINION

HUDSON, Justice.

This case presents the issue of whether the district court abused its discretion when it summarily denied appellant Kawaskii Antonio Blanche's second postconviction petition as time-barred because Blanche's postconviction claim fails to satisfy the newly discovered evidence or the interests-of-justice exceptions. Following a jury trial, Blanche was convicted of premeditated first-degree murder for his involvement in the 1996 drive-by shooting death of 11-year-old B.P. in North Minneapolis.¹ In this postconviction petition, Blanche asserts a newly discovered evidence claim based on statements made by Corey Scott, the intended victim of the gang-related shooting, to law enforcement officers indicating that the fatal gunshots were fired from a gray Chevrolet Cavalier. Blanche alleges that the State committed a *Brady* violation when it failed to disclose this exculpatory information to him before his trial. *See Brady v. Maryland*, 373 U.S. 83, 87 (1963) (holding that suppression by the prosecution of material evidence favorable to the defendant violates due process). The district court summarily denied Blanche's postconviction petition as time-barred because it does not satisfy the newly discovered evidence or the interests-of-justice exceptions. Blanche now appeals, arguing that the district court abused its discretion when it summarily denied the petition. Because we conclude that the district court did not abuse its discretion, we affirm.

¹ Blanche was also convicted of second-degree murder, conspiracy to commit murder, and crime committed for the benefit of a gang.

FACTS

In 1996, there was ongoing violence, including drive-by shootings, between two rival gangs in Minneapolis: the “Shortys Taking Over” and the “Bogus Boyz.” Blanche was involved with the Bogus Boyz. On June 2, 1996, 11-year-old B.P. was shot and killed while playing on a porch in North Minneapolis with two other boys.² The intended target of the drive-by shooting was Corey Scott, a member of the Shortys Taking Over gang. One of the boys playing on the front porch with the victim testified that the fatal gunshots were fired from a red car with visible rust spots. The boy gave a similar statement to a police officer after the shooting. The other boy playing with the victim testified that the fatal shots were fired from a blue car with a large number of visible rust spots.

Scott was arrested and questioned on August 9, 1996, in connection to his involvement in the drive-by shootings. *State v. Scott*, 584 N.W.2d 412, 415 (Minn. 1998). Law enforcement officers asked Scott to “provide any information that he had about who was shooting at him on the day that [B.P.] was killed.” *Id.* “A videotape and audiotape were made of the entire 3-hour period during which the police questioned Scott.” *Id.* Summaries of Scott’s various statements to law enforcement officers, including the interview on August 9, 1996, were provided to Blanche before his trial. The August 9 interview summary contained Scott’s account of the make, model, and color of cars nearby at the time that he heard the fatal gunshots fired on June 2. The interview summary noted that Scott saw a “gray Chevy Cavalier speed past” him at the time of the shooting. A later

² A more complete description of the facts can be found in *State v. Blanche*, 696 N.W.2d 351, 358–60 (Minn. 2005).

statement of Scott to law enforcement from November 1996, which was also provided to Blanche before trial, stated that Scott saw a passenger “with his arm over the hood shooting” from the gray Cavalier. Scott also identified someone other than Blanche as the shooter.

At Blanche’s trial, the State’s theory was that the fatal gunshots were fired from a red Nissan Maxima. The State connected Blanche to a maroon Nissan Maxima owned by his co-defendant Montay Bernard’s mother. The jury found Blanche guilty, and the district court sentenced him to life in prison along with sentences for the other crimes of which he was convicted. Blanche did not file a direct appeal.

In 2002, Blanche filed his first postconviction petition challenging: (1) the State’s peremptory strike of a prospective juror, (2) a Confrontation Clause violation based on the admission of his co-defendant’s statements during the trial, (3) the district court’s decision to join Blanche’s trial with his co-defendant, (4) the admission of expert testimony on gang activity, (5) prosecutorial misconduct, (6) ineffective assistance of counsel, and (7) the district court’s decision to make an upward sentencing departure. The district court summarily denied the petition, and we affirmed on appeal. *State v. Blanche*, 696 N.W.2d 351, 380 (Minn. 2005).

In his second postconviction petition filed in 2022, Blanche alleged the existence of newly discovered and exculpatory evidence. Blanche argued that the State failed to disclose Scott’s August 9, 1996 statement to him before his trial, resulting in a *Brady* violation. *See Brady*, 373 U.S. at 87. Blanche asserted that he was unaware of Scott’s statements to law enforcement regarding the gray Chevrolet Cavalier until 2021, when he

read about the statement in *State v. Scott* while doing legal research for Blanche’s own case. *See* 584 N.W.2d at 415. Blanche alleged that he was deprived of Scott’s eyewitness account and testimony regarding the make, model, and color of the car from which the fatal gunshots were fired. According to Blanche, this testimony would have been exculpatory and impacted the outcome of his trial.

The district court summarily denied Blanche’s second postconviction petition as time-barred because it was filed over 14 years after the deadline for postconviction claims and did not satisfy the newly discovered evidence exception. Further, the district court stated that “even if it was new evidence the interview did not have a reasonable probability of changing the results of the trial.” The district court also found that Blanche’s claim did not satisfy the interests-of-justice exception because he did not allege an injustice that caused him to miss the deadline for filing his postconviction claim.

Blanche now appeals to this court.

ANALYSIS

We review the summary denial of a petition for postconviction relief for an abuse of discretion. *Martin v. State*, 969 N.W.2d 361, 363 (Minn. 2022). A district court abuses its discretion when “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 findings.” *El-Shabazz v. State*, 984 N.W.2d 569, 573 (Minn. 2023) (citations omitted) (internal quotation marks omitted). We review the district court’s legal conclusions de novo and its factual findings for clear error. *Thoresen v. State*, 965 N.W.2d 295, 303 (Minn. 2021).

Minnesota Statutes section 590.01, subdivision 4 (2022), requires that a petition for postconviction relief be filed within 2 years after “the later of: (1) the entry of judgment of conviction or sentence if no direct appeal is filed; or (2) an appellate court’s disposition of petitioner’s direct appeal” unless an exception applies.³ If a petitioner’s conviction became final before August 1, 2005, the 2-year limitations period runs from August 1, 2005. *See* Act of June 2, 2005, ch. 136, art. 14, § 13, 2005 Minn. Laws 901, 1097–98.

A district court need not hold an evidentiary hearing if the alleged facts, when viewed in a light most favorable to the petitioner, together with the arguments of the parties, “‘conclusively show’ that the petitioner is not entitled to relief.” *Riley v. State*, 819 N.W.2d 162, 167 (Minn. 2012) (quoting Minn. Stat. § 590.04, subd. 1 (2022)). A court therefore “may summarily deny a claim that is untimely under the 2-year statute of limitations.” *Rossberg v. State*, 932 N.W.2d 6, 9 (Minn. 2019).

Here, Blanche was convicted and sentenced in 1999 and did not file a direct appeal. But because his conviction became final before August 1, 2005, the 2-year limitations

³ As a preliminary matter, Blanche argues that “[w]hen the state commits a [*Brady*] violation, it waives any right to assert an objection as to time, because it is the source of the violation and the untimeliness of the Petition” and “[t]here is no statute of limitations for [*Brady*] and any objection to such has been waived by the misconduct of non-disclosure.” Blanche does not cite to authority to support these assertions, so they are not viable. *See State v. Krosch*, 642 N.W.2d 713, 719 (Minn. 2002) (“The brief contains no argument or citation to legal authority in support of the allegations and we therefore deem them waived.”). In addition, Blanche’s argument that *Brady* claims are not subject to the statute of limitations is not supported by our precedent. *See Griffin v. State*, 941 N.W.2d 404, 410 (Minn. 2020) (holding that petitioner’s *Brady* claim failed to meet the newly discovered evidence exception to the time-bar, because, even taking the allegations as true, the evidence did not establish that he was innocent of the crimes for which he was convicted).

period started running from that date. *See* Act of June 2, 2005, ch. 136, art. 14, § 13, 2005 Minn. Laws 901, 1097–98. The postconviction deadline therefore expired in 2007. Blanche filed his current claim in 2022. The claim was therefore filed over 14 years beyond the time limit. Accordingly, Blanche’s petition is untimely unless it falls within one of the exceptions enumerated in Minnesota Statutes section 590.01, subdivision 4(b), which includes exceptions for newly discovered evidence and the interests of justice.

First, Blanche argues that his claim is based on newly discovered evidence. An exception exists for newly discovered evidence of innocence “that could not have been ascertained by the exercise of due diligence by the petitioner or petitioner’s attorney” before the 2-year time limit expired. Minn. Stat. § 590.01, subd. 4(b)(2). To satisfy the exception for newly discovered evidence, the petitioner must show that the evidence:

(1) is newly discovered; (2) could not have been ascertained by the exercise of due diligence by the petitioner or the petitioner’s attorney within the 2-year time-bar for filing a petition; (3) is not cumulative to evidence presented at trial; (4) is not for impeachment purposes; and (5) establishes by the clear and convincing standard that petitioner is innocent of the offenses for which he was convicted.

Riley, 819 N.W.2d at 168; *see also* Minn. Stat. § 590.01, subd. 4(b)(2). “All five requirements must be met for this exception to apply.” *Henderson v. State*, 906 N.W.2d 501, 506 (Minn. 2018).

Blanche argues that Scott’s identification of the gray Chevrolet Cavalier as the car from which the fatal gunshots were fired is exculpatory and that he did not know about the interview or its substance until 2021, when he read *State v. Scott*. According to Blanche, the interview is therefore newly discovered evidence.

The State responds that the interview cannot be considered newly discovered because a summary of the August 9 interview was provided to Blanche before his trial. According to the State, the summary of the August 9 interview included Scott's reference to the gray Chevrolet Cavalier and included a notation that the entire interview was videotaped. Furthermore, the State contends that even without the disclosure of the interview summary, Blanche or his attorney could have discovered the evidence with due diligence because the interview was mentioned in the publicly available *State v. Scott* decision, which was released in 1998, before Blanche's trial began.

The State is correct that the interview containing Scott's statements does not satisfy the first prong of the newly discovered evidence exception because the statements are not newly discovered. The State disclosed summaries of several interviews containing the pertinent information to Blanche before his trial. Specifically, the summary of the August 9 interview was provided to Blanche and his attorney. The summaries mentioned the information that Blanche now claims was unknown and is exculpatory.

Further, the *State v. Scott* decision containing reference to the August 9 interview could have been found before Blanche's trial through due diligence. The *Scott* opinion was released on August 27, 1998. *See Scott*, 584 N.W.2d at 412. *State v. Scott* specifically references the murder of B.P. and that the Scott interview was recorded. *Id.* at 414–15 (“Scott was the intended victim of a drive-by shooting on June 2nd that resulted in the death of 11-year-old [B. P.]. . . . “A videotape and audiotape were made of the entire 3-hour period during which the police questioned Scott.”). Blanche's trial for the murder of B.P. began after the release of *State v. Scott*. The law enforcement interviews with Scott

were also referenced at Blanche’s trial. Because Blanche or his attorney could have discovered the existence of the videotaped interview within the statutory timeframe, the claim fails on the second prong of the newly discovered evidence exception.⁴

The district court also found that Blanche’s claim does not meet the interests-of-justice exception. The interests-of-justice exception to the time-bar allows a court to hear an untimely postconviction claim 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). To satisfy the interests-of-justice exception, the petitioner must first allege an injustice that prevented him from meeting the statutory time limit. *See Sanchez v. State*, 816 N.W.2d 550, 557 (Minn. 2012).

The interests-of-justice exception is intended for injustices related to a delay in filing a petition, not an injustice related to the substance of a petition. *See id.* Blanche’s argument that he could not file his petition because he did not know about his claim due to the State’s failure to disclose the interview is the same argument that he uses to oppose his conviction in the substance of his petition. His claim therefore fails to satisfy the interests-of-justice exception. *See id.* Blanche has not alleged “an injustice that delayed the filing of the petition.” *Hooper v. State*, 888 N.W.2d 138, 142 (Minn. 2016).⁵

⁴ The State also argues that Blanche’s claim fails to satisfy the fifth requirement of the newly discovered evidence exception, which requires that the petitioner show that the evidence establishes by the clear and convincing standard that petitioner is innocent of the offenses for which he was convicted. Because the claim fails to satisfy the first and second prongs of the newly discovered evidence exception, we do not reach the fifth prong.

⁵ Because the petition is time-barred, we do not address the issues of whether Blanche’s claim is procedurally barred by *State v. Knaffla*, 243 N.W.2d 737, 741

Accordingly, Blanche's claims do not satisfy the newly discovered evidence or the interests-of-justice exceptions, and the district court did not abuse its discretion when it summarily denied Blanche's second postconviction petition as untimely under Minnesota Statutes section 590.01, subdivision 4.

CONCLUSION

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

Affirmed.

(Minn. 1976) or whether the substance of Blanche's claim has merit, namely whether the State's disclosure of only a summary of the Scott interview, rather than the full recording, was a *Brady* violation.