

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

2023 ND 67

Byron Whetsel,

Petitioner and Appellant

v.

The State of North Dakota,

Respondent and Appellee

No. 20220351

Appeal from the District Court of Ransom County, Southeast Judicial District,
the Honorable Jay A. Schmitz, Judge.

AFFIRMED.

Per Curiam.

Benjamin C. Pulkrabek, Mandan, ND, for petitioner and appellant.

Fallon M. Kelly, State's Attorney, Lisbon, ND, for respondent and appellee.

Whetsel v. State
No. 20220351

Per Curiam.

[¶1] Byron Whetsel appeals from an order summarily dismissing his application for post-conviction relief before an evidentiary hearing was held. Whetsel applied for post-conviction relief on August 4, 2022, approximately five years after being convicted of criminal charges. He argues his sentences are unconstitutional pursuant to the Eighth Amendment’s prohibition against cruel and unusual punishment. The district court dismissed his application finding that Whetsel did not satisfy any condition under N.D.C.C. § 29-32.1-01(3) warranting consideration outside the statutory two-year period for requesting relief, and that Whetsel did not provide adequate evidentiary support for his claims to warrant a hearing. We conclude the district court properly dismissed Whetsel’s application under these circumstances. We summarily affirm under N.D.R.App.P. 35.1(a)(6). *See Atkins v. State*, 2017 ND 290, ¶ 6, 904 N.W.2d 738 (finding summary denial of post-conviction relief appropriate when the State moves for summary disposition, and a petitioner fails to provide some competent evidence to support his claims).

[¶2] Jon J. Jensen, C.J.
Daniel J. Crothers
Lisa Fair McEvers
Jerod E. Tufte
Douglas A. Bahr