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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-2020**

Gary Leroy Reynolds, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed August 28, 2017
Affirmed
Reilly, Judge**

Douglas County District Court
File No. 21-K5-05-000778

Gary Leroy Reynolds, Faribault, Minnesota (pro se appellant)

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Chad M. Larson, Douglas County Attorney, Alexandria, Minnesota (for respondent)

Considered and decided by Reilly, Presiding Judge; Reyes, Judge; and Jesson,
Judge.

UNPUBLISHED OPINION

REILLY, Judge

Appellant Gary Leroy Reynolds challenges the denial of his petition for postconviction relief following his first-degree criminal sexual conduct conviction.

Because the postconviction court properly denied relief on the basis that appellant's postconviction petition was statutorily time-barred and procedurally barred, we affirm.

DECISION

Denial of a petition for postconviction relief is reviewed for an abuse of discretion. *State v. Vang*, 847 N.W.2d 248, 266 (Minn. 2014). The postconviction court's factual determinations are reviewed under a clearly erroneous standard and will not be reversed unless they lack factual support in the record. *Id.* Legal conclusions are reviewed de novo. *Davis v. State*, 784 N.W.2d 387, 390 (Minn. 2010).

I.

Appellant's postconviction petition is untimely under Minnesota Statutes section 590.01, which precludes the filing of a petition for postconviction relief "more than two years after . . . an appellate court's disposition of petitioner's direct appeal." Minn. Stat. § 590.01, subd. 4(a)(2) (2016). Appellant entered a plea of guilty to first-degree criminal sexual conduct on November 17, 2006, we affirmed the conviction on June 17, 2008, and the Minnesota Supreme Court denied further review on August 19, 2008. *State v. Reynolds*, No. A07-0718, 2008 WL 2415409 (Minn. App. June 17, 2008, *review denied* (Minn. Aug. 19, 2008)). Appellant's direct appeal became final 90 days later, in November 2008. See *Berkovitz v. State*, 826 N.W.2d 203, 207 (Minn. 2013) ("When an appellant does not file a petition for certiorari with the Supreme Court of the United States following [the Minnesota appellate court's] decision on direct appeal, the appellant's conviction becomes 'final' 90 days after [the court's] decision for purposes of Minn. Stat. § 590.01, subd. 4(a)(2)."). Appellant's postconviction petition, filed on August 15, 2016, is untimely under

the two-year statutory deadline imposed by section 590.01, subdivision 4(a), and there is no error of law in the postconviction court's dismissal of appellant's petition as untimely.

II.

Minnesota recognizes certain exceptions to the two-year limitations period in subdivision 4(a). Minn. Stat. § 590.01, subd. 4(b). A postconviction court may consider a petition for postconviction relief outside of the two-year limitations period if the petitioner establishes “that a physical disability or mental disease precluded a timely assertion of the claim,” or 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)(1), (5) (2016). A petitioner seeking relief under subdivision 4(b) must file the petition “within two years of the date the claim arises.” Minn. Stat. § 590.01, subd. 4(c). “A claim arises under subdivision 4(c) when the petitioner knew or should have known that he had a claim.” *Hannon v. State*, 889 N.W.2d 789, 793 (Minn. 2017) (quotation omitted). A postconviction court does not abuse its discretion by “summarily deny[ing] a petition that invokes an exception to the statute of limitations when the claim underlying the exception arises more than 2 years before the petition is filed.” *Id.*

Appellant claims that he suffered from a mental disability that prevented him from understanding the charges filed against him or the consequences of the sentence imposed, and that his trial counsel failed to adequately apprise the court of these disabilities at trial or on appeal. The postconviction court rejected these arguments on the ground that appellant admitted that a mental disability existed at the time of his conviction and direct

appeal. We agree. Appellant has not demonstrated that a mental disability prevented him from timely filing a petition for postconviction relief under subdivision 4(b)(1).

We likewise reject appellant's claim that he is entitled to relief under the interests-of-justice exception in subdivision 4(b)(5). This exception applies when the petitioner establishes that "the petition is not frivolous and is in the interests of justice." *Brown v. State*, 863 N.W.2d 781, 788 (Minn. 2015) (quoting Minn. Stat. § 590.01, subd. 4(b)(5)). It is "triggered by an injustice that caused the petitioner to miss the primary postconviction deadline, not the substantive merits of the petition," and is reserved "for exceptional cases" only. *Id.* (emphasis omitted). This is not an exceptional case. Appellant claims that he received ineffective assistance of counsel, that the district court improperly admitted evidence, and that the district court failed to hold an evidentiary hearing on appellant's mental defect. But these issues were directly appealable after appellant's conviction, and he failed to raise them on appeal. Appellant has not demonstrated that he is entitled to relief under subdivision 4(b)(5).

III.

Appellant's postconviction petition is also procedurally barred under *State v. Knaffla*, which provides that a postconviction court will not review successive petitions for postconviction relief that assert the same issues that were raised or could have been raised in a direct appeal or in a prior petition for postconviction relief. 309 Minn. 246, 252, 243 N.W.2d 737, 741 (1976). We agree with the postconviction court that "[e]very ground raised by Petitioner to support his petition for postconviction relief could have been raised on direct appeal."

Further, appellant has not established that an exception applies to the procedural bar. Minnesota courts recognize the following two exceptions to an otherwise *Knaffla*-barred claim: “if (1) the defendant presents a novel legal issue or (2) the interests of justice require the court to consider the claim.” *Hooper v. State*, 838 N.W.2d 775, 787 (Minn. 2013) (quotation omitted). For a claim “[t]o be reviewed in the interests of justice, a claim must have merit and must be asserted without deliberate or inexcusable delay.” *Wright v. State*, 765 N.W.2d 85, 90 (Minn. 2009). “The second exception may be applied if fairness requires it and the petitioner did not deliberately and inexcusably fail to raise the issue on direct appeal.” *White v. State*, 711 N.W.2d 106, 109 (Minn. 2006) (quotation omitted).

Neither exception applies here. Appellant has not presented a novel argument, nor has he established that the interests of fairness and justice warrant relief. Because appellant could have asserted these arguments in his direct appeal and failed to do so, and because he has not asserted a *Knaffla* exception, his claims are barred procedurally. The district court did not abuse its discretion in determining that appellant’s postconviction petition was procedurally barred.

Affirmed.