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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0152**

Mahmoud Mahdy Musta Soltan, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed September 5, 2017
Affirmed
Larkin, Judge**

Hennepin County District Court
File No. 27-CR-02-031913

Mahmoud M. Soltan, Minnetonka, Minnesota (pro se appellant)

Considered and decided by Worke, Presiding Judge; Larkin, Judge; and Klaphake,
Judge.*

UNPUBLISHED OPINION

LARKIN, Judge

Appellant challenges the district court's denial of his petition for eligibility for compensation based on exoneration under Minn. Stat. § 590.11 (2016). We affirm.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

FACTS

On April 22, 2002, appellant Mahmoud Mahdy Musta Soltan attended a courtroom proceeding at the Hennepin County Courthouse in Minnetonka. During the proceeding, the district court asked Soltan's wife, who was sitting in the audience, if she was "okay." She answered, "Yeah." Next, the district court asked Soltan, who was seated next to her, "How about you sir?" Soltan replied, "I have nothing to say to you." Soltan and his wife got up to leave the courtroom. Soltan and the district court "exchanged goodbyes," and the district court said, "Have a good day." Soltan responded, "Happy Hanukkah."

The district court found Soltan in contempt of court and sentenced him to a 30-day jail term. Soltan appealed the contempt conviction, arguing that (1) the district court's summary finding of contempt violated his right to due process, (2) he was not guilty of criminal contempt because he did not violate a court order, and (3) the evidence was insufficient to establish beyond a reasonable doubt that his words were contumacious. *State v. Soltan*, No. C6-02-710, 2002 WL 31867703, at *1-2 (Minn. App. Dec. 24, 2002) (*Soltan I*). The district court denied Soltan's motion for release pending appeal.

This court rejected Soltan's arguments that the contempt finding violated his right to due process and that he was not guilty of contempt because he did not violate a court order. *Id.* However, because the district court did not issue findings or an order following its summary contempt determination, this court remanded for a written order and findings of fact. *Id.* at *2-3.

On remand, the district court issued a written order and factual findings supporting its contempt determination. The district court found that while Soltan was leaving the

courtroom, he said “Happy Hanukkah” to the district court judge, and, “looking directly at the presiding judge, [Soltan] put his thumb to his nose, wiggled his fingers, and held up the same hand with only the middle finger extended.” Soltan did not appeal the district court’s contempt order following the remand.

In June 2016, Soltan petitioned for eligibility for compensation based on exoneration under Minn. Stat. § 590.11. The district court denied Soltan’s petition, reasoning that (1) the district court was authorized to hold Soltan in contempt; (2) Soltan was not exonerated of the contempt; (3) Soltan failed to show that “a crime was not committed or that the crime was not committed by the petitioner,” as was his burden under Minn. Stat. § 590.11; and (4) Soltan failed to show that he was convicted of a felony or that he served any part of his sentence in prison, as required under Minn. Stat. § 590.11. Soltan appeals.

DECISION

The Minnesota Imprisonment and Exoneration Remedies Act (MIERA) provides compensation to eligible persons who served time in prison for a crime they did not commit. Minn. Stat. §§ 611.362-.368 (2016); *see id.* at § 590.11, subd. 5 (setting out criteria for eligibility). A person may not bring a claim for an award of compensation based on exoneration unless the person “receives an order under section 590.11 determining that the person is entitled to compensation based on exoneration.” Minn. Stat. § 611.362, subd. 1.

Minn. Stat. § 590.11 establishes several requirements for eligibility for compensation. Because the provisions of Minn. Stat. § 590.11 only apply to persons who

have been “exonerated,” as defined in Minn. Stat. § 590.11, subd. 1, only persons who meet that definition are eligible for compensation. *Back v. State*, 883 N.W.2d 614, 619 (Minn. App. 2016), *review granted* (Minn. Sept. 28, 2016). “[E]xonerated,” means that:

- (1) a court of this state:
 - (i) vacated or reversed a judgment of conviction on grounds consistent with innocence and the prosecutor dismissed the charges;¹ or
 - (ii) ordered a new trial on grounds consistent with innocence and the prosecutor dismissed the charges or the petitioner was found not guilty at the new trial; and
- (2) the time for appeal of the order resulting in exoneration has expired or the order has been affirmed and is final.

Minn. Stat. § 590.11, subd. 1.

If the petitioner was exonerated and the prosecutor does not join the petition, the district court must determine whether the petitioner is eligible for compensation based on innocence. *Id.*, subd. 3(b). The petitioner must establish, by a preponderance of the evidence, “that a crime was not committed or that the crime was not committed by the petitioner.” *Id.*; Minn. Stat. § 590.04, subd. 3 (2016).

If the district court determines that a crime was not committed or that the crime was not committed by the petitioner, a claim for compensation arises if:

- (1) the person was convicted of a felony and served any part of the imposed sentence in prison;

¹ In *Back*, this court held that the requirement in Minn. Stat. § 590.11, subd. 1(1)(i), that a court must vacate or reverse a judgment of conviction on grounds consistent with innocence and the prosecutor must dismiss the charges, violates the Equal Protection Clause of the Minnesota Constitution. 883 N.W.2d at 627. This court severed and excised the words “and the prosecutor dismissed the charges” from that provision. *Id.* at 628.

(2) in cases where the person was convicted of multiple charges arising out of the same behavioral incident, the person was exonerated for all of those charges;

(3) the person did not commit or induce another person to commit perjury or fabricate evidence to cause or bring about the conviction; and

(4) the person was not serving a term of imprisonment for another crime at the same time, provided that if the person served additional time in prison due to the conviction that is the basis of the claim, the person may make a claim for that portion of time served in prison during which the person was serving no other sentence.

Minn. Stat. § 590.11, subd. 5(a).

The application of a statute to the undisputed facts of a case is a question of law that we review de novo. *Mell v. Comm’r of Pub. Safety*, 757 N.W.2d 702, 709 (Minn. App. 2008).

Soltan does not meet the requirements of Minn. Stat. § 590.11. First, Soltan has not been exonerated. In *Soltan I*, this court expressly rejected Soltan’s arguments that the district court’s summary finding of contempt violated his right to due process and that he was not guilty of contempt because he did not violate a court order. 2002 WL 31867703, at *1-2. This court remanded to the district court for a written order and findings. *Id.* at *2-3. Because this court did not vacate or reverse Soltan’s contempt conviction or order a new trial, Soltan has not been exonerated under Minn. Stat. § 590.11, subd. 1. Second, Soltan was convicted of misdemeanor contempt of court and not a felony offense as required under Minn. Stat. § 590.11, subd. 5. And third, although Soltan served time in jail, he never served time in prison as required under Minn. Stat. § 590.11, subd. 5.

Soltan argues that (1) the evidence was insufficient to support his contempt conviction, (2) the district court “failed to make the statutorily required order and finding of fact pursuant to Minn. Stat. 588.03,” and (3) although he was not convicted of a felony, he “suffered needlessly for 20 days in the Hennepin County Adult Correctional Facility.” Soltan’s arguments do not overcome his inability to satisfy the statutory requirements described above. He therefore is not entitled to relief under the plain language of Minn. Stat. § 590.11. *See State ex rel. Duncan v. Roy*, 887 N.W.2d 271, 276 (Minn. 2016) (“When legislative intent is clear from the statute’s plain and unambiguous language, we interpret the statute according to its plain meaning without resorting to other principles of statutory interpretation.” (quotation omitted)). The district court therefore did not err by denying Soltan’s petition.

Affirmed.