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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1104**

Byron Kenneth Anderson, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed April 30, 2018
Affirmed
Ross, Judge**

Stearns County District Court
File No. 73-K7-92-003696

Cathryn Middlebrook, Chief Appellate Public Defender, Sara J. Euteneuer, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Janelle P. Kendall, Stearns County Attorney, Michael J. Lieberg, Assistant County Attorney, St. Cloud, Minnesota (for respondent)

Considered and decided by Worke, Presiding Judge; Peterson, Judge; and Ross, Judge.

UNPUBLISHED OPINION

ROSS, Judge

Byron Anderson is civilly committed as a sexual psychopathic personality and a sexually dangerous person, and he now challenges one of the convictions giving rise to his

commitment. Anderson pleaded guilty to first-degree criminal sexual conduct in 1993 partly in exchange for a Stearns County prosecutor's promise that she would not seek his civil commitment as a sexually dangerous person if he completed sex-offender treatment. Thirteen years later, Hennepin County successfully petitioned for his civil commitment, and Anderson unsuccessfully challenged the commitment in state and federal court. Anderson petitioned for postconviction relief, arguing that he should be allowed to withdraw his guilty plea because the plea agreement rested on an illusory promise. The district court dismissed his petition as tardy. Because Anderson petitioned for postconviction relief after the statutory deadline, we affirm.

FACTS

In November 1992, a Stearns County prosecutor charged Byron Anderson with first-degree criminal sexual conduct for assaulting a 21-year-old woman. Anderson struck a deal with the prosecutor and pleaded guilty. At the plea hearing in 1993, the prosecutor described the agreement to the district court, and the following exchange occurred:

Prosecutor: Additionally, it will be agreed that the prosecutor, and that is me personally, if Mr. Anderson while in the custody of the Commissioner of Corrections actively participates and successfully completes the appropriate treatment identified that he needs in the institution, I personally will not recommend that psychopathic offender commitment be pursued. And I want to emphasize that's my responsibility and that recommendation would come from me if all conditions had been satisfied.

The Court: And you're not saying that anyone else is free to do that?

Prosecutor: That's right.

The district court accepted Anderson's guilty plea and sentenced him to 67 months in prison to be served consecutive to a previously executed sentence for Anderson's 1990 Pope County rape of a 60-year-old woman in her home, imposed a five-year conditional release term, and ordered Anderson to pay restitution. We affirmed the sentence except for the restitution order. *State v. Anderson*, 520 N.W.2d 184, 187–88 (Minn. App. 1994). The lengthy sentence incorporated Anderson's sexual-assault history. We have summarized, "In the five-year period from 1987 to 1992, . . . Byron Anderson, then in his 20s, had sexual incidents with seven victims." *In re Civil Commitment of Anderson*, A12-1111, 2012 WL 5476173, at *1 (Minn. App. Nov. 13, 2012).

Stearns County petitioned the district court in 2002 to civilly commit Anderson as a sexual psychopathic personality and a sexually dangerous person. Two physicians opined that good cause did not support commitment, and the district court dismissed the petition. Anderson completed in-patient sex-offender treatment in 2003, but he never completed outpatient treatment.

Hennepin County petitioned for Anderson's civil commitment in 2005 as a sexual psychopathic personality and a sexually dangerous person and succeeded. We affirmed. *In re Civil Commitment of Anderson*, A06-2008, 2007 WL 824019, at *8 (Minn. App. Mar. 20, 2007). Anderson challenged the commitment again, and the district court denied the challenge. *Anderson*, 2012 WL 5476173, at *2. We again affirmed. *Id.* at *4. We rejected Anderson's argument that the state violated the terms of the plea agreement by securing his commitment, reasoning that after Anderson failed to present any evidence of the actual terms of the plea agreement, the district court found that "even if a Stearns

County prosecutor did agree not to pursue [his] civil commitment . . . , this would not bind Hennepin County, which petitioned for his commitment, or Douglas County, where the trial on the petition occurred.” *Id.* at *3.

Anderson filed two petitions for habeas corpus relief in federal district court. *Anderson v. Dayton*, 2014 WL 1309143, at *1 (D. Minn. Mar. 31, 2014). Anderson argued that his due process and equal protection rights were violated when the state sought his commitment contrary to the Stearns County prosecutor’s promise. *Id.* at *2–3. The federal court denied both petitions. *Id.* at *5.

In November 2016, Anderson moved the state district court to withdraw his plea. Anderson argued that his motion survives the two-year deadline for postconviction petitions under Minnesota Statutes, section 590.01, subdivision 4 (2016), because his claim meets the manifest-injustice exception of Minnesota Rule of Criminal Procedure 15.05 and the “mental disease,” “newly discovered evidence,” “new interpretation of law,” and “interests of justice” deadline exceptions. The district court found the petition untimely and meritless.

Anderson appeals.

D E C I S I O N

Anderson challenges the district court’s order denying his postconviction petition. We review legal issues in a postconviction decision de novo and factual issues for clear error. *Matakis v. State*, 862 N.W.2d 33, 36 (Minn. 2015). We will reverse only if the postconviction court exercised its discretion arbitrarily or capriciously, relied on an erroneous view of the law, or issued clearly erroneous findings. *Id.*

Anderson maintains that the district court abused its discretion by dismissing his petition as untimely. The postconviction statute bars petitions “filed more than two 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.” Minn. Stat. § 590.01, subd. 4(a)(1)–(2) (2016). Anderson’s 2016 petition missed the two-year deadline by more than a decade. The statute includes various exceptions to the deadline, including one that applies when the petitioner demonstrates that his “petition is not frivolous and is in the interests of justice.” *Id.* at subd. 4(b)(5) (2016). This interests-of-justice exception has its own two-year deadline, requiring a convicted person to petition for relief within two years after the date that the grounds for the exception arose. *Id.* at subd. 4(c) (2016). That deadline within a deadline is absolute. *Roby v. State*, 808 N.W.2d 20, 29–30 (Minn. 2011) (concluding that interests-of-justice claims that arose more than two years before defendant filed his petition for postconviction relief were time barred). Anderson’s petition is therefore timely only if the grounds supporting it occurred within two years before he filed his petition.

Anderson’s petition is too late. A petitioner’s claim under the interests-of-justice exception “arises when the petitioner knew or should have known that he had a claim.” *Sanchez v. State*, 816 N.W.2d 550, 560 (Minn. 2012). Whether Anderson knew or should have known he had a claim is a question of fact that we review for clear error. *Wayne v. State*, 832 N.W.2d 831, 834 (Minn. 2013). The district court identified four events that occurred after the 1992 plea-agreement promise that put Anderson on notice of those events that would presumably support his broken-promise, interests-of-justice allegations: First,

in 2002 Stearns County petitioned for his civil commitment; second, in 2005 Hennepin County petitioned for his civil commitment; third, in 2012, Anderson's appeal included the claim that the state had reneged on its promise; and fourth, in Anderson's 2013 federal habeas petition he again claimed that the state had reneged on its promise. The district court's reasoning and the factual support for its findings are unassailable. Because Anderson's interests-of-justice plea-withdrawal claim rests on his theory that the state unfairly broke a 1993 promise not to seek his civil commitment, and because Anderson knew in 2002 that the state was seeking his civil commitment, he knew about the claim 14 years before he filed his petition for relief.

Anderson's supplemental brief offers various other arguments, which we do not address because he raises them for the first time on appeal. *Azure v. State*, 700 N.W.2d 443, 447 (Minn. 2005). The district court did not abuse its discretion by rejecting Anderson's postconviction petition as untimely.

Affirmed.