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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1563**

Brandyn Brett Phillips, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed June 25, 2018
Affirmed
Bratvold, Judge**

Cook County District Court
File No. 16-CR-06-197

Joseph A. Gangi, Daniel J. Bellig, Farrish Johnson Law Office, Chtd., Mankato, Minnesota
(for appellant)

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

Molly Hicken, Cook County Attorney, Grand Marais, Minnesota (for respondent)

Considered and decided by Florey, Presiding Judge; Larkin, Judge; and Bratvold,
Judge.

UNPUBLISHED OPINION

BRATVOLD, Judge

Appellant challenges the district court's denial of his postconviction petition
seeking a declaration of eligibility for exoneration compensation under Minn. Stat.

§ 590.11 (2016). Because appellant's petition was time barred under Minn. Stat. § 590.11, subd. 2, we affirm.

FACTS

In February 2006, appellant Brandyn Brett Phillips was charged with one count of criminal sexual conduct in the third degree, in violation of Minn. Stat. § 609.344, subd. 1(b) (2004). The state alleged that Phillips, then age 38, engaged in a sexual relationship with S.M., then age 14, for approximately six months. At a three-day jury trial, Phillips offered the affirmative defense of mistake as to the age of the juvenile, arguing that he believed that S.M. was 19 years old, relying on his own testimony. On August 1, 2007, the jury found Phillips guilty of the charged offense. The district court sentenced Phillips to 28 months, but stayed execution of the sentence. We affirmed Phillips's conviction. *See State v. Phillips*, No. A08-0231, 2009 WL 1118874, at *6 (Minn. App. Apr. 28, 2009), *review denied* (Minn. July 22, 2009). Phillips served the 28-month sentence due to a probation violation.

In July 2010, Phillips petitioned for postconviction relief, arguing that he received ineffective assistance of counsel in his 2007 trial. In December 2010, the district court granted Phillips's petition, concluding that "[t]rial [c]ounsel's representation fell below an objective standard of reasonableness and there is a reasonable probability that, but for [trial counsel's] unprofessional errors, the result of the proceeding would have been different." The district court found that Phillips's trial counsel was "constitutionally ineffective in his failure to investigate and prepare for trial," citing several examples of ineffective assistance during the trial, including the failure to elicit favorable testimony from S.M. and her mother

regarding Phillips's mistake-of-age defense. The district court granted Phillips's request for a new trial and the state did not appeal.

In January 2012, the district court granted the state's motion to dismiss the criminal sexual conduct charge, pursuant to Minn. R. Crim. P. 30.01. The state's motion reasoned that Phillips had served his sentence for the charged crime and, therefore, "dismissal of this charge [was] in the interests of justice."

In November 2016, Phillips petitioned for exoneration compensation under Minn. Stat. § 590.11. On January 20, 2017, the state replied to Phillips's petition, arguing (1) that Phillips had not been exonerated and was not entitled to compensation, and (2) Phillips's petition should be rejected as untimely under Minn. Stat. § 590.11, subd. 2.

On September 12, 2017, the district court denied Phillips's petition. The district court determined that the petition had been filed outside the statutory deadline, but because Phillips "diligently pursued the claim," it would consider the petition in the "interests of justice." On the merits, however, the district court rejected Phillips's request for relief, determining that he was not exonerated because the 2010 finding of ineffective assistance of counsel did not rise to the level of a reversal "on grounds consistent with innocence." This appeal follows.

D E C I S I O N

The Minnesota Imprisonment and Exoneration Remedies Act (MIERA) authorizes compensation to persons who have served time in prison after a wrongful conviction. Minn. Stat. §§ 611.362-.368 (2016); *see generally Back v. State*, 902 N.W.2d 23, 26 (Minn. 2017). Under the exoneration-compensation statute, the "threshold" determination is whether the

individual has been “exonerated” as that term is defined in Minn. Stat. § 590.11, subds. 1, 3. *Back*, 902 N.W.2d at 26 (describing threshold determination); *see also* Minn. Stat. § 611.362, subd. 1 (providing that an individual seeking exoneration compensation must receive “an order under section 590.11 determining that the person is entitled to compensation based on exoneration”).¹ In addition, an exoneration-compensation petition must be timely. The timing requirements are set out in section 590.11, which provides that an exoneration-compensation petition “must be brought within two years, but no less than 60 days after the petitioner is exonerated.” Minn. Stat. § 590.11, subd. 2.

In opposition to Phillips’s petition, the state argued that the two-year deadline for Phillips to file his petition expired in July 2016, and thus, his November 2016 petition should be rejected as untimely. In response, Phillips urged the district court to hear his claim in the interests of justice. The district court agreed with Phillips that it could review his untimely petition, but then rejected relief on the merits after determining he had not been exonerated.² Phillips asks this court to reverse the district court’s decision. The timeliness of Phillips’s exoneration-compensation petition raises a question of statutory

¹ If an individual has been exonerated, and meets other “eligibility requirements,” then the district court “shall” declare that individual to be eligible for exoneration compensation. *See Back*, 902 N.W.2d at 26; *see also* Minn. Stat. § 590.11, subd. 5 (setting out criteria for eligibility); *id.*, subd. 7 (order declaring eligibility).

² Phillips claimed that he was exonerated by the December 2010 new-trial order. He specifically argued that the district court had (a) “ordered a new trial on grounds consistent with innocence and the prosecutor dismissed the charges . . .” and (b) the time for appeal had expired so the order was final. *See* Minn. Stat. § 590.11, subd. 1.

interpretation which we review de novo. *See Nelson v. State*, 896 N.W.2d 879, 883 (Minn. App. 2017).

In Phillips's reply brief to this court, he argues that the state did not file a notice of related appeal on the timeliness issue, which was decided adversely to the state at the district court. *See Minn. R. Civ. App. P. 106* (respondent's right to obtain review). Phillips concludes that this court is unable to consider the timeliness issue. We disagree. First, the issue was fully briefed, argued, and decided during district court proceedings. Next, "it is well-established that the respondent on appeal in a criminal case may present to this court an alternative reason for affirming the district court, if the alternative reason is permitted by both the law and the factual record and would not expand the relief granted." *State v. Bennett*, 867 N.W.2d 539, 543 n.1 (Minn. App. 2015) (citing Minn. R. Crim. P. 29.04, subd. 6), *review denied* (Minn. Oct. 28, 2015); *State v. Grunig*, 660 N.W.2d 134, 137 (Minn. 2003) (holding court of appeals erred in refusing to consider alternative grounds for affirming district court's decision). Accordingly, whether Phillips timely filed his exoneration-compensation petition is properly before this court.

As mentioned above, the exoneration-compensation statute provides deadlines for bringing a claim:

A petition must be brought within two years, but no less than 60 days after the petitioner is exonerated. Persons released from custody after being exonerated before July 1, 2014, must commence an action under this section within two years of July 1, 2014.

Minn. Stat. § 590.11, subd. 2. Initially, we must determine when Phillips was allegedly exonerated. The postconviction court granted relief in December 2010 after ruling that

Phillips’s trial counsel provided ineffective assistance. The state dismissed its case against Phillips in January 2012. Thus, Phillips’s alleged exoneration occurred before July 1, 2014. Accordingly, we conclude that Phillips was required to file his exoneration-compensation petition by July 1, 2016. *See id.* Because Phillips did not file his petition until November 15, 2016, the district court correctly determined that his petition was untimely.

The district court relied on Minnesota’s postconviction statute when it concluded that it could hear Phillips’s untimely petition in the interests of justice. *See* Minn. Stat. § 590.01, subd. 4 (2016). Section 590.01 imposes a two-year time limit on petitions for postconviction relief. *Id.* It also lists exceptions and specifically provides that a court may hear a postconviction petition that is filed outside the two-year limitations period if the petitioner establishes that the petition “is not frivolous and is in the interests of justice.” Minn. Stat. § 590.01, subd. 4(b)(5).

The legislature enacted the interests-of-justice exception for postconviction petitions filed under Minn. Stat. § 590.01, but did not include a similar exception in Minn. Stat. § 590.11. We find no support for applying the interests-of-justice exception to an exoneration-compensation petition filed under section 590.11. Phillips has not cited any legal authority that authorized the district court to do so and we have found no relevant authority. In fact, applying the interests-of-justice exception to section 590.11 would effectively add terms to the exoneration-compensation statute, which we will not do. *See State v. Noggle*, 881 N.W.2d 545, 550 (Minn. 2016) (“[O]ur rules of construction forbid adding words or meaning to a statute that are purposely omitted or inadvertently

overlooked.”) (citation omitted). Thus, the interests-of-justice exception does not apply to an exoneration-compensation petition.

We conclude that Phillips’s petition was time barred and the district court’s decision should be affirmed on this alternative basis. *See Erickson v. State*, 842 N.W.2d 314, 318 (Minn. 2014) (“[A] postconviction court may summarily deny a claim that is time barred.”). We, therefore, do not reach the district court’s decision rejecting Phillips’s petition on the merits.³ Thus, we affirm.

Affirmed.

³ After oral argument, Phillips filed a letter citing supplemental authority, pursuant to Minn. R. Civ. App. P. 128.05, asking this court to consider bills from both chambers of the Minnesota Legislature, in support of his contention that he was exonerated on grounds consistent with innocence. *See* S.F. 2778, 90th Leg. (Minn. 2018); H.F. 2856, 90th Leg. (Minn. 2018). We note that “the fact that the legislature may pass such legislation in the future is not sufficient grounds for overturning the district court’s decision on appeal.” *See Altimus v. Hyundai Motor Co.*, 578 N.W.2d 409, 411 (Minn. App. 1998) (emphasis omitted) (citing *Geraci v. Eckankar*, 526 N.W.2d 391, 401 (Minn. App. 1995) (courts are required to apply the law in effect at the time it renders a decision), *review denied* (Minn. Mar. 14, 1995)). Moreover, our decision turns on the timeliness of Phillips’s petition, and we do not decide whether he was eligible for exoneration compensation.