

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1049**

Yusuf Ahmed Yusuf, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed May 28, 2019
Reversed and remanded
Reyes, Judge**

St. Louis County District Court
File No. 69DU-CR-05-3802

Cathryn Middlebrook, Chief Appellate Public Defender, Gina D. Schulz, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Keith Ellison, Minnesota Attorney General, St. Paul, Minnesota; and

Mark S. Rubin, St. Louis County Attorney, Gary W. Bjorklund, Assistant County Attorney, Duluth, Minnesota (for respondent)

Considered and decided by Hooten, Presiding Judge; Reyes, Judge; and Kirk,
Judge.*

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

UNPUBLISHED OPINION

REYES, Judge

Appellant argues that the postconviction court abused its discretion by denying his petition for postconviction relief as time barred because (1) it is not frivolous and should be addressed in the interests of justice and (2) he brought the claim within two years of the date his claim arose. We reverse and remand.

FACTS

Appellant Yusuf Ahmed Yusuf pleaded guilty to second-degree controlled-substance sale in 2006 for conduct between September 21 and October 5, 2005. Appellant received a stayed sentence of 48 months, and the district court placed him on probation for five years.

Appellant is a refugee from Somalia and came to the United States when he was about 7.5 years old. He came to the U.S. with no paperwork and believed his birthdate to be January 1, 1986, based on what his relatives told him. He recently made a request for official documents through the Freedom of Information Act (FOIA) while working with an immigration attorney to obtain a passport. Through this request, he received government documentation showing that his birthdate is October 8, 1987, which means he would have been under the age of 18 when he committed the 2005 controlled-substance offense.

In January 2018, appellant petitioned for postconviction relief, arguing that the district court lacked subject-matter jurisdiction over his case because he was under 18 and

a juvenile when the conduct underlying his conviction occurred. The state opposed the petition, arguing that it was time-barred.

The postconviction court held a hearing during which appellant testified in support of his postconviction petition. The postconviction court received appellant's immigration documents from the U.S. Department of Justice Immigration and Naturalization Service as an exhibit. The postconviction court then denied appellant's petition because he did not bring it within the two-year statutory time limitation under Minn. Stat. § 590.01, subd. 4(c) (2018). This appeal follows.

D E C I S I O N

Appellant argues that the interests-of-justice exception to the two-year time bar applies and that the postconviction court abused its discretion because it based its decision on a clearly erroneous factual finding that he did not bring his claim within two years from when the claim arose. We agree.

We review the denial of a petition for postconviction relief for an abuse of discretion. *Matakis v. State*, 862 N.W.2d 33, 36 (Minn. 2015). We review legal issues de novo, and we review factual issues to determine whether the record contains sufficient evidence to sustain the postconviction court's findings. *Id.* We will not reverse a postconviction court's order unless it acted arbitrarily or capriciously, based its ruling on an erroneous view of the law, or made clearly erroneous factual findings. *Id.*

A petition for postconviction relief may not be filed more than two years after the entry of judgment of conviction or sentence if the petitioner did not file a direct appeal. Minn. Stat. § 590.01, subd. 4(a)(1) (2018). But the postconviction statute lists five

exceptions to the two-year statute of limitations. *Id.*, subd. 4(b)(1)-(5) (2018). The fifth exception applies if a petitioner “establishes that the petition is not frivolous and is in the interests of justice.” *Id.*, subd. 4(b)(5) (2018). Any petition invoking the exception must be filed within two years of the date the claim arises. *Id.*, subd. 4(c). Postconviction courts invoke the statutory interests-of-justice exception only in “exceptional and extraordinary situations.” *Carlton v. State*, 816 N.W.2d 590, 607 (Minn. 2012). It is the petitioner’s burden to establish that an exception applies. *Wayne v. State*, 912 N.W.2d 633, 640 (Minn. 2018).

The threshold requirement that a postconviction petition meet the nonfrivolous prong is not high. *Id.* A petitioner need not show that he would succeed on the merits but only that “there is a good-faith basis for the claim made in the petition.” *Rickert v. State*, 795 N.W.2d 236, 241 (Minn. 2011). Mere argumentative assertions without factual support, or those that, even if true, would not entitle the petitioner to relief, are frivolous. *Wayne*, 912 N.W.2d at 640.

Appellant’s claim is not frivolous because it has a good-faith basis in fact and is not based on a mere argumentative assertion. Appellant received official government documentation that lists his birthdate as a date different from that told to him by his family. Moreover, this claim has a good-faith basis in law. Generally, a district court lacks subject-matter jurisdiction to convict or sentence a juvenile as an adult. *Vang v. State*, 788 N.W.2d 111, 117 (Minn. 2010). Claims involving a district court’s lack of subject-matter jurisdiction can be raised at any time. *Id.* at 115.

To meet the interests-of-justice prong, “[t]he claim must relate to an injustice that delayed the filing of the petition, not to the substantive merit of the petition.” *Hooper v. State*, 888 N.W.2d 138, 142 (Minn. 2016). A petitioner’s untimely claim can satisfy the interests-of-justice exception if a third-party caused the untimeliness. *Rickert*, 795 N.W.2d 236, 242 (Minn. 2011).

Here, appellant is not at fault for the delay in filing the petition. His family members told him that his birthdate was January 1, 1986. *See id.* (holding Rickert’s postconviction petition met interests-of-justice exception when delay in filing petition was due to his postconviction counsel not receiving transcripts until two days before statute of limitations expired, which was not Rickert’s fault). As a result, because the claim relates to an injustice that delayed his filing of the petition, it meets the interests-of-justice exception.

Although appellant established the interests-of-justice exception, he must also show that he filed his petition within two years after the date the claim arose. Minn. Stat. § 590.01, subd. 4(c). A petitioner’s claim for relief 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). Determining when an interests-of-justice claim arose is a question of fact. *Id.* A “claim” refers to an event which supports a right to relief under the exception asserted. *Bee Yang v. State*, 805 N.W.2d 921, 925 (Minn. App. 2011), *review denied* (Minn. Aug. 7, 2012).

Here, the postconviction court denied appellant’s petition by finding that he did not show that he filed his postconviction petition within two years from when his claim arose. It found that appellant “was not clear about when he executed his FOIA request, nor when

he received the requested information.” Appellant argues that this finding is clearly erroneous because it is contrary to the facts on record. We review a district court’s factual findings to determine whether the record contains reasonable evidence to support them and will not set them aside unless clearly erroneous. *Matakis*, 862 N.W.2d at 36.

Appellant testified that he found out when his real birthdate was “within the last year when [he] started doing [his] immigration paperwork.” He testified also that his immigration lawyer had submitted the FOIA request for him and that he had been working with the immigration lawyer for about 18 months. He further testified that the FOIA request “took about nine months to receive.” While appellant did not point to a clear date on which he found out about his actual birthdate, his testimony is clear that he filed his petition within two years of the date his claim arose. For that reason, this finding is unsupported by the record and is clearly erroneous. Because the postconviction court based its decision on a clearly erroneous finding, it abused its discretion.

The state argues that appellant’s claim did not arise when he received actual knowledge of his birthdate because the test is whether appellant should have known he had a claim, and appellant “had years of adulthood to question” whether the birthdate his relatives told him was his real birthdate. The state contends that appellant “should have known” that his birthdate was wrong much earlier. But there is nothing in the record to suggest that appellant had reason to question his birthdate or assume that he was a juvenile when he committed the offense. The claim therefore arose when he learned that there was a question regarding the district court’s jurisdiction to prosecute him as an adult.

Because appellant satisfied the interests-of-justice exception and filed the petition within two years after the claim arose, we reverse and remand for the postconviction court to evaluate the evidence, including the evidence regarding appellant's birthdate, and to consider appellant's petition on the merits.

Reversed and remanded.