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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1325**

Daniel Lee McMaster, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed April 15, 2019
Affirmed
Kirk, Judge***

Hennepin County District Court
File No. 27-CR-15-16852

Cathryn Middlebrook, Chief Appellate Public Defender, F. Richard Gallo, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Michael O. Freeman, Hennepin County Attorney, Linda K. Jenny, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Schellhas, Presiding Judge; Worke, Judge; and Kirk,
Judge.

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

UNPUBLISHED OPINION

KIRK, Judge

Appellant appeals the denial of his petition for postconviction relief seeking withdrawal of his guilty plea as timely to correct a manifest injustice. Because the district court properly dismissed the petition as untimely under *Sanchez v. State*, 816 N.W.2d 550 (Minn. 2012), we conclude the district court did not abuse its discretion and, therefore, affirm.

FACTS

On June 23, 2015, appellant was charged with one count of third degree criminal sexual conduct in violation of Minn. Stat. § 609.344, subd. 1(c) (2014).¹ Appellant entered into a plea agreement with the state. A pre-plea investigation recommended a presumptive execution of a 48-month prison sentence and lifetime registration as a predatory offender; the plea agreement, however, included a dispositional departure with a 57-month stay of execution sentence for ten years with a ten-year registration requirement.²

On November 30, 2015, appellant appeared for a plea hearing. Counsel acknowledged the terms of the plea agreement. The state disagreed—and represented that appellant’s trial counsel also disagreed—with the pre-plea investigation that the predatory offender registration was lifetime. Counsel, instead, believed the registration requirement

¹ Chapter 609.344, subd. 1 was amended on May 16, 2014. 2014 Minn. Laws ch. 259, § 5 (amending Minn. Stat. § 609.344, subd. 1 (2012)).

² The applicable guideline range was a 41 to 57 month term of imprisonment.

would be a ten-year term. The district court accepted appellant's plea and followed the terms of the agreement identifying the ten-year registration term.

On June 30, 2017, appellant appeared on a probation violation. The district court found that appellant failed to follow the conditions of his probation on three occasions and that appellant's "pattern of failure coupled with his stated refusal to come to grips with his chemical dependency issues make it impossible to deal with his most fundamental probation goal—sex offender treatment." The district court revoked appellant's probation and committed him to the commissioner of corrections for a period of 57 months. Neither party nor the district court raised the predatory offender registration obligation at the time of the hearing.

On April 27, 2018, appellant filed a petition for postconviction relief. Appellant asserted the state promised a limited predatory offender registration of ten years contrary to the statutory lifetime requirement. Appellant argued the "guilty plea was induced by [a] false promise" and he requested to withdraw his plea. The district court denied the petition as time-barred.

This appeal follows.

D E C I S I O N

This court reviews a district court's denial of postconviction relief for an abuse of discretion. *Brown v. State*, 863 N.W.2d 781, 786 (Minn. 2015). "We will reverse a postconviction court only if it 'exercised its discretion in an arbitrary or capricious manner, based its ruling on an erroneous view of the law, or made clearly erroneous factual

findings.’” *Wayne v. State*, 912 N.W.2d 633, 639 (Minn. 2018) (quoting *Reed v. State*, 793 N.W.2d 725, 729 (Minn. 2010)).

A petition for postconviction relief may not be filed more than two years after “(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) (2018). An otherwise untimely postconviction petition may be permitted in certain contexts. *Id.*, subd. 4(b)(1)-(5) (2018) (identifying enumerated grounds for permitting untimely postconviction relief petitions).

The district court sentenced appellant on November 30, 2015, to a stay of execution following his guilty plea, and he did not appeal his conviction. Appellant argues he was not sentenced until June 30, 2017, when the district court revoked his probation and executed his sentence. This argument is unfounded. Minn. Stat. §§ 244.10, subd. 1, 609.10, 609.13, 609.135 (2014); Minn. R. Crim. P. 27.03 subds. 4, 5, 8 (requiring under subdivision 5 the district court inform a defendant of his or her right to appeal at the time the sentence is imposed and the execution is stayed).

The district court accepts and records a finding of guilt when it imposes a stay of execution and, even if the offender successfully completes probation and is discharged, the offender’s record includes a felony conviction. Minn. Sent. Guidelines 1.B.19.b (2014). A criminal defendant must appeal within 90 days from final judgment, which “occurs when the district court enters a judgment of conviction and imposes or stays a sentence.” Minn. R. Crim. P. 28.02, subds. 2(1), 4(3)(a). Because appellant was sentenced on November 30, 2015—and he did not appeal—his conviction became final on February 29, 2016.

See Minn. R. Crim. P. 34.01. Accordingly, appellant does not meet the two-year timeframe for filing the petition for postconviction relief from his sentence.

Because the petition was filed more than two years after the time for direct appeal expired, appellant argues that this court may consider the merits of the petition under the interests-of-justice exception under Minn. Stat. § 590.01, subd. 4(b)(5). The interests-of-justice exception provides that a petition may be heard if “the petitioner establishes to the satisfaction of the court that the petition is not frivolous and is in the interests of justice.” *Id.* A petition is frivolous under the interests-of-justice exception when it is apparent—without argument—the petition lacks merit. *Brocks v. State*, 883 N.W.2d 602, 605 (Minn. 2016).

A postconviction relief petition filed under the interests-of-justice exception “must be filed within two years of the date the claim arises.” Minn. Stat. § 590.01, subd. 4(c) (2018). “[T]he interests-of-justice exception is triggered by an injustice that *caused* the petitioner to miss the primary deadline in subdivision 4(a), not the *substance* of the petition.” *Sanchez*, 816 N.W.2d at 557. Further,

When the only injustice claimed is identical to the substance of the petition, and the substance of the petition is based on something that happened before or at the time a conviction became final, the injustice simply cannot have caused the petitioner to miss the 2-year time limit in subdivision 4(a), and therefore is not the type of injustice contemplated by the interests-of-justice exception in subdivision 4(b)(5).

Id. A claim arises under section 590.01, subdivision 4(b)(5) when “the petitioner knew or should have known that he [or she] had a claim.” *Id.* at 560. The moment a claim under the interests-of-justice exception arises is a question of fact. *Id.*

Here, appellant missed the primary deadline to file his postconviction relief petition based on the incorrect representations that his predatory offender registration would only be a ten-year term rather than lifetime. Appellant, on the record provided, appeared to only learn about the incorrect nature of the registration term when he sought review of his probation violation with the assistance of the state public defender's office after the probation revocation. Although appellant learned this information late, the injustice he claims is identical to the substance of his claim. Accordingly, appellant's claim fails to meet the requirements under the interests-of-justice exception to permit postconviction relief.³

Affirmed.

³ We offer no opinion on the length of the predatory offender registration applicable in this matter. See Minn. Stat. § 243.166, subds. 1b(a)(1)(iii), 2, 6(d)(3) (2014).