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**STATE OF MINNESOTA
IN COURT OF APPEALS**

A18-1449

A18-1615

Gene Rechtzigel, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent,

AND

State of Minnesota,
Respondent,

vs.

Gene Rechtzigel,
Appellant.

**Filed August 12, 2019
Affirmed; motion denied
Cochran, Judge**

Dakota County District Court
File No. 19AV-CR-15-10738

Gene A. Rechtzigel, Apple Valley, Minnesota (pro se appellant)

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

Christine J. Casellius, Apple Valley City Prosecutor, Ryan J. Bies, Assistant City Attorney,
Dougherty, Molenda, Solfest, Hills & Bauer P.A., Apple Valley, Minnesota (for
respondent)

Considered and decided by Florey, Presiding Judge; Worke, Judge; and Cochran, Judge.

UNPUBLISHED OPINION

COCHRAN, Judge

Appellant Gene Rechtzigel challenges two district court orders addressing probation violations and requests for postconviction relief arising out of his convictions for violating the Minnesota State Building Code (MSBC). Because the district court did not abuse its discretion in dismissing Rechtzigel's postconviction petitions, and Rechtzigel's other claims are moot or not properly before this court, we affirm.

FACTS

In June 2015, an Apple Valley building official issued Rechtzigel a citation related to a fence Rechtzigel constructed on his property. The citation included a total of four violations: two misdemeanor violations of the MSBC and two misdemeanor violations of the Minnesota State Fire Code (the fire code). The MSBC violations included one count of violating a stop work order and one count of failing to secure a building permit. The fire code violations related to a fire hydrant near the fence. Rechtzigel moved to dismiss the charges. The City of Apple Valley (the city) agreed to dismiss the charges related to the fire code. After a hearing, the district court denied Rechtzigel's motion to dismiss the remaining two counts, relating to the MSBC. Rechtzigel sought appellate review of the pretrial order, and this court denied his request, noting that Rechtzigel could appeal from final judgment on the case.

The case was scheduled for jury trial on April 4, 2016. On that date, Rechtzigel entered into a plea agreement and pleaded guilty to two counts of violating the MSBC pursuant to an *Alford* plea.¹ In discussing the potential plea agreement, the prosecutor informed Rechtzigel that he would be required to apply for a permit and take any steps necessary to ensure that the fence complied with the MSBC. The prosecutor noted that she did not know what, if anything, Rechtzigel would need to do to comply with the MSBC, but defense counsel represented that the fence was built to code. The district court accepted Rechtzigel's *Alford* plea and proceeded to sentencing. The district court sentenced Rechtzigel to a stay of imposition on each count and to one year of probation. The district court also included the following condition:

Defendant must apply to the [C]ity of Apple Valley for the required [f]ence permit & pay applicable fees within 10 days from today. Defendant shall include a land survey/drawing or whatever is required by the City of Apple Valley within 60 days. Defendant must allow city inspection of the fence and defendant shall comply with all applicable city codes regarding the fence. Upon compliance with the applicable city codes with regard to the fencing defendant is to be discharged from probation.

Rechtzigel did not file a direct appeal of his convictions.

¹ Under Minnesota law, a defendant may plead guilty pursuant to an *Alford* plea without admitting guilt if the defendant “agrees that evidence the State is likely to offer at trial is sufficient to convict” and if the district court independently determines that there is a strong factual basis for a finding of guilt and a strong probability that a jury would find the defendant guilty. *State v. Theis*, 742 N.W.2d 643, 649 (Minn. 2007); *see also North Carolina v. Alford*, 400 U.S. 25, 38, 91 S. Ct. 160, 168 (1970) (holding that in some circumstances, a court may constitutionally accept a defendant’s guilty plea even though the defendant maintained his innocence).

In September 2016, the city requested that the stays of imposition be vacated because Rechtzigel failed to provide an engineer-certified plan for the fence, a required submission with the application for a permit. The district court set a probation-violation hearing for October 2016. Rechtzigel did not appear for the probation-violation hearing, and the district court issued a warrant for Rechtzigel's arrest. Rechtzigel alleges that he never received notice of the hearing.

In September 2017, Rechtzigel filed an "ex parte" motion to "dismiss" the charges to which he pleaded guilty.² The district court denied Rechtzigel's ex parte motion and scheduled another probation-violation hearing. Rechtzigel then filed a petition for postconviction relief in October 2017. Rechtzigel requested that the criminal charges and fines be "dismissed" or, in the alternative, that the issue be set for jury trial. In December 2017, the district court denied Rechtzigel's petition and set the matter on for a contested probation-violation hearing.

In January 2018, the district court found that Rechtzigel violated the terms of his probation. The district court ordered Rechtzigel to cooperate with the requirements of obtaining a permit for his fence and ordered the parties to return for a review and disposition hearing in three months. Following that review hearing, the district court extended Rechtzigel's probation to July 26, 2018, required Rechtzigel to appear for a

² In his filings at both district court and the court of appeals, Rechtzigel appears to use language about "dismissing" his charges interchangeably to mean either that his convictions should be reversed or that he should be discharged from probation.

review hearing on June 5, 2018, and required Rechtzigel to submit an engineer's report regarding the fence to the city.

In March 2018, Rechtzigel filed an engineer's report with the district court. The report indicated that the fence was not adequate to resist wind loads and suggested additions were needed to repair the fence. Rechtzigel disagreed with the conclusions of his own engineer's report. At the June 5, 2018 review hearing, the district court scheduled another contested probation-violation hearing based on Rechtzigel's continued failure to bring his fence up to code. On June 7, 2018, Rechtzigel filed another motion to "dismiss" the charges. On July 6, 2018, Rechtzigel filed a motion to "dismiss" the charges or in the alternative to withdraw his guilty pleas. In August 2018, the district court issued an order finding that Rechtzigel violated the conditions of his probation and scheduled a disposition hearing. In that same order, the district court denied Rechtzigel's motions to "dismiss" the charges or withdraw his guilty pleas. This order is the first of two district court orders that Rechtzigel is currently appealing.

In September 2018, following the disposition hearing, the district court ordered Rechtzigel to serve 20 days in jail starting on November 15, 2018. But the order stated that the jail sentence would be vacated if Rechtzigel brought the fence into compliance with the MSBC and received approval from a city inspector by November 1, 2018. This is the second order that Rechtzigel is appealing.

After Rechtzigel filed an appeal of the September order, he brought the fence into compliance with the MSBC by reducing its height so that the MSBC's requirements no

longer apply to the fence. As a result, the district court vacated Rechtzigel's jail sentence and discharged him from probation. This court consolidated Rechtzigel's appeals.

DECISION

Rechtzigel is self-represented in these consolidated appeals. Rechtzigel alleges a number of claims and constitutional violations. Although only the August 2018 order and the September 2018 order are at issue in this appeal, Rechtzigel's jumbled brief blends various issues from throughout the district court proceedings. It is difficult to follow all of Rechtzigel's arguments, and much of his brief is without citation to legal authorities. While a self-represented appellant "is usually accorded some leeway in attempting to comply with court rules, he is still not relieved of the burden of, at least, adequately communicating to the court what it is he wants accomplished and by whom." *Carpenter v. Woodvale, Inc.*, 400 N.W.2d 727, 729 (Minn. 1987); *see also State v. Seifert*, 423 N.W.2d 368, 372 (Minn. 1988) (noting that Minnesota courts require self-represented criminal defendants to comply with standard rules of court procedure and that "[n]o extra benefits will be given to [self-represented] litigants"). Because Rechtzigel is self-represented, we will consider his claims to the extent that we can understand them.

I. The district court did not abuse its discretion in dismissing Rechtzigel's postconviction petitions.

Rechtzigel argues that the district court erred in denying his postconviction petitions. He argues that the MSBC does not apply to his fence and that he should be allowed to withdraw his guilty plea and have a jury trial. Rechtzigel also makes a number of constitutional claims, including that the state violated his rights to due process under the

Minnesota Constitution and his rights to equal protection under the United States and Minnesota Constitutions. Rechtzigel also alleges violations of article I, sections 1, 2, 4, 5, 6, 7, 8, 10, and 13 of the Minnesota Constitution. To the extent that Rechtzigel argues that his convictions should be reversed or that he should be allowed to withdraw his guilty plea, we address those arguments here. To the extent that Rechtzigel argues that he should be compensated based on any alleged constitutional violations, we address those arguments in section III.

Minnesota law allows criminal defendants to bring a variety of requests before a district court in the form of a postconviction petition. Minn. Stat. § 590.01, subd. 1 (2016) (allowing individuals convicted of crimes to bring claims that “the conviction obtained or the sentence or other disposition made violated the person’s rights under the Constitution or laws of the United States or of the state”); *see also Sanchez v. State*, 816 N.W.2d 550, 554-56 (Minn. 2012) (addressing a postconviction petition alleging violations of the Fourth and Sixth Amendments); *Stewart v. State*, 764 N.W.2d 32, 33-34 (Minn. 2009) (considering a postconviction petition alleging a lack of subject-matter jurisdiction based on an argument that the laws were invalid). “A motion to withdraw a guilty plea made after sentencing must be raised in a petition for postconviction relief . . .” *Lussier v. State*, 821 N.W.2d 581, 583 (Minn. 2012); *see also Sanchez v. State*, 868 N.W.2d 282, 286 (Minn. App. 2015) (“A motion to withdraw a plea after sentencing must be raised in a postconviction petition.”), *aff’d*, 890 N.W.2d 716 (Minn. 2017).

But “[t]he court may summarily deny a second or successive petition for similar relief on behalf of the same petitioner.” Minn. Stat. § 590.04, subd. 3 (2016). “Review of

a postconviction proceeding is limited to determining whether there is sufficient evidence to sustain the postconviction court's findings, and a postconviction court's decision will not be disturbed absent an abuse of discretion." *Dukes v. State*, 718 N.W.2d 920, 921 (Minn. 2006) (quotations omitted). "When making this determination, we are not limited to the reasoning of the postconviction court, and we can affirm the denial of postconviction relief on grounds other than those on which the postconviction court relied." *Id.* at 921-22.

Rechtzigel filed his first petition for postconviction relief in October 2017. In that petition, he argued that the case should be "dismissed" on a number of grounds, including that he fulfilled the requirements of the plea agreement, that the MSBC did not apply to his fence, and that the city violated numerous provisions of the United States and Minnesota Constitutions. The district court denied Rechtzigel's petition, and Rechtzigel chose not to appeal the district court's decision. See Minn. R. Crim. P. 28.02, subd. 4(3)(c) (stating that a defendant must appeal an order denying postconviction relief within 60 days after entry of the order).

On June 7, 2018, roughly six months after the district court denied his petition for postconviction relief, Rechtzigel filed a motion to "dismiss" his charges under Minn. R. Crim. P. 17.06. Rechtzigel filed another motion to "dismiss" his charges under Minn. R. Crim. P. 17.06 or withdraw his guilty pleas under Minn. R. Crim. P. 15.05 on July 6, 2018. Although Rechtzigel did not title his filings as postconviction petitions, his arguments amounted to requests for postconviction relief because he sought to collaterally attack the validity of his convictions and withdraw his *Alford* pleas. The supreme court addressed a similar situation in *Johnson v. State*, 801 N.W.2d 173 (Minn. 2011). In that case, Johnson

filed an initial postconviction petition, which was denied, arguing that his plea agreement was invalid for a number of reasons. *Johnson*, 801 N.W.2d at 175. After the time limit to file postconviction petitions lapsed, Johnson filed a motion to correct his sentence under Minn. R. Crim. P. 27.03, subd. 9, arguing that his guilty plea was invalid. *Id.* The supreme court concluded that, despite the motion’s title, it was in effect a petition for postconviction relief and that the “petition [was] untimely and should not be considered on the merits.” *Id.* at 177. Similarly, Rechtzigel’s June 2018 and July 2018 motions amounted to petitions for postconviction relief.

Thus, Rechtzigel’s motions to dismiss and withdraw his guilty plea were successive postconviction petitions. Rechtzigel based those petitions on the same grounds as his initial petition for postconviction relief: that he fulfilled the requirements of the plea agreement, that the MSBC did not apply to his fence, and that the city was violating numerous provisions of the United States and Minnesota Constitutions. The district court summarily denied Rechtzigel’s petitions, noting that the court had “previously denied [Rechtzigel’s] motions to dismiss in an Order dated December 8, 2017.” Because Rechtzigel’s June 2018 and July 2018 postconviction petitions constituted successive petitions requesting similar relief, the district court was entitled to summarily deny the petitions. *See* Minn. Stat. § 590.04, subd. 3. Furthermore, we note that Rechtzigel’s successive petitions were procedurally barred under the *Knaffla* rule. *See Jackson v. State*, 919 N.W.2d 470, 473 (Minn. 2018) (“Under the *Knaffla* rule, any claim raised on direct appeal, or in a previous postconviction petition, will not be considered upon a subsequent petition for postconviction relief.” (quotation omitted)). On this record, we discern no abuse of

discretion in the postconviction court's summary denial of Rechtzigel's successive postconviction petition.

II. Rechtzigel's request to reverse the sentencing order is moot.

Rechtzigel also challenges the district court's conclusion that he violated his probation and the district court's subsequent sentence for the probation violation, requesting that the district court's "sentencing orders be reversed." Rechtzigel's challenges to the probation violation and subsequent sentence are moot. "Mootness has been described as the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." *Dean v. City of Winona*, 868 N.W.2d 1, 4-5 (Minn. 2015) (quotation omitted). The doctrine requires this court to decide only actual controversies, and to refrain from issuing advisory opinions. *In re Schmidt*, 443 N.W.2d 824, 826 (Minn. 1989). If there is "no injury that a court can redress," the case becomes moot except in limited circumstances. *State ex rel. Sviggum v. Hanson*, 732 N.W.2d 312, 321 (Minn. App. 2007). "An appeal is not moot, however, where the issue raised is capable of repetition yet evades review or where collateral consequences attach to the judgment." *In re McCaskill*, 603 N.W.2d 326, 327 (Minn. 1999).

We may consider post-appeal factual developments in determining whether an appeal is moot. *See Dean*, 868 N.W.2d at 5-6 (determining that appeal was moot based on factual developments occurring after grant of appellate review). Lack of mootness is "a constitutional prerequisite to the exercise of jurisdiction," and appellate courts "must consider the mootness question even if ignored by the parties." *Schmidt*, 443 N.W.2d at

826. “We review the issue of mootness de novo.” *Wayzata Nissan, LLC v. Nissan N. Am., Inc.*, 875 N.W.2d 279, 283 (Minn. 2016).

“The expiration of a sentence operates as a discharge that bars further sanctions for a criminal conviction.” *State v. Purdy*, 589 N.W.2d 496, 498 (Minn. App. 1999). Once the sentence has been served, any issues involving the sentence are moot because the court of appeals cannot grant effective relief. *See State v. Eller*, 780 N.W.2d 375, 384 (Minn. App. 2010) (noting that an appeal from a sentence was moot where the sentence had already been served).

In this case, the district court ordered Rechtzigel to serve 20 days in jail unless he brought his fence into compliance with the MSBC. After Rechtzigel reduced the height of his fence to bring it into compliance with the MSBC, the district court vacated the sentence and discharged Rechtzigel from probation. Because the district court vacated the sentence and discharged Rechtzigel from probation, we cannot grant effective relief. Rechtzigel has also not demonstrated that the issues raised in this case are capable of repetition because the issues are confined to the specific circumstances of his case. We conclude that under these facts, Rechtzigel’s challenges to the probation violation and subsequent sentence are moot.³

³ To the extent that Rechtzigel’s arguments in his petitions for postconviction relief that his charges should be “dismissed” referred to discharging him from probation, we note that those claims are also moot. Rechtzigel has been discharged from probation and thus, he has already received his requested relief in regard to those claims.

III. Rechtzigel's requests for damages and declaratory judgment are not properly before the court.

Rechtzigel also requests just compensation for his fence, a ruling that the MSBC does not apply to his fence, and a ruling that he should be allowed to rebuild his fence without a permit. Rechtzigel's request for compensation appears to be based on claims that his fence was unconstitutionally taken without just compensation and that he was unconstitutionally forced to cut the fence in order to avoid cruel and unusual punishment. Parties injured by constitutional abuses may be entitled to recovery of monetary damages under 42 U.S.C. § 1983 (2012). *Maras v. City of Brainerd*, 502 N.W.2d 69, 75 (Minn. App. 1993), *review denied* (Minn. Aug. 16, 1993). But such claims should be brought as a civil action, not as a part of a criminal appeal. *See State v. Fox*, 868 N.W.2d 206, 226 (Minn. 2015) (declining to address claims related to an appellant's conditions of confinement because such claims are more appropriately raised in a petition for habeas corpus relief or in a civil action under 42 U.S.C. § 1983). Because Rechtzigel's claims for monetary damages should be brought as part of a civil suit, we decline to address them here.

Rechtzigel also requests that this court provide an opinion stating that he should be allowed to rebuild his fence without a permit. Rechtzigel's request amounts to a request for declaratory relief. *See* Minn. Stat. § 555.02 (2018) (allowing any person whose rights are affected by a statute or municipal ordinance to have any question of construction or validity arising under the statute or ordinance to seek a declaration of rights under that statute or ordinance); *see also McCaughtry v. City of Red Wing*, 808 N.W.2d 331, 337

(Minn. 2011) (noting that a declaratory-judgment action is proper to test the validity of a municipal ordinance). A request for declaratory relief may be brought in district court. But, because Rechtzigel did not bring a declaratory-judgment action in district court addressing his rights regarding a possible future fence, there is no district court order regarding Rechtzigel's rights in regards to a possible future fence. "[A]n undecided question is not usually amenable to appellate review." *Hoyt Inv. Co. v. Bloomington Commerce & Trade Ctr. Assocs.*, 418 N.W.2d 173, 175 (Minn. 1988). In the absence of a district court order addressing Rechtzigel's rights regarding a theoretical future fence, we decline to address that issue.

IV. We deny as unnecessary the state's motion to strike portions of Rechtzigel's reply brief.

Finally, the state moved to strike portions of Rechtzigel's reply brief, arguing that it raises new issues that were not raised in Rechtzigel's principal brief. Issues that are raised for the first time in an appellant's reply brief are "not proper subject matter for appellant's reply brief and, therefore, [are] waived and stricken." *See State v. Yang*, 774 N.W.2d 539, 558 (Minn. 2009) (striking an argument in appellant's reply brief because it raised a new issue).

The state argues that Rechtzigel's reply brief introduces new issues beyond his principal brief because the reply brief's statement of the issues differs from the statement of the issues in his principal brief. Like Rechtzigel's principal brief, his reply brief is difficult to follow at times, but it appears to center on the same issues raised in his principal brief. To the extent that we can understand Rechtzigel's reply brief, and it addresses the

issues raised in his principal brief and discussed above, we have considered his reply brief. We have not considered any new arguments raised in the reply brief. We therefore deny the motion to strike the reply as unnecessary.

Affirmed; motion denied.