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

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A19-0474**

Sakariya Ali Aden, petitioner,  
Appellant,

vs.

State of Minnesota,  
Respondent.

**Filed August 26, 2019  
Affirmed  
Worke, Judge**

Rice County District Court  
File No. 66-CR-12-655

Abdulwahid Sheikh Osman, Minneapolis, Minnesota (for appellant)

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

John L. Fossum, Rice County Attorney, Terence Swihart, Assistant County Attorney,  
Faribault, Minnesota (for respondent)

Considered and decided by Jesson, Presiding Judge; Worke, Judge; and Bratvold,  
Judge.

**UNPUBLISHED OPINION**

**WORKE**, Judge

Appellant challenges the denial of his petition for postconviction relief, arguing that:  
(1) the district court erred in concluding that his petition was untimely; (2) his counsel's

misadvice regarding the immigration consequences of his guilty plea entitles him to plea withdrawal; and (3) the district court judge should have recused herself based on appellant's allegation that she had erred in the prior proceedings. We affirm.

### **FACTS**

On June 25, 2012, appellant Sakariya Ali Aden pleaded guilty to gross-misdemeanor domestic assault. Aden also signed a rule 15 plea petition. The district court examined Aden on whether he had an opportunity to question his attorney about the plea agreement, and his attorney questioned Aden if he understood that his guilty plea could affect his immigration status. On August 23, 2012, the district court sentenced Aden to 365 days in jail, stayed for two years.

On December 4, 2018, the United States Department of Homeland Security began removal proceedings against Aden, a native of Somalia and lawful permanent resident of the United States, due to his conviction in the present matter. On January 26, 2019, Aden filed a postconviction petition to withdraw his guilty plea and vacate his sentence due to the ineffective assistance of his counsel, and the district court's failure to comply with the requirement in Minn. R. Crim. P. 15.02, subd. 1(3), that Aden be questioned as to whether he understood that his plea "may result in deportation, exclusion from admission to the United States, or denial of naturalization as a United States citizen."

Aden claimed that, in an off-the-record conversation with his attorney prior to entering his guilty plea, he was misadvised that he "would have no immigration issues" because he was not pleading guilty to a felony. The district court denied the petition as

untimely, and therefore did not reach the merits of any of Aden's asserted bases for relief. This appeal followed.

## DECISION

### *Timeliness*

Aden asserts that the district court erred by finding that his postconviction petition was barred by the statute of limitations, because he filed it within two years of receiving notice of the removal proceedings. "We review the denial of a petition for postconviction relief for an abuse of discretion. We review legal issues de novo, but on factual issues our review is limited to whether there is sufficient evidence in the record to sustain the postconviction court's findings." *Matakis v. State*, 862 N.W.2d 33, 36 (Minn. 2015) (citation and quotation omitted). "A petition that is filed outside the statute of limitations may be summarily denied, unless a statutory exception applies." *Anderson v. State*, 913 N.W.2d 417, 423 (Minn. 2018) (citation omitted).

Aden did not appeal his conviction. Therefore, his petition for postconviction relief must have been filed within two years of the entry of his judgment of conviction on August 23, 2012. Minn. Stat. § 590.01, subd. 4(a)(1) (2018). A district court may hear a petition filed beyond two years of entry of judgment only if "the petitioner establishes to the satisfaction of the [district] court that the petition is not frivolous and is in the interests of justice." *Id.*, subd. 4(b)(5). A petition filed under the interests-of-justice exception "must be filed within two years of the date the claim arises." *Id.*, subd. 4(c). Aden asserts that his petition satisfies the requirements of the interests-of-justice exception.

The district court found that Aden’s petition was not frivolous in light of the deportation proceedings. However, without specifying an exact date,<sup>1</sup> the district court found that Aden’s claim arose “more than two years prior to bringing his petition,” and thus denied his petition as untimely without reaching its merits.

Aden claims that he satisfies the interests-of-justice exception because his attorney’s ineffective assistance and the district court’s failure to follow rule 15.02 caused him to be unaware of the immigration consequences of his guilty plea until he was served with notice of the removal proceedings. However,

the 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. 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). . . .

*Sanchez v. State*, 816 N.W.2d 550, 557 (Minn. 2012). All of the actions that Aden asserts entitle him to relief occurred during his plea hearing on June 25, 2012. Because the alleged errors that Aden asserts establish the interests-of-justice exception to the statute of limitations are identical to the substance of his petition, they do not satisfy the exception to the limitations period. *See also Jackson v. State*, 929 N.W.2d 903, 906-07 (Minn. 2019)

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<sup>1</sup> The district court first discussed the arguments of the parties regarding when Aden objectively should have known that the United States was deporting individuals to Somalia. The district court then proceeded to reject Aden’s claim that he was unaware of the immigration consequences of his plea at the time of sentencing. The district court concluded: “Applying the two year time limit objectively, [Aden] knew or should have known that he had a claim at a time more than two years prior to bringing his petition for postconviction relief” without specifying a precise date for when the claim arose.

(stating that a claim for ineffective assistance of counsel relating to advice given at a plea hearing did not set forth a reason for delay separate from the substance of the petition, and therefore the interests-of-justice exception did not apply).

Even if Aden's claims satisfy the interests-of-justice exception, they are time-barred under that provision as well because he did not file his petition within two years of the date the claim arose. Aden argues that the district court erred in finding that his petition was untimely because he filed it within two years of receiving notice of the removal proceedings on December 4, 2018. "[A] petitioner's claim under Minn. Stat. § 590.01, subd. 4(b)(5), arises when the petitioner knew or should have known that he had a claim." *Sanchez*, 816 N.W.2d at 560. This is an objective standard. *Id.* at 558. "The determination of when [a petitioner's] interests-of-justice claim arose is a question of fact. On appeal from a postconviction court's denial of relief, we apply the clearly erroneous standard to the court's findings of fact." *Id.* at 560.

Aden asserts that due to the ineffective assistance of his counsel, and the district court's failure to strictly comply with rule 15.02, he did not become aware of the basis to vacate his plea until served with notice of the removal proceedings in December 2018. This, however, sets forth a subjective, as opposed to objective, basis for when his claim arose. Aden asserts that because his claim is premised upon the ineffective assistance of his counsel, he could not objectively have known of his basis for relief until removal proceedings were initiated. However, this argument has already been denied in the cases upon which Aden relies.

Aden relies in part on language from this court's unpublished opinion in *Tengben v. State*, but that case directly undermines Aden's assertion that under an objective standard his claim arose when he learned of the immigration consequences of his guilty plea via the initiation of removal proceedings. No. A12-1539, 2013 WL 1395618 (Minn. App. Apr. 8, 2013). In *Tengben*, the appellant was unrepresented when he pleaded guilty, the rule 15 plea petition that he signed did not contain the immigration advisory, and the district court failed to advise him of the immigration consequences of his plea. *Id.* at \*2.

This court held that under the objective knew-or-should-have-known standard, Tengben's claim arose on the date he entered his invalid guilty plea. *Id.* at \*4. "[T]he only scenario in which [Tengben's] postconviction petition is timely under the interests-of-justice exception is if his claim arose on the date he learned that his plea to domestic assault would have immigration consequences. . . . But *Sanchez* soundly rejected a subjective, actual-knowledge standard. . . ." *Id.* at \*4 n.3. While *Tengben* is not binding precedent, it directly supports the district court's determination that Aden's claim objectively arose at a date prior to his receipt of actual notice of the initiation of removal proceedings against him, and therefore Aden's reliance on *Tengben* is misplaced. *See also Sanchez*, 816 N.W.2d at 560 (declining to apply subjective actual-knowledge standard to interests-of-justice claim involving ineffective assistance of counsel). Objectively, all of the actions by his attorney and the district court which Aden claims entitle him to plea withdrawal occurred on June 25, 2012. Therefore, the district court did not err in determining that Aden's postconviction petition was untimely.

Furthermore, even if this court were to base the analysis of when Aden’s claim arose upon the timing of deportations to Somalia by the federal government, his claim would still be outside the two-year limitation of the interests-of-justice exception. As pointed out by the district court, Aden “agrees that by October 2016—more than two years before filing his [p]etition—deportations to Somalia were occurring.” Therefore, by any potential objective measure, Aden’s petition is untimely.

### ***Ineffective assistance of counsel***

Because the district court did not err in dismissing Aden’s postconviction petition as untimely, we do not reach Aden’s claim that he was entitled to plea withdrawal based upon the alleged ineffective assistance of his counsel. *See James v. State*, 699 N.W.2d 723, 727 (Minn. 2005) (“When a criminal defendant seeks to withdraw a guilty plea . . . after the defendant has been sentenced, the motion to withdraw the plea must be raised in a petition for postconviction relief.”).

### ***Recusal***

Aden argues that the district court judge should have recused herself from hearing his postconviction petition because one of his asserted bases for relief was the district court judge’s failure to question him regarding his rule 15.02 acknowledgement. Aden did not make a motion in district court to remove the judge. “A judicial officer’s authority to conduct a trial is a legal question that we review de novo.” *State v. Irby*, 848 N.W.2d 515, 517-18 (Minn. 2014) (applying de novo review on appeal despite failure to object to the judge presiding at trial because the issue involves a “fundamental question of judicial authority”).

“A judge must not preside at a trial or other proceeding if disqualified under the Code of Judicial Conduct.” Minn. R. Crim. P. 26.03, subd. 14(3). “A judge shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned. . . .” Minn. Code Jud. Conduct Rule 2.11(A). “A judge is disqualified for a lack of impartiality under Rule 2.11(A) if a reasonable examiner, from the perspective of an objective layperson with full knowledge of the facts and circumstances, would question the judge’s impartiality.” *Troxel v. State*, 875 N.W.2d 302, 314 (Minn. 2016) (quotations omitted).

Aden argues that the district court judge’s impartiality would reasonably have been questioned because the judge did not address the merits of his assertion that she failed to comply with rule 15.02. However, a district court may summarily deny an untimely petition, unless an exception applies. *Anderson*, 913 N.W.2d at 423. Here, the district court thoroughly analyzed whether an exception to the statute of limitations applied, and after concluding that no exception applied, summarily dismissed the petition as barred by the statute of limitations. Therefore, there is no basis to Aden’s assertion that the district court acted with the appearance of bias in failing to address the merits of his claim.

**Affirmed.**