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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1773**

Benjamin Joseph Hill, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed June 15, 2020
Reversed and remanded
Klaphake, Judge***

Ramsey County District Court
File No. 62-CR-11-438

Thomas Hagler, St. Paul, Minnesota (for appellant)

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

John Choi, Ramsey County Attorney, Alexandra Meyer, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Considered and decided by Hooten, Presiding Judge; Jesson, Judge; and Klaphake,
Judge.

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

UNPUBLISHED OPINION

KLAPHAKE, Judge

In this appeal from the district court's denial of appellant Benjamin Joseph Hill's petition for an order declaring eligibility for compensation based on exoneration under Minn. Stat. § 590.11 (2018 & Supp. 2019), appellant argues that the district court erred in concluding that he was not exonerated because the postconviction court did not grant him a new trial on grounds consistent with innocence. Because there is evidence of factual innocence, the postconviction court granted appellant a new trial on grounds consistent with innocence, and appellant therefore was exonerated. We reverse and remand.

DECISION

The Minnesota Incarceration and Exoneration Remedies Act (MIERA) provides procedures for compensating certain individuals who were incarcerated and later released after a court reversed their conviction. See Minn. Stat. §§ 611.362-.368 (2018 & Supp. 2019). “An individual can file a claim for compensation under MIERA only if he or she first petitions a court for and receives an order certifying that he or she is eligible for compensation based on exoneration under Minn. Stat. § 590.11.” *Buhl v. State*, 922 N.W.2d 435, 438 (Minn. App. 2019); see Minn. Stat. § 590.11.; see also *Back v. State*, 902 N.W.2d 23, 26 (Minn. 2017) (stating that the “threshold determination under the exoneration-compensation statute is whether an individual has been ‘exonerated’”). Whether a petitioner meets the statutory definition of “exonerated” under section 590.11 presents a legal question subject to de novo review. *Buhl*, 922 N.W.2d at 438.

Prior to 2019, Minn. Stat. § 590.11, subd. 1, provided that a person was “exonerated” if (1) a court of this state “ordered a new trial on grounds consistent with innocence and the prosecutor dismissed the charges” and (2) “the time for appeal of the order resulting in exoneration has expired or the order has been affirmed and is final.” Minn. Stat. § 590.11, subd. 1(1)(ii), (2) (2018). Although section 590.11 did not define “on grounds consistent with innocence,” see Minn. Stat. § 590.11 (2018), this court interpreted it to mean “agrees with innocence,” *Buhl*, 922 N.W.2d at 436.

In 2019, the legislature amended Minn. Stat. § 590.11, subd. 1. 2019 Minn. Laws 1st Spec. Sess. ch. 5, art. 2, § 13, at 965-66. The statute now provides, in relevant part, that “exonerated” means that (1) a court “ordered a new trial on grounds consistent with innocence and the prosecutor dismissed all felony charges against the petitioner arising from the same behavioral incident,” (2) “the time for appeal of the order resulting in exoneration has expired or the order has been affirmed and is final,” and (3) “60 days have passed since the judgment of conviction was reversed or vacated, and the prosecutor has not filed any felony charges against the petitioner from the same behavioral incident.” Minn. Stat. § 590.11, subd. 1(b)(1)(ii), (2)-(3) (Supp. 2019). The statute also now defines “[o]n grounds consistent with innocence” as either

(1) exonerated through a pardon or sentence commutation, based on factual innocence; or

(2) exonerated because the judgment of conviction was vacated or reversed, or a new trial was ordered, and there is *any evidence of factual innocence*, whether it was available at the time of investigation or trial or is newly discovered evidence.

Minn. Stat. § 590.11, subd. 1(c)(1)-(2) (Supp. 2019) (emphasis added).

Appellant was convicted of two counts of prohibited person in possession of a firearm in 2013 resulting from police finding a firearm at appellant's parents' residence and a firearm at appellant's business. In 2017, appellant petitioned for postconviction relief, arguing that his "right to due process was violated when a corrupt law enforcement officer planted [his] DNA on the firearms seized from his parents' house and his business," (2) that his counsel was ineffective, and (3) that the state failed to provide all police reports and property room logs regarding the chain of custody for the firearms. Following a hearing, the postconviction court found that appellant had proven "by a preponderance of the evidence that the DNA was planted in this case" and that the state failed to disclose chain-of-custody records. The postconviction court reversed his convictions, and ordered a new trial. The state dismissed the charges, and in May 2019, appellant petitioned for an order declaring his eligibility for compensation based on exoneration under Minn. Stat. §590.11. The district court denied his request.

Appellant contends that the new statutory definition of "on grounds consistent with innocence" should apply to his petition for an order declaring eligibility for compensation based on exoneration. The state relies on the pre-2019 amendment version of Minn. Stat. § 590.11, subd. 1, and this court's interpretation of "on grounds consistent with innocence" in *Buhl* in its brief, but does not acknowledge the 2019 amendments. The district court quoted the new statutory definition of "on grounds consistent with innocence" in Minn. Stat. § 590.11, subd. 1(c), in its order denying appellant's petition, but still relied on this court's interpretation of the phrase in *Buhl*.

In *Freeman v. State*, a recent published opinion of this court, we applied the new definition of “on grounds consistent with innocence” in Minn. Stat. § 590.11, subd. 1(c), to a petition filed in January 2019. ___ N.W.2d ___, ___, 2020 WL 1983227, at *1-4 (Minn. App. Apr. 27, 2020). Like the petition in *Freeman*, appellant’s petition for an order declaring eligibility for compensation based on exoneration was pending at the time of the 2019 amendments to Minn. Stat. § 590.11, subd. 1. We therefore follow *Freeman* and apply the statutory definition of “on grounds consistent with innocence” in Minn. Stat. § 590.11, subd. 1(c). See *State v. M.L.A.*, 785 N.W.2d 763, 767 (Minn. App. 2010) (stating that this court is bound by the published opinions of the court of appeals), *review denied* (Minn. Sept. 21, 2010).

Having decided that the statutory definition of “on grounds consistent with innocence” in Minn. Stat. § 590.11, subd. 1(c), applies here, we now use that definition to determine whether the postconviction court “ordered a new trial on grounds consistent with innocence.” See Minn. Stat. § 590.11, subd. 1(b)(1)(ii).

As noted above, Minn. Stat. § 590.11, subd. 1(c)(2), provides that “grounds consistent with innocence” includes exoneration because “a new trial was ordered, and there is *any evidence of factual innocence, whether it was available at the time of investigation or trial or is newly discovered evidence.*” (Emphasis added.) “[T]he phrase ‘any evidence of factual innocence’ means any evidence that shows some fact establishing the absence of the petitioner’s guilt.” *Freeman*, 2020 WL 1983227, at *2. Witness testimony, including alibi witness testimony, may constitute “evidence of factual innocence.” *Id.* at *4 & n.5.

Appellant was convicted of two counts of prohibited person in possession of a firearm under Minn. Stat. § 624.713, subd. 1(2) (Supp. 2009), which provides that a person convicted of a crime of violence “shall not be entitled to possess a . . . [a] firearm.”

“Possession of a firearm may be proved through actual or constructive possession.” *State v. Salyers*, 858 N.W.2d 156, 159 (Minn. 2015). “Actual possession, also referred to as physical possession, involves direct physical control.” *State v. Barker*, 888 N.W.2d 348, 353 (Minn. App. 2016) (quotation omitted). To establish constructive possession the state must show either (1) the prohibited item was found “in a place under [the] defendant’s exclusive control to which other people did not normally have access,” or (2) if police found the prohibited item “in a place to which others had access, there is a strong probability (inferable from other evidence) that [the] defendant was at the time consciously exercising dominion and control over it.” *State v. Florine*, 226 N.W.2d 609, 611 (Minn. 1975).

At trial, appellant testified that he had never seen, touched, or possessed either firearm. Appellant’s sister testified that she owned the firearm found at appellant’s parents’ home. Appellant’s cousin, who worked at appellant’s business, testified that he owned the firearm found in the basement of appellant’s business, that he had stored it in a ventilation duct there, and that he did not tell appellant that he brought a gun into the business. Because the trial testimony of appellant, appellant’s sister, and appellant’s cousin, if credited, indicates that appellant did not actually or constructively possess the two firearms, their testimonies constitute “evidence of factual innocence” under Minn. Stat. § 590.11, subd. 1(c)(2). And because there is “evidence of factual innocence,” the postconviction court

ordered a new trial on grounds consistent with innocence. The district court therefore erred by summarily denying appellant's petition for an order declaring eligibility for compensation based on exoneration. We reverse and remand to the district court for further proceedings consistent with Minn. Stat. § 590.11 regarding appellant's petition.

Reversed and remanded.