

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0277**

Jonah James Hawkins, petitioner,
Appellant

vs.

State of Minnesota,
Respondent.

**Filed June 1, 2021
Affirmed
Bratvold, Judge**

Norman County District Court
File No. 54-CR-11-277

Cathryn Middlebrook, Chief Appellate Public Defender, Kathryn J. Lockwood, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

James D. Brue, Norman County Attorney, Ada, Minnesota (for respondent)

Considered and decided by Bryan, Presiding Judge; Bjorkman, Judge; and Bratvold, Judge.

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

Appellant pleaded guilty to second-degree criminal sexual conduct and received an extended juvenile jurisdiction (EJJ) designation. The district court later revoked appellant's EJJ status and, later still, appellant chose to execute his prison sentence. He did not file a

direct appeal. More than seven years later, he filed a postconviction petition. In this appeal from an order denying postconviction relief, appellant argues that the district court erred by determining that his petition was untimely. He contends that his petition satisfies the “interests-of-justice” exception to the statutory deadline for filing a postconviction petition. We affirm.

FACTS

In February 2009, respondent State of Minnesota filed a juvenile-delinquency petition charging appellant Jonah James Hawkins with criminal-sexual-conduct offenses. Seven months later, Hawkins pleaded guilty to second-degree criminal sexual conduct under Minn. Stat. § 169.343, subd. 1(a) (2008), and agreed to an EJJ designation. Hawkins was 17 years old at the time of his offense. The district court sentenced Hawkins to 36 months in prison but stayed execution for ten years on the condition that he follow the terms of his juvenile probation. As part of his probation, Hawkins completed an inpatient adolescent treatment program for sex offenders, during which he admitted he had abused children that were between two and ten years old.

In March 2011, the district court found Hawkins had violated probation. The district court revoked Hawkins’s EJJ status, stayed imposition of the 36-month prison sentence for ten years, and placed Hawkins on adult probation with conditions.

In January 2012, a probation report alleged that Hawkins had violated probation by having contact with children and being terminated from outpatient sex-offender treatment. Hawkins admitted to the violations and, two months later, asked the district court to execute his sentence. The district court granted Hawkins’s request, executed his 36-month prison

sentence, and imposed a ten-year conditional-release period. Hawkins did not file a direct appeal.

In September 2019, Hawkins petitioned for postconviction relief without help from an attorney. Hawkins’s petition alleges that his 2009 guilty plea was invalid as unintelligent and involuntary, his EJJ sentence was unconstitutional, and his revocation stemmed from violations of unconstitutional probation conditions. Hawkins’s petition also requested an evidentiary hearing “to examine the evidence supporting this petition and the grounds herein.” Hawkins sought to vacate his adult criminal conviction and dismiss the charges in his juvenile file. The state opposed the petition, arguing that it was untimely.

The district court issued a written decision without a hearing. The district court determined that Hawkins’s petition was untimely, the interests of justice were not implicated, and the allegations in the petition were “not supported . . . by a sufficient factual basis or legal argument.” The district court found “that the petition lists several argumentative assertions for why the Petitioner should be granted post-conviction relief . . . [but] a petition cannot be granted based on argumentative and conclusory assertions without factual support.” “For this reason,” the district court concluded, “and because the petition is untimely, the petition for post-conviction relief must be denied.”

Hawkins appeals.

DECISION

Hawkins argues that the district court abused its discretion by denying his postconviction petition as untimely because his petition met the interests-of-justice exception to the statutory deadline. The state did not file a brief with this court. *See*

Minn. R. Civ. App. P. 142.03 (when a respondent defaults on appeal, the “case shall be determined on the merits”). We review a district court’s denial of a petition for postconviction relief for abuse of discretion. *Andersen v. State*, 913 N.W.2d 417, 422 (Minn. 2018).

“[A] person convicted of a crime” may seek postconviction relief by filing a petition claiming that the conviction “violated the person’s rights under the Constitution or laws of the United States or of the state.” Minn. Stat. § 590.01, subd. 1(1) (2018). “Unless the petition and the files and records of the proceeding conclusively show that the petitioner is entitled to no relief,” a district court must hold an evidentiary hearing on postconviction relief. Minn. Stat. § 590.04, subd. 1 (2018); *see also Reed v. State*, 925 N.W.2d 11, 18 (Minn. 2019). A petition filed outside the statute of limitations may be summarily denied, unless a statutory exception applies. *Id.* at 423.

A postconviction petition must be filed within two years of “the entry of judgment of conviction or sentence if no direct appeal is filed.” Minn. Stat. § 590.01, subd. 4(a)(1). The district court sentenced Hawkins in March 2012, and Hawkins did not appeal. Hawkins filed his postconviction petition in September 2019, long after the two-year deadline in subdivision 4(a)(1).

The postconviction statute, however, provides five exceptions to the two-year deadline. Minn. Stat. § 590.01, subd. 4(b)(1)-(5). Hawkins asserts that the district court should hear his petition under the interests-of-justice exception. *Id.*, subd. 4(b)(5). A petition invoking an exception “must be filed within two years of the date the claim arises.” *Id.*, subd. 4(c). Thus, the postconviction statute provides two relevant deadlines for

Hawkins's petition: two years from entry of judgment or sentence (subdivision 4(a)(1)), and two years from "the date the claim arises" for the interests-of-justice exception (subdivision 4(c)).

The state, however, has forfeited any challenge to timeliness under subdivision 4(c). The state's motion to the district court argued that Hawkins failed to meet "the timelines as required by Minn. Stat. § 590.01 Subd. 4(a) (1) and (2)." The state never claimed that Hawkins's petition was untimely under Minn. Stat. § 590.01, subd. 4(c). The Minnesota Supreme Court has held that "that the statute of limitations in Minn. Stat. § 590.01, subd. 4(c), is not jurisdictional and therefore is subject to waiver by the State." *Carlton v. State*, 816 N.W.2d 590, 601 (Minn. 2012).

In *Carlton*, the supreme court determined the state had failed to assert that Carlton's postconviction petition "was untimely under the 2-year statute of limitations in subdivision 4(c)" and therefore the state had "waived this defense." *Id.* at 606. Similarly, we conclude that the state waived any claim that Hawkins's postconviction petition was untimely under subdivision 4(c). Thus, we review the district court's decision to deny Hawkins's petition in the same way the supreme court reviewed the postconviction petition in *Carlton*: by examining his claim under the interests-of-justice exception. *See id.* at 607-10.

The interests-of-justice exception requires that "the petitioner establish to the satisfaction of the court that the petition [1] is not frivolous and [2] is in the interests of justice." Minn. Stat. § 590.01, subd. 4(b)(5). Both requirements must be satisfied or the petition is time-barred. *Wallace v. State*, 820 N.W.2d 843, 849 (Minn. 2012) (explaining

that if petitioner “fails to meet either of those requirements, then his petition is time barred and we will not consider the merits of his claims”). The “interests of justice” refers to the reason the petition was filed late—the cause of the tardiness—not the substantive error that the petition alleges. *State v. Sanchez*, 816 N.W.2d 550, 557 (Minn. 2012). Hawkins’s petition and his brief to this court do not address the reason his petition was filed late. Instead, he argues that his “claim had substantive merit, and his arguments were based on sound legal principles.” We nevertheless address Hawkins’s arguments given the two requirements in the interests-of-justice exception.

We first assume, without deciding, that Hawkins’s petition is not frivolous. Next, to assess whether he has satisfied the exception, we consider five nonexclusive factors:

(1) whether the claim has substantive merit; (2) whether the defendant deliberately and inexcusably failed to raise the issue on direct appeal; (3) whether the party alleging error is at fault for that error and the degree of fault assigned to the party defending the alleged error; (4) whether some fundamental unfairness to the defendant needs to be addressed; and (5) whether application of the interests-of-justice analysis is necessary to protect the fairness, integrity, or public reputation of judicial proceedings.

Carlton, 816 N.W.2d at 607. The five factors “do not form a rigid test”; courts need not examine each factor “in every case.” *Id.* 608. Indeed, “[d]ifferent factors may be dispositive in the unique circumstances of each case.” *Id.* The supreme court’s analysis of these factors in *Carlton* aids our review of Hawkins’s petition.

First, the supreme court in *Carlton* determined that Carlton’s petition lacked substantive merit, but that even if it had merit, “that does not necessarily lead to the conclusion that it serves the interests of justice to set aside the time limit in

subdivision 4(a).” *Id.* at 609. As mentioned above, caselaw directs us to weigh the factors to determine whether the exception applies. *Id.*

Hawkins’s postconviction petition asserts that his guilty plea was invalid, the EJJ statute under which he was sentenced is unconstitutional, and the conditions of his probation were unconstitutional. We agree with the district court that Hawkins’s petition cites no facts or relevant caselaw to support his assertions.¹ Still, we will assume, without deciding, that his petition has substantive merit. Thus, the first factor weighs in Hawkins’s favor.

Turning to the second factor—whether the petitioner deliberately and inexcusably failed to raise the issue on direct appeal—Hawkins argues that he “did not deliberately or inexcusably” fail to raise these issues before the current postconviction petition. But Hawkins does not explain his failure to file a direct appeal or a timely postconviction petition. In *Carlton*, the supreme court determined that Carlton’s delay in filing was “deliberate and inexcusable” because he failed to prove otherwise—nothing in the record suggested that the “failure to follow through with his appeal or postconviction relief in a timely manner was anything other than deliberate and inexcusable.” *Id.* Because Hawkins

¹ Hawkins’s brief to this court states, “the facts in the record did provide the necessary factual basis in support of his arguments.” But Hawkins does not point to which facts support his arguments. And he cites no caselaw that illuminates his constitutional claims. For example, Hawkins’s petition cites an opinion from this court to support his claim that the EJJ statute is unconstitutional. While he is correct that the opinion struck down part of the EJJ statute as unconstitutional, the part that was found unconstitutional is not relevant to Hawkins’s prosecution. See *In re Welfare of T.C.J.*, 689 N.W.2d 787 (Minn. App. 2004), review dismissed (Minn. Jan. 26, 2005). Thus, Hawkins’s constitutional argument about the EJJ statute is vague, at best.

also failed to show why his seven-year delay was not deliberate and inexcusable, this factor does not weigh in his favor.

The third factor is “whether the party alleging error is at fault for that error and the degree of fault assigned to the party defending the alleged error.” *Id.* at 607. This factor, however, “looks to the instances giving rise to the interests-of-justice exception, not to any alleged errors giving rise to the underlying claims in the petition.” *Id.* at 610. Hawkins argues that he “did not contribute to the issues he raised with the validity of his conviction and sentence.” Hawkins’s argument focuses on the merits of the issues he seeks to raise on appeal and does not address whether he contributed to the delay in filing. Nor does Hawkins allege that the state, or anyone else, caused his delay, and so this factor weighs against Hawkins.

As to the fourth and fifth factors, Hawkins argues he “suffered fundamental unfairness as a result of his conviction” and that “the interests of justice require that Hawkins is entitled to postconviction review to protect the fairness and integrity of the judicial proceedings.” Again, Hawkins’s arguments focus on the merits of the issues on appeal and not whether his reasons for the delay satisfy the interests-of-justice exception.

The supreme court in *Carlton* explained that “our fairness inquiry under the interests-of-justice analysis has often involved looking to whether the party had an opportunity to correct any potential unfairness.” *Id.* at 610. The court determined that Carlton “had an opportunity to seek review of his underlying claims and failed to do so multiple times” and did “not allege misconduct or flagrant disregard for judicial process.” *Id.* Similarly, Hawkins had the opportunity to correct the unfairness that he alleges, yet he

did not file a direct appeal or a timely postconviction petition. Nor has Hawkins alleged misconduct or flagrant disregard in the judicial process. Thus, the fourth and fifth factors weigh against Hawkins.

We acknowledge that Hawkins, like the defendant in *Carlton*, has not had any appellate review of his conviction. *See id.* at 600. But this, alone, does not satisfy the interests-of-justice exception. As the supreme court explained in *Carlton*, “we cannot rewrite subdivision 4(b) in the postconviction statute to provide an additional exception” whenever a petitioner’s conviction has not been reviewed on direct appeal. *Id.* at 609.

We are mindful that “the interests of justice are implicated only in exceptional and extraordinary circumstances.” *Id.* at 607 (quotation omitted). Under four of the five factors that inform the interests-of-justice determination, Hawkins has not satisfied this court that it would serve the interests of justice to set aside the statutory deadline and allow his untimely petition to proceed. We therefore conclude that the district court did not abuse its discretion by denying Hawkins’s petition as untimely under Minn. Stat. § 590.01, subd. 4(a).

Affirmed.