

*This opinion is nonprecedential except as provided by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
A20-0745**

Lue Yang, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed February 8, 2021
Affirmed
Hooten, Judge**

Hennepin County District Court
File No. 27-CR-15-10663

Lue Yang, Brooklyn Center, Minnesota (pro se appellant)

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

Michael O. Freeman, Hennepin County Attorney, Jonathan P. Schmidt, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Smith, Tracy M., Presiding Judge; Hooten, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

HOOTEN, Judge

In this appeal from the district court's denial of his petition for compensation based on exoneration under Minn. Stat. § 590.11, subds. 1(b) and (c) (Supp. 2019), appellant argues that he is eligible to receive compensation as an exonerated individual under the

statute. While appellant's conviction for possession of a firearm was vacated, appellant is not eligible for compensation as an exonerated person under our recent precedent in *Kingbird v. State*, 949 N.W.2d 744 (Minn. App. 2020), *review granted* (Minn. Nov. 17, 2020). We affirm.

FACTS

Appellant Lue Yang was pulled over in April 2015 for driving a vehicle a police officer believed to be stolen. The officer discovered a compressed-air-powered BB gun under the driver's seat. The state charged Yang with felony possession of a firearm by an ineligible person under Minn. Stat. § 624.713, subd. 1(2) (2014). After a trial, a jury found Yang guilty. The district court entered the conviction and sentenced Yang to 60 months in prison. Yang then appealed.

Prior to our deciding Yang's appeal, the supreme court released *State v. Haywood*, 886 N.W.2d 485 (Minn. 2016), in which the defendant, Haywood, appealed his conviction for possession of a firearm by an ineligible person. In that case, the supreme court concluded that the plain meaning of the term "firearm" includes only devices that fire a projectile using explosive force like gunpowder, overruling a previous interpretation of the term that included a compressed-air-powered BB gun. *Id.* at 489-490. On that basis, the court vacated the appellant's conviction. *Id.* at 490-91.

In Yang's appeal from his conviction, we applied the supreme court's interpretation of the term "firearm," concluding that Minn. Stat. § 624.713, subd. 1 (2014) did not criminalize Yang's possession of a BB gun. *State v. Lue Yang*, 887 N.W.2d 40, 43 (Minn.

App. 2016). We vacated Yang's conviction because he "did not possess a firearm when he was arrested on April 20, 2015." *Id.*

In 2019, Yang petitioned for compensation based on exoneration under Minn. Stat. § 590.11. The district court denied his petition. Yang appeals to this court.

DECISION

Yang contends that he was exonerated of the crime of possession of a firearm by an ineligible person because we vacated his conviction on the basis that his BB gun was not a firearm. *Yang*, 887 N.W.2d at 43. The state contends that Yang was not exonerated and that there is no evidence of his innocence.

An exonerated person may petition for compensation from the state for the time they were unjustly imprisoned. Minn. Stat. § 590.11 (2018 & Supp. 2019). A person must first show that they were exonerated. *Id.*, subds. 2 (Supp. 2019), 3 (2018). A person is exonerated if a court "vacated, reversed, or set aside a judgment of conviction on grounds consistent with innocence." *Id.*, subd. 1(b). The phrase "on grounds consistent with innocence" means that "there is any evidence of factual innocence." *Id.*, subd. 1(c) (Supp. 2019). The phrase "evidence of factual innocence" means "any evidence that shows some fact establishing the absence of the petitioner's guilt." *Freeman v. State*, 944 N.W.2d 488, 491 (Minn. App. 2020). Once a person shows they were exonerated on grounds consistent with innocence, they may petition the district court for an order certifying them as eligible for compensation. Minn. Stat. § 590.11, subds. 3, 7 (Supp. 2019). We review de novo whether an appellant has met the statutory definition of "exonerated." *Freeman*, 944 N.W.2d at 490.

The district court concluded that Yang was not exonerated because he was guilty of possessing a firearm under existing case law in 2015, and his conviction was vacated only because we later clarified that a BB gun is not a firearm. The district court reasoned that “[t]he subsequent change in the law does not absolve [Yang] of guilt.” The state agrees with the district court’s reasoning.

We conclude that, based upon our holding in *Kingbird v. State*, the district court did not err by determining that Yang was not exonerated. 949 N.W.2d 744 (Minn. App. 2020), review granted (Minn. Nov. 17, 2020). Just as in Yang’s case, the appellant in *Kingbird* had a BB gun, was convicted of possession of a firearm by an ineligible person, and the district court vacated his conviction on the basis that a BB gun was not a firearm under *Haywood*. *Id.* at 746. The appellant petitioned for compensation on the basis of exoneration, but the district court denied the petition, concluding that the appellant’s conviction was not vacated based on grounds consistent with innocence and the appellant failed to offer any evidence of factual innocence. *Id.* at 746-47. We agreed, holding that a defendant is not exonerated under the compensation statute when they “violate the criminal law under existing precedent” and their conviction was only “vacated based on a clarification of the law so that the . . . conduct is no longer criminal.” *Id.* at 750-51.

Under the *Kingbird* rationale, even though Yang’s conviction was vacated, he was not factually innocent because his conduct was deemed to be criminal under the case law

existing at the time he committed the offense. Because Yang was not factually innocent, he was not eligible to bring a claim under the exoneration compensation statute.¹

Yang finally argues that the supreme court's decision in *Back v State*, 902 N.W.2d 23 (Minn. 2017), violated his equal protection rights by preventing him from claiming he was exonerated under an older definition of that term. See Minn. Stat. § 590.11, subd. 1(1)(i) (2016) (“‘exonerated’ means that: (1) a court of this state: (i) vacated or reversed a judgment of conviction on grounds consistent with innocence and the prosecutor dismissed the charges”). The supreme court declared that because it required that a prosecutor dismiss the charges, the definition was unconstitutional on equal protection grounds. *Back*, 902 N.W.2d at 30-32. As a remedy, the supreme court excised the entire definition from the compensation statute. *Id.* In a dissent, Justice Lillehaug criticized the majority opinion for overreaching by unnecessarily excising the entire definition rather than only the unconstitutional phrase requiring the dismissal by a prosecutor, leaving a person whose conviction was vacated or reversed on grounds consistent with innocence without a remedy and equal protection under the compensation statute. *Id.* at 36-37. The legislature responded to these concerns by amending the statute to reinstate the right of compensation for a person whose conviction was vacated or reversed on grounds consistent with innocence. 2019 Minn. Laws 1st Spec. Sess. ch. 5, art. 2, §§ 13-16, at 965-67. In doing so, the legislature defined for the first time the phrase “on grounds consistent with

¹ Because we conclude that Yang was not exonerated, we do not address his contention that the district court improperly considered his other potential bad acts to support its conclusion that he failed to show his innocence.

innocence” as “any evidence of factual innocence.” 2019 Minn. Laws 1st Spec. Sess. ch. 5, art. 2, § 13, at 966. Yang cites Justice Lillehaug’s dissent to support his claim that the supreme court erred in excising the entire definition, arguing that the excised definition was less restrictive than the new definition, and concluding that *Back* denied him equal protection under the statute.

There is no merit to Yang’s equal protection claims. First, the legislature amended the statute to allow a person to claim compensation when their conviction is vacated or reversed on grounds consistent with innocence, directly solving Justice Lillehaug’s equal protection concern that *Back* left that person without a remedy under the compensation statute. 2019 Minn. Laws 1st Spec. Sess. ch. 5, art. 2, §§ 13-16, at 965-67; *Back*, 902 N.W.2d at 36-37. Therefore, Justice Lillehaug’s dissent provides no legal support for Yang’s equal protection claim. Second, Yang cites no legal support for his contention that the new definition of exonerated is more restrictive than the old definition. The supreme court in *Back* specifically declined to analyze whether the appellant’s conviction was reversed on grounds consistent with innocence; *Back* provides no baseline to compare the restrictiveness of the old definition to the new one. *Back*, 902 N.W.2d at 27 n.1. Third, Yang has failed to otherwise articulate and develop the legal and factual support for an equal protection claim, so we need not consider it further. *See State v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997).

Affirmed.