

*This opinion is nonprecedential except as provided by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
A20-0878**

Ricky Arlen Turner, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed April 26, 2021
Reversed and remanded
Reyes, Judge**

Washington County District Court
File No. 82-CR-17-2023

Cathryn Middlebrook, Chief Appellate Public Defender, Erik I. Withall, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Pete Orput, Washington County Attorney, Nicholas A. Hydukovich, Assistant County Attorney, Stillwater, Minnesota (for respondent)

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

NONPRECEDENTIAL OPINION

REYES, Judge

In this appeal from the postconviction court's denial of his postconviction petition, appellant argues that he was denied his constitutional right to counsel. We reverse and remand.

FACTS

Appellant Ricky Arlen Turner pleaded guilty to aiding and abetting racketeering by enterprise under Minn. Stat. § 609.903, subd. 1(1) (2016), and promoting prostitution under Minn. Stat. § 609.322, subd. 1a(2) (2016). On December 19, 2019, appellant, then self-represented, filed a postconviction petition under Minn. Stat. § 590.01, subd. 1(1) (2018), challenging the district court's authority to impose a ten-year conditional-release term and require appellant to register as a predatory offender. Appellant served his petition on the Minnesota Attorney General, Washington County Attorney, and the Washington County district court administrator. The district court administrator did not send a copy of the petition to the state public defender's office.

The postconviction court summarily denied appellant's petition on the merits without appointing counsel or indicating whether appellant waived counsel. This appeal followed, and we accepted jurisdiction, despite an untimely appeal, in the interest of allowing appellant to obtain judicial review. We also provided a copy of our order accepting jurisdiction to the public defender's office, which assumed representation on appeal.

DECISION

Appellant argues that his right to counsel was violated when (1) the postconviction court failed to appoint counsel for him or find that he waived counsel and (2) the district court administrator failed to send a copy of his postconviction petition to the public defender's office. We agree.

As an initial matter, respondent State of Minnesota concedes that reversal and remand is necessary so that appellant can proceed at the postconviction stage with counsel. But we must decide cases according to the law, even if the parties agree. *State v. Hannuksela*, 452 N.W.2d 668, 673 n.7 (Minn. 1990).

“We review a postconviction court’s findings of fact for an abuse of discretion and questions of law de novo.” *Bonga v. State*, 765 N.W.2d 639, 642 (Minn. 2009) (citations omitted). When the facts are undisputed, as they are here, we review the legal question of whether a person’s right to counsel has been violated de novo. *State v. Slette*, 585 N.W.2d 407, 409 (Minn. App. 1998).

Criminal defendants have a constitutional right to counsel. U.S. Const. amend. VI; Minn. Const. art. I, § 6. The Minnesota Supreme Court extended the state constitutional right to counsel to a first review of a criminal conviction, either on direct appeal or by postconviction proceeding. *Deegan v. State*, 711 N.W.2d 89, 98 (Minn. 2006). Denial of counsel is a structural error, *Bonga*, 765 N.W.2d at 643, and requires no showing of prejudice to reverse, *State v. Camacho*, 561 N.W.2d 160, 171 (Minn. 1997).

Additionally, Minnesota law requires the district court administrator to send a copy of a self-represented postconviction petition to the public defender’s office and advise the petitioner of the referral. Minn. Stat. § 590.02, subd. 1(4) (2018); *Paone v. State*, 658 N.W.2d 896, 899 (Minn. App. 2003). In turn, the public defender’s office must accept representation of an indigent person in a first review of a criminal conviction. Minn. Stat. § 590.05 (2018); *Paone*, 658 N.W.2d at 899.

Here, appellant did not directly appeal his conviction, and this is his first postconviction petition. This is therefore the first review of his conviction, entitling him to representation. But because the postconviction court did not inform appellant of his right to counsel, appoint counsel for him, or find that he waived counsel, and because the district court administrator did not send a copy of appellant's petition to the public defender's office, appellant's right to counsel was violated. We therefore reverse and remand so that appellant can file a postconviction petition with the assistance of counsel. We express no opinion on the merits of appellant's substantive claims.

Reversed and remanded.