

*This opinion is nonprecedential except as provided by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
A20-1096**

Dario Jothzan Abla-Salmeron, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed March 15, 2021
Affirmed
Connolly, Judge**

Ramsey County District Court
File No. 62-CR-13-3514

Dario Jothzan Abla-Salmeron, Faribault, Minnesota (pro se appellant)

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

John J. Choi, Ramsey County Attorney, St. Paul, Minnesota (for respondent)

Considered and decided by Connolly, Presiding Judge; Ross, Judge; and Smith,
Tracy M., Judge.

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

Appellant challenges the district court's denial of his petition for postconviction relief after being convicted of first-degree criminal sexual conduct, arguing that the district court erred by finding that his petition was untimely. We affirm.

FACTS

A jury found appellant, Dario Jothzan Abila-Salmeron, guilty of first-degree and third-degree criminal sexual conduct in 2014. The jury concluded that appellant raped an adult woman in May 2013; he forced her to have anal and vaginal intercourse on the side of a road in St. Paul. *See State v. Abila-Salmeron*, No. A14-1127, 2015 WL 1959968, at *1 (Minn. App. May 4, 2015) (appellant’s direct appeal).

Nearly five years after his appeal was final, appellant filed a petition for postconviction relief arguing that his conviction should be overturned based on his interpretation of the Minnesota Supreme Court’s recent decision in *State v. Ortega-Rodriguez*. 920 N.W.2d 642 (Minn. 2018) (reversing a conviction for first-degree criminal sexual conduct because the required statutory element of “penetration” was not shown). Appellant argued that the ruling in *Ortega-Rodriguez* constituted a “new interpretation of federal or state constitutional or statutory law” and so excepted him from the two-year time limit described in Minn. Stat. § 590.01, subd. (4)(b)(3) (2018). The district court denied appellant’s petition, concluding that the petition was untimely and that the exception cited by appellant did not apply.

This appeal follows.

DECISION

“A petition [for postconviction relief] that is filed outside the statute of limitations may be summarily denied, unless a statutory exception applies.” *Andersen v. State*, 913 N.W.2d 417, 423 (Minn. 2018) (quotations and citations omitted). “We review a

postconviction court’s summary denial of a petition for postconviction relief for an abuse of discretion.” *Id.* at 422.

A petition for postconviction relief is untimely if it is filed more than two years after “the entry of judgment of conviction or sentence if no direct appeal is filed” or “an appellate court’s disposition of petitioner’s direct appeal,” whichever is later. *See* Minn. Stat. § 590.01, subd. 4(a) (2018). However, the court may consider a petition when the petitioner satisfies one of the five statutory exceptions to this two-year time limit. *Id.* at subd. 4(b) (2018). In his petition for postconviction relief, appellant cited the exception that applies when “the petitioner asserts a new interpretation of federal or state constitutional or statutory law by either the United States Supreme Court or a Minnesota appellate court and the petitioner establishes that this interpretation is retroactively applicable to the petitioner’s case.” *Id.* at subd. 4(b)(3).

Appellant argued that the holding in *Ortega-Rodriguez* applied to his case and that its “new interpretation” of Minnesota law provided him with an exception to the procedural time limit. In *Ortega-Rodriguez*, the court dealt with criminal sexual conduct involving a minor; the court held that the statute required proof of penetration to be convicted of first-degree criminal sexual conduct of a minor. But this holding did not change the analysis for first-degree criminal sexual conduct of an adult, and penetration was never at issue in appellant’s case.

The district court analyzed appellant’s claim, including the proffered explanation as to why *Ortega-Rodriguez* would provide appellant with an exception to the time limit on his petition. Because the facts are dissimilar in all respects to the present case and appellant

was charged with a different offense, the district court concluded that “*Ortega-Rodriguez* does not apply.” We agree.

Appellant filed a petition for postconviction relief more than two years after his conviction became final. Because appellant cannot establish an exception to this rule pursuant to Minn. Stat. § 590.01, subd. 4 (2018), the district court did not err by denying his petition for postconviction relief.

Affirmed.