This opinion is nonprecedential except as provided by Minn.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
A21-0455

Jose Antonio Martinez-Fuentes, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed February 7, 2022
Affirmed
Smith, Tracy M., Judge

Kandiyohi County District Court
File No. 34-CR-08-954

Kimberley Woods Vanselow, Khanh Nguyen Law Office, Minneapolis, Minnesota (for appellant)

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

Shane Baker, Kandiyohi County Attorney, Julianna Passe, Assistant County Attorney, Willmar, Minnesota (for respondent)

Considered and decided by Slieter, Presiding Judge; Smith, Tracy M., Judge; and Gaïtas, Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In this appeal from the district court's denial of postconviction relief, appellant Jose Antonio Martinez-Fuentes argues that the district court erred by determining that his petition was time-barred and abused its discretion by concluding that, in any event, he was not entitled to relief on the merits of his petition. Because the district court did not err by concluding that Martinez-Fuentes's petition is time-barred, we affirm.

FACTS

In 2008 Martinez-Fuentes, who did not and does not have legal status to reside in the United States, pleaded guilty to one count of aggravated forgery in violation of Minn. Stat. § 609.625, subd. 1(1) (2008). Under federal immigration law, aggravated forgery is considered a "crime of moral turpitude," making Martinez-Fuentes inadmissible, and a person who is inadmissible is deportable. *See* 8 U.S.C. § 11182(a)(2)(a)(1)(I) (2017) (stating that immigrants who commit crimes involving moral turpitude are inadmissible); *see also* 8 U.S.C. § 1227(a)(1)(A) (2017) (stating that an immigrant "who at the time of entry . . . was within one or more of the classes of aliens inadmissible by the law existing at such time is deportable"). Martinez-Fuentes's guilty plea thus makes him deportable.

Martinez-Fuentes was represented by counsel at the time of his plea. At the plea hearing, the district court asked Martinez-Fuentes if he understood that there could be adverse consequences to his guilty plea, including "[his] ability to remain in the United States." Martinez-Fuentes responded that he did. Years after this plea hearing, Martinez-Fuentes's plea counsel was placed on probation and then suspended indefinitely for providing incompetent legal advice to clients.

In 2020, pursuant to Minn. Stat. § 590.01 (2018), Martinez-Fuentes filed a postconviction petition for relief, asserting that his constitutional rights were violated when his plea counsel failed to advise him of the immigration consequences of his plea. At an evidentiary hearing on his petition, Martinez-Fuentes testified that his plea counsel never discussed the consequences of the charges on his immigration status, that his counsel advised Martinez-Fuentes to plead guilty, and that he would not have pleaded guilty if he had understood that he would be subject to deportation. Martinez-Fuentes also testified that he was "overcome by nerves" when the district court judge went through a list of his rights at the plea hearing.

Martinez-Fuentes further testified that, in 2010, he met with an attorney at the Wilson Law Group. This second attorney informed Martinez-Fuentes that Martinez-Fuentes did not "have any case" to gain lawful immigration status and that he would need to "wait until the immigration laws were changed." Martinez-Fuentes testified that, following that meeting, he withheld a $1,000 payment from his plea counsel.

Martinez-Fuentes also testified that, in 2019, he met with a third attorney, who informed him that his aggravated forgery conviction would make him ineligible to obtain lawful immigration status.

The district court denied Martinez-Fuentes's petition for postconviction relief on the ground that it was time-barred. The district court also determined that, even if the petition was timely, Martinez-Fuentes's claim that his guilty plea was not accurately, knowingly, or intelligently made was not credible.

This appeal follows.

DECISION

A denial of postconviction relief is reviewed for an abuse of discretion. *Reed v. State*, 793 N.W.2d 725, 729 (Minn. 2010). "Under this standard of review, a matter will not be reversed unless the postconviction court exercised its discretion in an arbitrary or capricious manner, based its ruling on an erroneous view of the law, or made clearly erroneous factual findings." *Id.* An appellate court reviews legal issues de novo but reviews factual issues for "whether there is sufficient evidence in the record to sustain the postconviction court's findings." *Pearson v. State*, 891 N.W.2d 590, 596 (Minn. 2017) (quotation omitted).

A petition for postconviction relief must be filed within two years after the entry of a judgment of conviction or sentence if, as here, no direct appeal is filed. *See* Minn. Stat. § 590.01, subd. 4. This time bar has exceptions, including when "the petitioner establishes to the satisfaction of the court that the petition is not frivolous and is in the interests of justice." *Id.*, subd. 4(b)(5). An additional time bar applies to the exceptions. Under the postconviction statute, "[a]ny petition invoking an exception provided in [subdivision 4(b)] must be filed within two years of the date the claim arises." *Id.*, subd. 4(c).

It is undisputed that Martinez-Fuentes filed his petition 12 years after the district court entered a judgment of conviction and imposed his sentence. However, Martinez-Fuentes argues that his petition is not frivolous and is in the interests of justice and therefore meets the time-bar exception described in section 590.01, subdivision 4(b)(5). His argument fails for two reasons.

First, the district court correctly concluded that Martinez-Fuentes failed to assert a claim that triggers the interests-of-justice exception. In *Sanchez v. State*, the supreme court explained that "the interests-of-justice exception is triggered by an injustice that *caused* the petitioner to miss the primary deadline in subdivision 4(a), and not to the *substance* of his petition." 816 N.W.2d 550, 557 (Minn. 2012). The court clarified that the interests of justice referred to in subdivision 4(b)(5) "relate to the *reason* the petition was filed after the 2-year time limit in subdivision 4(a), not the *substantive claims* in the petition." *Id.* Therefore, a petitioner attempting to invoke the interests-of-justice exception must allege that some injustice occurred that caused the petitioner to miss the filing deadline.

Here, the district court concluded that Martinez-Fuentes failed to allege any injustice that caused him to miss filing a timely petition. The injustice that Martinez-Fuentes alleged was ineffective assistance of plea counsel in misadvising Martinez-Fuentes about the immigration consequences of his guilty plea. Under *Sanchez*, because the injustice that Martinez-Fuentes alleged was identical to the substance of his petition, that injustice could not have caused him to miss the primary two-year deadline. *See id*. The district court therefore properly concluded that the interests-of-justice exception to the primary two-year time bar does not apply.

Second, even if Martinez-Fuentes's claim did properly invoke the interests-of-justice exception, the district court did not clearly err by determining that the claim would still be untimely under the secondary time bar because it was not filed within two years of the date that the claim arose. A claim arises for the purposes of the interests-of-justice exception "when the petitioner knew or should have known that he had a claim" that could invoke that exception. *Id.* at 560.

The district court found that "[a]ll of the facts on which Martinez Fuentes' claim is based were known or knowable by him by 2010, when he met with an attorney at Wilson Law Group." Thus, the district court concluded, any claim under the interests-of-justice exception arose at that time and he was required to file a petition within two years, or by

2012. Because the present petition was not filed until 2020, the district court concluded, it is time-barred.

Martinez-Fuentes argues that his claim arose not in 2010, but in 2019, when he met with his third attorney. He points to the fact that he did not file a claim for a refund of the $12,000 he had paid to his plea counsel and argues that, had he known he had a claim, "logically he would have requested a refund or at least filed a complaint."

The argument is unpersuasive. Martinez-Fuentes's own testimony provides a basis for the district court's factual finding. He testified that he learned from his second attorney in 2010 that he did not have a case under existing immigration law to seek lawful status in the United States. Given this testimony, the district court did not clearly err by finding that Martinez-Fuentes's claim arose in 2010. In the absence of clear error, we defer to the district court's factual findings. *See Pearson*, 891 N.W.2d at 596. Because Martinez-Fuentes's claim arose in 2010, his petition failed to meet the secondary two-year deadline in Minn. Stat. § 590.01, subd. 4(c).

In sum, the district court did not abuse its discretion in denying Martinez-Fuentes's petition for postconviction relief on the ground that it is time-barred and does not meet the interests-of-justice exception to the statutory deadline. We do not address the district court's determination that the petition also fails on the merits of Martinez-Fuentes's claim.

Affirmed.