

*This opinion is nonprecedential except as provided by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
A21-1113**

Ryan Leroy Smith,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed February 14, 2022
Reversed and remanded
Jesson, Judge**

Mille Lacs County District Court
File No. 48-CV-21-1260

Wilbur W. Fluegel, Fluegel Law Office, Minneapolis, Minnesota; and

Michael C. Van Berkom, Fishman, Carp, Bescheinen & Van Berkom, Ltd, Plymouth,
Minnesota (for appellant)

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

Joe Walsh, Mille Lacs County Attorney, Milaca, Minnesota (for respondent)

Considered and decided by Bryan, Presiding Judge; Jesson, Judge; and
Rodenberg, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

JESSON, Judge

Appellant Ryan Leroy Smith's conviction of first-degree driving while intoxicated was reversed by the Minnesota Supreme Court. He then petitioned the district court for an order declaring him eligible for compensation based on exoneration. The state joined the petition. But the district court denied his petition because it determined that he had not been exonerated. Because we conclude that Smith was exonerated, we reverse and remand.

FACTS

Smith was convicted of first-degree driving while intoxicated and sentenced to 72 months in prison. Two and a half years later, the supreme court reversed the conviction. After the reversal, the district court vacated Smith's conviction and entered a judgment of acquittal. Following the vacation of his conviction, Smith petitioned the district court for an order declaring him eligible for exoneration compensation under Minnesota Statutes section 590.11 (2020). The county attorney joined Smith's exoneration-compensation petition.¹ But the district court concluded that Smith had not been exonerated, reasoning that his conviction had not been vacated "on grounds consistent with innocence." As a result, the district court denied Smith's petition for compensation.

Smith appeals.

¹ The state did not file a brief in this matter. We determine this appeal on the merits. Minn. R. Civ. App. P. 142.03.

DECISION

Smith contends that he is entitled to compensation because he was exonerated of the first-degree driving-while-intoxicated conviction. We review de novo whether a person is entitled to exoneration compensation. *Freeman v. State*, 944 N.W.2d 488, 490 (Minn. App. 2020).

The first step to receive compensation is to petition the district court under Minnesota Statutes section 590.11, the eligibility statute, for an order declaring the petitioner eligible for compensation. *Id.* To be declared eligible for compensation, the petitioner must have been exonerated, meaning that the petitioner’s conviction was vacated or reversed “on grounds consistent with innocence.” Minn. Stat. § 590.11, subd. 1(b)(1)(i). In turn, “on grounds consistent with innocence” means “exonerated because the judgment of conviction was vacated or reversed, or a new trial was ordered, and there is *any evidence of factual innocence*.” *Id.*, subd. 1(c)(2) (emphasis added). And “the phrase ‘any evidence of factual innocence’ means any evidence that shows some fact establishing the absence of the petitioner’s guilt.” *Freeman*, 944 N.W.2d at 491.

To consider the question of factual innocence, we begin with the statute under which Smith was convicted: first-degree driving while intoxicated. A person is guilty of this crime if the person drives a motor vehicle under the influence of alcohol “within ten years of the first of three or more qualified prior impaired driving incidents.” Minn. Stat. § 169A.24, subd. 1(1) (2008). And the legislature defined what offenses qualify as prior impaired driving convictions. Minn. Stat. § 169A.03, subd. 20(1)-(5) (2008).

When the state charged Smith with first degree driving while intoxicated in 2010, it asserted that Smith had three qualified prior impaired-driving offenses. One of these was a 2005 criminal-vehicular-operation conviction.² The state did not charge Smith with any lesser-included offenses.

To determine whether Smith was exonerated, we turn to the circumstances of the reversal of his first-degree driving-while-intoxicated conviction. The supreme court reversed Smith's conviction because at the time of that conviction, criminal vehicular operation was not included in the list of prior impaired-driving offenses. *State v. Smith*, 899 N.W.2d 120,122-23 (Minn. 2017). Because Smith's 2005 conviction was not a prior impaired-driving conviction the supreme court concluded that "the evidence was insufficient to convict Smith of first-degree driving while impaired." *Id.* at 126.

With this ruling in mind, we turn to whether "there is any evidence of factual innocence" underlying the reversal of Smith's conviction. Minn. Stat. § 590.11, subd. 1(c)(2). The district court concluded that Smith's conviction was not reversed based on evidence of factual innocence because the jury found him guilty of the crime of driving under the influence. The court reasoned that the use of Smith's prior convictions to enhance the level of the offense to a felony was "irrelevant to his guilt or innocence" because he still committed a crime.

We disagree. While Smith may have committed *a* crime, it was not *the* crime for which he was charged. And a conviction for that crime, first-degree driving while

² Minn. Stat. § 609.21, subd. 2b(6) (2002).

intoxicated, requires three prior impaired-driving convictions. Minn. Stat. § 169A.24, subd. 1(1). Here it is undisputed that Smith committed the offense within ten years of only two qualified prior impaired driving convictions. *Smith*, 899 N.W.2d at 121 (quotation omitted). The fact that the state failed to prove a third qualified prior impaired-driving conviction is evidence of factual innocence because it establishes Smith’s absence of guilt of the crime charged. *See Freeman*, 944 N.W.2d at 491 (requiring petitioner to show “some fact establishing the absence of the petitioner’s guilt”). As the supreme court stated, because his criminal-vehicular-operation conviction was not a prior impaired-driving conviction, the evidence was “insufficient to convict Smith.” *Smith*, 899 N.W.2d at 126. Because the state did not charge Smith with any lesser-included offenses, the jury’s finding that he drove under the influence does not disturb this conclusion. In sum, Smith was exonerated.³

Our decision in *Kingbird v. State*, 949 N.W.2d 744 (Minn. App. 2020), *rev. granted* (Minn. Nov. 17, 2020), does not compel a different result. Kingbird was convicted of being a felon in possession of a firearm after police found him with a BB gun. *Kingbird*, 949 N.W.2d at 746. But his conviction was vacated in 2017 following the supreme court’s clarification that a BB gun is not a “firearm” for purposes of the felon-in-possession statute. *Id.* (citing *State v. Haywood*, 886 N.W.2d 485, 491 (Minn. 2016)). When Kingbird petitioned for an order declaring him eligible for compensation, the district court denied

³ Smith’s conduct may be relevant in a later proceeding about the amount of compensation to which he is entitled, but it does not alter the fact that he was exonerated of the crime with which he was charged. Minn. Stat. § 590.11, subd. 4.

his petition because it concluded that his conviction was not vacated on grounds consistent with innocence. *Id.* at 746-47. We affirmed the district court because Kingbird’s conduct was criminal when he committed the act under then-existing precedent. *Id.* at 747-50. The supreme court’s clarification of the law did not qualify as evidence of factual innocence, we held, because Kingbird “was guilty of the crime charged when he committed it.” *Id.* at 750. But here, unlike in *Kingbird*, Smith was never guilty of first-degree driving while intoxicated because, under existing law at the time of the incident, he did not have three qualifying prior impaired-driving convictions.⁴

Because we conclude that Smith’s conviction was vacated on grounds consistent with innocence, further proceedings are required.⁵ We remand this matter to the district court for a finding that Smith was exonerated and for additional proceedings under the eligibility statute, consistent with this opinion.⁶

Reversed and remanded.

⁴ The supreme court reversed Smith’s conviction in a plurality opinion. The parties agree that the opinion authored by Justice Stras is controlling, instead of the concurrence. We apply the reasoning of the opinion, which reversed Smith’s conviction on the basis of existing precedent.

⁵ We observe that the state stipulated to Smith’s petition before the district court, and that Minnesota Statutes section 590.11, subdivision 3(a) provides that joinder by the prosecutor “shall conclusively establish eligibility for compensation.” But because Smith did not argue that subdivision 3(a) establishes his eligibility for compensation, we do not address its applicability in this appeal.

⁶ The district court must hold a hearing on Smith’s petition. Minn. Stat. § 590.11, subd. 6. At the hearing, the parties may submit evidence and the court may consider whether Smith’s conduct brought about the conviction. *Id.*, subd. 4. And if, after considering the files, records, and any evidence submitted under subdivision 4, the court determines that Smith is eligible for compensation, the court shall issue an order indicating the “portion of the term of incarceration for which [Smith] is entitled to make a claim.” *Id.*, subd. 7.