

*This opinion is nonprecedential except as provided by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
A22-0335**

Orlando Omar Castillo, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed September 6, 2022
Affirmed
Gaïtas, Judge**

Sibley County District Court
File No. 72-CR-14-31

Cathryn Middlebrook, Chief Appellate Public Defender, Jennifer Workman Jesness,
Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Donald E. Lannoye, Sibley County Attorney, Gaylord, Minnesota (for respondent)

Considered and decided by Gaïtas, Presiding Judge; Cochran, Judge; and Bryan,
Judge.

NONPRECEDENTIAL OPINION

GAÏTAS, Judge

In this appeal from the district court's summary denial of his petition for postconviction relief, appellant Orlando Omar Castillo argues that the district court abused its discretion by denying his petition as untimely. We affirm.

FACTS

In February 2014, a deputy sheriff responded to reports of a possible domestic assault at a residence. The deputy encountered Castillo sitting at the kitchen table. Castillo refused to acknowledge the deputy. When the deputy attempted to escort Castillo out of the residence, Castillo spit vomit at the deputy's face.

Based on this incident, Castillo was charged with fourth-degree assault under Minnesota Statutes section 609.2231, subdivision 1 (2012). Castillo pleaded guilty to the charged offense. In March 2014, the district court sentenced Castillo to 90 days in jail and three years of supervised probation. Castillo did not appeal.

Under Minnesota law, Castillo's fourth-degree-assault conviction is classified as a felony crime of violence. *See* Minn. Stat. § 624.712, subd. 5 (2020). Because Castillo has been convicted of a felony crime of violence, he is prohibited from possessing a firearm. *See* Minn. Stat. § 624.713, subd. 1(2) (2020). In October 2020, Castillo was charged with possession of a firearm by an ineligible person. *See id.* Castillo was ultimately convicted of that offense and sentenced to prison.

Castillo filed a petition for postconviction relief challenging the 2014 conviction for fourth-degree assault that made him ineligible to possess a firearm. He argued that his fourth-degree-assault conviction effectively was invalidated by the Minnesota Supreme Court's decision in *State v. Struzyk*, 869 N.W.2d 280 (Minn. 2015), which was issued after his conviction became final. In *Struzyk*, the supreme court held that "proof of an intentional act of throwing or transferring bodily fluid at or onto an officer, *without proof of a physical assault*, does not satisfy the elements of felony fourth-degree assault." *Id.* at 289 (emphasis

added). Castillo did not commit a physical assault against the deputy; his conviction was based entirely on his act of spitting bodily fluids.¹

Although Castillo’s postconviction petition was filed well after the statutory filing deadline for a postconviction petition, he asserted that it should be considered under the interests-of-justice exception to the postconviction statute. *See* Minn. Stat. § 590.01, subd. 4(b)(5), (c) (2020). Castillo’s petition alleged that he was “unaware of [his] claim until he sought appellate review” of his firearm conviction, which “was an injustice that prevented [him] from seeking postconviction relief in a timely manner.” The state opposed Castillo’s petition.

The district court denied Castillo’s postconviction petition without an evidentiary hearing. In its order, the district court stated that “[i]t is uncontested that the actions of [Castillo] do not constitute a ‘physical assault,’ considering the holding in *Struzyk*.” However, it noted that a postconviction petition must “be filed within two years of the date the claim arises.” Applying *Aili v. State*, 963 N.W.2d 442, 447 (Minn. 2021), which holds that “[a] postconviction petitioner knows or should know he has a claim on the date that a court decision announces an interpretation of law that provides the basis for a claim,” the district court concluded that Castillo was required to file his petition by August 2017, two

¹ Section 609.2231, subdivision 1, was amended in May 2016. Under the amended statute, spitting bodily fluids at a law-enforcement officer is a felony offense without proof of an additional physical assault. 2016 Minn. Laws ch. 93, § 1, at 29. However, this amendment does not apply to Castillo’s conviction because he was convicted under the 2012 version of the statute.

years after the release of *Struzyk*. Because Castillo’s petition was not filed until November 2021, the district court determined that Castillo’s petition was untimely.

DECISION

Under Minnesota’s postconviction statute, a petitioner must file for postconviction relief within two years of the entry of a judgment of conviction. Minn. Stat. § 590.01, subd. 4(a) (2020). A district court may consider an untimely filed postconviction petition if a statutory exception to the time limit applies. Minn. Stat. § 590.01, subd. 4(b) (2020).

Castillo argues that the district court erred by summarily denying his postconviction petition as untimely. He contends that the interests-of-justice exception to the postconviction statute applies in his case because he was not represented by counsel when the supreme court issued the *Struzyk* decision, and he filed his petition within two years of discovering his claim. *See* Minn. Stat. § 590.01, subd. 4(b)(5), (c) (allowing the district court to consider an untimely postconviction petition in “the interests of justice”). He also argues that the district court erred in sua sponte considering another exception to the time limit for claims based on a new interpretation of the law. *See* Minn. Stat. § 590.01, subd. 4(b)(3) (creating an exception to the time limit if “the petitioner asserts a new interpretation of . . . 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”). And he asks us to reverse the district court based on policy considerations. We conclude that the district court did not err in denying Castillo’s postconviction petition as untimely and affirm.

Appellate courts “review the denial of a petition for postconviction relief for an abuse of discretion.” *Pearson v. State*, 891 N.W.2d 590, 596 (Minn. 2017). The district court’s findings are reviewed for clear error, and legal issues are reviewed de novo. *Id.*

We first consider Castillo’s argument that the district court abused its discretion by determining that the interests-of-justice-exception to the statutory time limit does not apply. Under section 590.01, subdivision 4(b)(5), a court may consider a petition if “the petitioner establishes to the satisfaction of the court that the petition is not frivolous and is in the interests of justice.” Minn. Stat. § 590.01, subd. 4(b)(5); *Wayne v. State*, 866 N.W.2d 917, 920 (Minn. 2015). A petition invoking the interests-of-justice exception “must be filed within two years of the date the claim arises.” Minn. Stat. § 590.01, subd. 4(c).

The district court determined that Castillo’s postconviction petition had merit as *Struzyk* directly invalidated his fourth-degree-assault conviction. However, the district court concluded that the interests of justice did not warrant consideration of Castillo’s petition, which was filed approximately six years after the *Struzyk* decision.

“[T]he interests-of-justice exception is triggered by an injustice that caused the petitioner to miss the primary deadline in subdivision 4(a).” *Wayne*, 866 N.W.2d at 920 (emphasis omitted) (quotation omitted). It “focuses on why the petition was filed after the 2-year time limit.” *Hannon v. State*, 957 N.W.2d 425, 436 (Minn. 2021). To satisfy the interests-of-justice exception, a petitioner must allege “an act or omission that prevented [the petitioner] from filing [the] petition before the 2-year limitations period expired.” *Id.* The exception applies only “in exceptional situations.” *Gassler v. State*, 787 N.W.2d 575,

586 (Minn. 2010), *abrogated on other grounds by Henderson v. State*, 906 N.W.2d 501 (Minn. 2018).

Castillo’s petition alleged the following facts to support his claim that an injustice prevented him from seeking postconviction relief within two years of the *Struzyk* decision: (1) “Petitioner did not know that spitting on a police officer did not qualify as a fourth-degree assault until he received representation by appellate counsel,” (2) “Petitioner never received the advice of counsel or review of his file until years later,” and (3) “Petitioner did not have the benefit of counsel’s review within the two-year period after the *Struzyk* decision.” Essentially, Castillo alleged that he did not find out about *Struzyk* in time to comply with the postconviction statute because he was not represented by counsel during the two years following the decision.

The law does not support Castillo’s contention that missing the statutory filing deadline due to a lack of legal representation is an exceptional situation. The supreme court has suggested that factors such as “pro se status and limited educational attainment” could potentially “satisfy the interests of justice requirement.” *See, e.g., Wayne*, 866 N.W.2d at 920 (holding that these factors *do not* satisfy the interests-of-justice requirement “in the context of a petitioner who has previously filed a petition for postconviction relief that was not time-barred.”); *see also Erickson v. State*, 842 N.W.2d 314, 319 (Minn. 2014) (same); *Taylor v. State*, 874 N.W.2d 429, 432 (Minn. 2016) (same). However, Castillo has cited no authority—and we have found none—holding that a petitioner can satisfy the interests-of-justice exception by merely alleging that the petitioner was unrepresented during the postconviction filing period.

There is caselaw that addresses the implications of a petitioner’s lack of knowledge about the legal basis for a postconviction claim. But these cases do not help Castillo’s argument that his lack of actual knowledge about the *Struzyk* decision satisfies the interests-of-justice exception. Under every exception to the statutory time limit, a petitioner must file the petition “within two years of the date the claim arises.” Minn. Stat. § 590.01, subd. 4(c). The supreme court has held that a postconviction claim arises when a petitioner knew *or should have known* of the claim. *Aili*, 963 N.W.2d at 447-49, (applying this standard to the new-interpretation-of-law exception to the statutory filing deadline); *see also Bolstad v. State*, 878 N.W.2d 493, 497 (Minn. 2016) (applying this standard to the interests-of-justice exception). The standard—knew or should have known—is objective; a petitioner’s subjective knowledge of a claim (or lack thereof) is irrelevant. *Bolstad*, 878 N.W.2d at 497 (“We have repeatedly declined to apply a subjective standard to the interests-of-justice exception.”). The supreme court has also held that a petitioner is presumed to know about a change in the law when it happens. *See Aili*, 963 N.W.2d at 449. Addressing the timeliness exception for petitions based on a new interpretation of the law, the Minnesota Supreme Court has stated:

A postconviction petitioner knows or should know he has a claim *on the date that a court decision announces an interpretation of law* that provides the basis for a claim that the petitioner is entitled to relief because the interpretation is a new rule of law that applies retroactively to the petitioner’s conviction.

Id. (emphasis added). It therefore follows that a petitioner’s lack of actual knowledge cannot, in and of itself, be an unjust impediment to filing a timely postconviction petition

for the purpose of the interests-of-justice exception. And notably, the supreme court has observed that a petitioner's lack of actual knowledge about a change in the law is "neither rare nor extraordinary." *Id.* Thus, the caselaw does not support Castillo's assertion that his lack of actual knowledge about the *Struzyk* decision was an injustice sufficient to trigger the interests-of-justice exception.

The district court determined that Castillo's claim arose on August 26, 2015, when the Minnesota Supreme Court decided *Struzyk*, because Castillo should have known of his claim then. This finding was not clearly erroneous. *See Sanchez*, 816 N.W.2d 550, 560 (2012) ("The determination of when [the petitioner]'s interests-of-justice claim arose is a question of fact.").

Because Castillo failed to identify an injustice that prevented him from timely filing a petition for postconviction relief, and he failed to file a petition within two years of the date that his claim arose, the district court did not abuse its discretion by concluding that the interests-of-justice exception to the statutory postconviction time limit did not apply.

The district court also concluded that Castillo's petition was untimely under the separate statutory exception for petitions asserting the applicability of a new interpretation of law. *See* Minn. Stat. § 590.01, subd. 4(b)(3), (c). Castillo contends that the district court abused its discretion by considering this exception, which Castillo did not raise in his postconviction petition. He does not challenge the district court's conclusion that the exception does not apply in his case. Instead, Castillo suggests that the district court's focus on this alternative exception led it to apply the wrong standard for determining when his claim arose under the interests-of-justice exception. Relying on *Aili*, Castillo argues

that a claim arises under the interests-of-justice exception when a petitioner “has information that allows him to make such an argument.” *Aili*, 963 N.W.2d at 447. He asserts that he only had such information when he gained actual knowledge of the *Struzyk* decision.

We see no error in the district court’s decision to also consider the alternative exception for claims involving a new interpretation of the law, which more closely aligns with the circumstances in Castillo’s case than the interests-of-justice exception. Moreover, we have already rejected Castillo’s argument that a different standard applies under the interests-of-justice exception when the triggering event is a new interpretation of the law. Neither the caselaw nor the postconviction statute support the proposition that a claim involving the same event—a new appellate decision—could “arise” at different times depending on which exception to the statutory time limit a petitioner invokes.

Finally, Castillo makes several policy arguments in support of his request for reversal. First, he argues “the state must bear some of the fault” for his untimely petition, noting that he made court appearances after the *Struzyk* decision was issued but was never informed about the decision. Castillo provides no authority for his argument that the state must notify individuals of potential postconviction claims; under Minnesota law it is the petitioner who “bears the burden to [justify] postconviction relief.” *Tscheu v. State*, 829 N.W.2d 400, 403 (Minn. 2013). Second, Castillo argues it is “fundamentally unfair for [his] conviction to stand” despite his factual innocence. The postconviction statute contemplates such a situation by including an exception for a new interpretation of the law. But the statute nonetheless requires a petitioner to raise the claim within two years of the

date the claim arises. *See* Minn. Stat. § 590.01, subd. 4(b)(3), (c). And third, Castillo notes that other individuals whose convictions were affected by the *Struzyk* decision have obtained relief. He brings several cases to our attention where prosecutors stipulated to the vacation of fourth-degree-assault convictions based on *Struzyk*. However, we are bound to follow the plain language of section 590.01, subdivision 4, and supreme court caselaw interpreting the statute. We therefore must affirm the district court's denial of Castillo's petition.

Affirmed.