

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1123**

James Paul Aery,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed March 27, 2023
Reversed and remanded
Segal, Chief Judge**

Beltrami County District Court
File No. 04-CV-22-2009

James Paul Aery, Bemidji, Minnesota (pro se appellant)

David Hanson, Beltrami County Attorney, Michael V. Mahlen, Assistant County Attorney,
Bemidji, Minnesota (for respondent)

Considered and decided by Segal, Chief Judge; Bratvold, Judge; and Bryan, Judge.

SYLLABUS

A petition for an order declaring eligibility for compensation based on exoneration under Minn. Stat. § 590.11 (2022)¹ is a postconviction proceeding for which no filing fee or order granting in forma pauperis status is required.

¹ We use the current 2022 version of the statutes throughout because the statutes have not been modified during the pendency of this matter.

OPINION

SEGAL, Chief Judge

Appellant challenges the district court's denial of his application for in forma pauperis (IFP) status to bring a civil action seeking an order declaring him eligible for compensation based on exoneration under Minn. Stat. § 590.11. Because a petition for an order declaring eligibility for compensation based on exoneration is a postconviction proceeding for which no filing fee or order granting IFP status is required, we reverse the district court's denial of appellant's IFP application and remand this matter to the district court.

FACTS

Appellant James Aery was convicted of fifth-degree controlled-substance crime. This court reversed the conviction, concluding that the search of Aery was unlawful and that the evidence of the methamphetamine found on Aery's person during the search should have been suppressed. *State v. Aery*, No. A19-1845, 2020 WL 7134872 (Minn. App. Dec. 7, 2020). Respondent State of Minnesota did not seek further review.

Aery later filed a document with the district court using a judicial branch form titled "Civil Complaint."² Aery stated that he is seeking compensation under Minn. Stat. § 590.11, which governs determinations of eligibility for compensation based on

² Before Aery filed the Civil Complaint, he submitted to the district court a motion in the criminal file titled a "motion for compensation under MIERA [the Minnesota Incarceration and Exoneration Remedies Act]," referencing Minn. Stat. § 590.11. Aery asked the district court administrator to serve counsel for the state via the district court's electronic service system. The district court administrator returned Aery's correspondence for failure to serve counsel for the state. No further action has been taken on that submission.

exoneration. Aery alleged in the complaint that he was wrongfully arrested in the controlled-substance case, that his conviction was only reversed after he had served his full 21-month sentence, and that he is seeking \$100,000 for the time he was incarcerated, \$100,000 for “mental emotional physical dental damages,” and \$100,000 for “occupational education[al], societal, familial damages.” The district court administrator opened a new district court file for the Civil Complaint, separate from the criminal file in the controlled-substance case.

Along with the Civil Complaint, Aery filed a signed affidavit to proceed IFP, in which he indicated that he is represented by a public defender in a separate matter, he has no income, and he is an “incarcerated indigent.” The district court denied Aery’s application for IFP status on the ground that the action was frivolous because Aery was in custody on an unrelated criminal case at the same time he was in custody for the controlled-substance case. Aery appeals the denial of his IFP application.

ISSUE

Does a petition for an order declaring eligibility for compensation based on exoneration under Minn. Stat. § 590.11 require a filing fee or an order granting IFP status?

ANALYSIS

Aery argues that the district court erred when it denied his IFP application because “[a] good faith claim based on law does exist” under Minn. Stat. § 590.11, subd. 7, and the district court dismissed his IFP application “without a thorough review of the files and records.” The state responds that the district court properly denied Aery’s IFP application because the underlying claim for relief is frivolous. We do not reach the issue of whether

Aery's action is frivolous, however, because we determine that Aery's claim is properly construed as a postconviction proceeding for which no filing fee or order to proceed IFP is required.³

A district court may authorize commencement of a civil action without payment of fees and costs upon a finding that the plaintiff is eligible for IFP status, which requires a determination that the action is not frivolous, and that the plaintiff is financially unable to pay fees and costs. Minn. Stat. § 563.01, subd. 3(a), (b) (2022). This court reviews a district court's decision to deny IFP status for an abuse of discretion. *State v. Scheffler*, 932 N.W.2d 57, 60 (Minn. App. 2019). Whether a filing fee or order granting IFP status

³ We note that, while neither party addressed the issue of whether a filing fee is required in a proceeding under section 590.11, this is one of those rare cases where we nevertheless deem it appropriate to address this question in the interests of justice. *See* Minn. R. Civ. App. P. 103.04; 3 Erica A. Holzer & Katherine S. Barrett Wiik, *Minnesota Practice* § 103.16 (2022 ed. 2022) (“In exceptional circumstances, the appellate court may also decide a case based on a legal issue even though the district court did not base its decision on that theory, and the issue was not even briefed by the parties.”). We address this issue because it involves a threshold question that is purely legal in nature and does not cause prejudice to either party. On remand, Aery can pursue his arguments that he is eligible for exoneration compensation and the state will have full opportunity to contest Aery's claim. In addition, the issue involves a straightforward interpretation of a statute recently construed by the supreme court in *Kingbird v. State*, 973 N.W.2d 633 (Minn. 2022). *See also State v. Jones*, 516 N.W.2d 545, 549 n.5 (Minn. 1994) (explaining that even though neither party sought review of an issue, “[i]n exceptional circumstances, especially in criminal cases, appellate courts, in the public interest, may, of their own motion, notice errors to which no exception has been taken, if the errors are obvious, or if they otherwise seriously affect the fitness, integrity or public reputation of judicial proceedings” (quotation omitted)); *State v. Hannuksela*, 452 N.W.2d 668, 673 n.7 (Minn. 1990) (stating “it is the responsibility of appellate courts to decide cases in accordance with law, and that responsibility is not to be diluted by counsel's oversights, lack of research, failure to specify issues or to cite relevant authorities” (quotation omitted)); *Jerry Mathison Constr., Inc. v. Binsfield*, 615 N.W.2d 378, 381-82 (Minn. App. 2000) (applying a legal theory not briefed or argued on appeal), *rev. denied* (Minn. Oct. 25, 2000).

is required, however, is a legal question we review de novo. *See Smith v. State*, 615 N.W.2d 849, 851 (Minn. App. 2000) (“Statutory interpretation is a question of law subject to de novo review.”), *rev. denied* (Minn. Sept. 26, 2000).

In addressing that legal question, we begin our analysis with the premise that no filing fee is required for postconviction proceedings. Minn. Stat. § 590.02, subd. 2 (2022) (“The filing of the petition and any document subsequent thereto and all proceedings thereon shall be without costs or any fees charged to the petitioner.”). Thus, if Aery’s Civil Complaint should have been construed as a postconviction proceeding, Aery would not be required to pay a filing fee or obtain an IFP order. The denial of his IFP application would therefore need to be reversed and this matter remanded for consideration as a postconviction proceeding in the criminal file.

“The exoneration-compensation statute . . . establishes a framework for compensating individuals who have served time in prison after a wrongful conviction.” *Back v. State*, 902 N.W.2d 23, 26 (Minn. 2017). A petition seeking an order declaring eligibility for compensation based on exoneration “must be brought before the district court where the original conviction was obtained” and “the state must be represented by the office of the prosecutor that obtained the conviction.” Minn. Stat. § 590.11, subd. 2. The statute sets out grounds for obtaining a declaration of eligibility for exoneration, including whether the petitioner’s judgment of conviction was vacated, reversed, or set aside on grounds consistent with factual innocence. *Id.*, subds. 1, 3. If found eligible, a claim for compensation arises so long as several conditions are met, including that the petitioner “was not serving a term of incarceration for another crime at the same time,” unless the

petitioner served additional time in confinement as a consequence of the offense for which he was exonerated. *Id.*, subd. 5.

The supreme court recently interpreted section 590.11 in *Kingbird*. There, the supreme court addressed the question of whether the two-year time bar for bringing a petition for exoneration compensation under “Minn. Stat. § 590.11, subd. 2, is a jurisdictional bar to review if a petition is not timely filed, or if that deadline is subject to waiver.” *Kingbird*, 973 N.W.2d at 637. To answer that question, the supreme court looked to the two-year time bar applicable to petitions for postconviction relief set out in Minn. Stat. § 590.01, subd. 4 (2022), for challenging a judgment of conviction or sentence. *Id.* at 640. The court noted that subdivision 3(b) of section 590.11 expressly incorporates the procedures for postconviction hearings set out in Minn. Stat. § 590.04, subd. 3 (2022). The supreme court thus reasoned that the two-year time bar for exoneration-compensation claims is not jurisdictional and can be waived by the state the same as the two-year time bar for bringing postconviction petitions can be waived under Minn. Stat. § 590.01, subd. 4. *Id.* at 640-41.

We observe that section 590.11 also incorporates other procedures in chapter 590, the chapter governing postconviction relief. For example, the section incorporates by reference the burden of proof and procedures set forth in Minn. Stat. § 590.04, subd. 3. Minn. Stat. § 590.11, subd. 3(b). And like a postconviction petitioner, an exoneration-compensation petitioner is entitled to a hearing “[u]nless the petition and the files and records of the proceeding conclusively show that the petitioner is not eligible for compensation.” Minn. Stat. § 590.11, subd. 6; *see also* Minn. Stat. § 590.04, subd. 1 (2022)

(stating that “[u]nless the petition and the files and records of the proceeding conclusively show that the petitioner is entitled to no relief, the court shall promptly set an early hearing on the petition”). As another example, section 590.11 references Minn. Stat. § 590.06 (2022) as providing the authority for a petitioner to appeal an order under Minn. Stat. § 590.11, subd. 3(b). Minn. Stat. § 590.11, subd. 8.

Because section 590.11 is not only in the chapter governing postconviction proceedings, but also expressly references postconviction procedures as applying to the determination of eligibility for exoneration compensation, we conclude that a petition for an order declaring eligibility for compensation based on exoneration is a type of postconviction petition. The district court is, therefore, required to “liberally construe” the petition—as it must do in postconviction proceedings—and to “look to the substance thereof and waive any irregularities or defects in form.” Minn. Stat. § 590.03 (2022). Although Aery submitted a document titled “Civil Complaint” to the district court, his submissions indicate he is seeking an order for a declaration of eligibility under section 590.11, for which no filing fee is required. The district court thus erred by construing his filing as a civil matter and by denying the application for IFP status.

We reverse and remand with directions to consider Aery’s Civil Complaint seeking a declaration of eligibility for exoneration compensation as a postconviction proceeding in the criminal file. Under Minn. Stat. § 590.11, subd. 3(b), the district court must then determine, as a threshold issue, whether Aery was “exonerated.” *See Kingbird*, 973 N.W.2d at 641. We express no opinion on the merits of that question.

DECISION

The district court erred in denying Aery's application for IFP status because a petition for an order declaring eligibility for compensation based on exoneration under section 590.11 is a postconviction proceeding for which no filing fee or order granting IFP status is required. On remand, the district court shall direct the district court administrator to transfer the Civil Complaint filed on June 22, 2022, to the criminal file where it shall be treated as a timely postconviction petition seeking an order declaring eligibility for compensation based on exoneration under section 590.11.

Reversed and remanded.