

STATE OF MINNESOTA

IN SUPREME COURT

A22-1817

Ramsey County

Chutich, J.

Lashazo Reese, Jr.,

Appellant,

vs.

Filed: June 28, 2023
Office of Appellate Courts

State of Minnesota,

Respondent.

Lashazo Reese, Jr., Rush City, Minnesota, pro se.

Keith Ellison, Attorney General, Saint Paul, Minnesota; and

John J. Choi, Ramsey County Attorney, Alexandra Meyer, Assistant Ramsey County Attorney, Saint Paul, Minnesota, for respondent.

S Y L L A B U S

1. The court has jurisdiction to hear this appeal because good cause exists to grant a 30-day extension to the statutory time limit under Minnesota Rule of Criminal Procedure 29.03, subdivision 3(f).

2. The district court did not abuse its discretion by summarily denying appellant's second petition for postconviction relief because his claim fails on the merits.

Affirmed.

Considered and decided by the court without oral argument.

OPINION

CHUTICH, Justice.

This case involves a pro se appeal from the district court's summary denial of appellant Lashazo Reese, Jr.'s second petition for postconviction relief. In 2003, a jury convicted Reese of first-degree premeditated murder, first-degree felony murder, and attempted second-degree intentional murder. On direct appeal, we vacated Reese's felony murder conviction as a lesser-included offense but affirmed his two other convictions. *State v. Reese*, 692 N.W.2d 736, 737–38 (Minn. 2005).

Reese filed his first postconviction petition in 2007, which was denied by the district court and not appealed. Reese filed this second postconviction petition in 2022, asserting that two other first-degree murder decisions of this court created a change in the law that requires a new trial. The district court denied relief without holding a hearing. Reese appealed, but his notice of appeal was filed after the 60-day postconviction appeal deadline.

For the following reasons, we first conclude that good cause exists to extend the deadline to file the notice of appeal as permitted by the governing rule, and we therefore have jurisdiction to hear his case on the merits. Second, we hold that the district court did not abuse its discretion by summarily denying Reese's claims because his claims fail on the merits. Accordingly, we affirm.

FACTS

In the early morning hours of August 29, 2002, appellant Lashazo Reese, Jr. was at the apartment of Juanita de la Rosa to sell drugs.¹ Jermaine Talley arrived at de la Rosa's apartment with a large amount of cash and asked to buy drugs from Reese. Reese declined, but gave Talley his phone number. Talley then fell asleep on a couch in the apartment with the cash in his hand.

De la Rosa followed Reese to the bathroom and asked him to leave her apartment. Reese responded by pulling out a gun, hitting de la Rosa on the back of the head, and then shooting her three times after she had fallen to the floor. De la Rosa survived the shooting, but laid face down on the bathroom floor and pretended to be dead. Reese left the bathroom, and de la Rosa heard the sound of another gunshot coming from the living room. After Reese exited the apartment, de la Rosa left the apartment to find help. Talley was found dead on the couch from a gunshot wound, and the cash in his hand was gone. Reese was later arrested by law enforcement.

A grand jury indicted Reese with first-degree premeditated murder, first-degree felony murder, second-degree intentional murder, attempted first-degree premeditated murder, and attempted second-degree murder. After a jury trial, the district court convicted him of first-degree premeditated murder, felony murder, and attempted second-degree murder. On direct appeal, this court affirmed his convictions for first-degree premeditated

¹ For a more complete recitation of the facts, see *Reese*, 692 N.W.2d at 738–40.

murder and second-degree attempted murder but vacated the first-degree felony murder conviction as a lesser-included offense. *Reese*, 692 N.W.2d at 737–38.

In 2007, Reese filed a pro se petition for postconviction relief, alleging claims of judicial bias, vindictive prosecution, attorney-client conflicts, and constitutional violations. The district court denied the request for postconviction relief, and Reese did not appeal.

On June 17, 2022, Reese filed this second pro se petition for postconviction relief. In the second petition, Reese contended that our court’s decisions in the first-degree murder cases *State v. Cox*, 779 N.W.2d 844 (Minn. 2010) (*Cox I*), and *State v. Cox*, 820 N.W.2d 540 (Minn. 2012) (*Cox II*), created a change in the law that requires a new trial in his case. The State asked the district court to deny Reese’s petition, arguing that the referenced opinions are inapplicable and do not warrant a new trial. The State did not object to the timeliness of Reese’s petition.

The district court, in an order filed October 18, 2022, summarily denied Reese’s second postconviction petition on the merits, finding that the *Cox* decisions do not represent a change in the law and do not require a new trial. The register of actions reflects that a copy of the district court’s order denying postconviction relief was sent to Reese and then returned by mail on October 24, 2022. The register of actions also shows that a copy of the order was sent to a private defense attorney, even though Reese was not represented by counsel, and then returned by mail on October 31, 2022. Reese maintains—and the State does not refute—that he did not receive the district court’s order denying his second request for postconviction relief until December 15, 2022. Reese then filed a notice of appeal on December 21, 2022.

ANALYSIS

I.

Before we can review an appeal of a postconviction petition in a first-degree murder case, we must first determine if the appeal is timely. “The time to appeal is jurisdictional.” *Hohenwald v. State*, 875 N.W.2d 843, 845 (Minn. 2016). Minnesota Rule of Criminal Procedure 29.03, subdivision 3(d), states that the appeal must be filed within 60 days after the entry of a district court order denying postconviction relief. Rule 29.03, subdivision 3(f), however, allows this court to extend the time for filing a notice of appeal in a first-degree murder case by up to 30 days without requiring the defendant to file a motion or providing notice to the parties. *Ford v. State*, 690 N.W.2d 706, 709 (Minn. 2005). We may grant the 30-day extension on our own accord, but we must have good cause to do so. Minn. R. Crim. P. 29.03, subd. 3(f). If we find good cause, appeals filed within the 30-day grace period are not jurisdictionally barred. *See Hohenwald*, 875 N.W.2d at 846 (holding that we lacked jurisdiction over a postconviction appeal that was filed *nearly 5 months late*); *see also Ford*, 690 N.W.2d at 709 (holding that we lacked jurisdiction over a postconviction appeal that was filed *almost 11 months late*).

Here, Reese claims that he had until February 14, 2023, to file a notice of appeal because he did not receive a copy of the district court order denying him postconviction relief until December 15, 2022. Because he filed a notice of appeal on December 21, 2022, less than 1 week after he claims to have received a copy of the district court’s order, Reese contends that his filing of the notice of appeal was timely. The State takes no position on the timeliness of Reese’s filing of the notice of appeal.

We disagree with Reese and conclude his notice of appeal in this case was untimely under Minnesota Rule of Criminal Procedure 29.03, subdivision 3(f). The district court filed its order denying postconviction relief on October 18, 2022. Reese’s notice of appeal needed to be filed 60 days later. Minn. R. Crim. P. 29.03, subd. 3(d) (“An appeal by a defendant from an adverse final order in a post-conviction proceeding in a first-degree murder case must be filed within 60 days after its entry.”); *Hohenwald*, 875 N.W.2d at 845. Day 60, December 17, 2022, fell on a Saturday, so the notice of appeal was due the following Monday, December 19, 2022. See Minn. R. Crim. P. 29.01, subd. 2 (“the Minnesota Rules of Civil Appellate Procedure govern appellate procedure unless these rules direct otherwise”); Minn. R. Civ. App. P. 126.01 (cross-referencing Minn. R. Civ. P. 6.01 as governing the computation of time); Minn. R. Civ. P. 6.01(a)(1)(C) (rule for computing time when the last day is a Saturday or Sunday). Consequently, the notice of appeal was filed 2 days late.

We find good cause, however, to extend the time for filing this appeal under Minnesota Rule of Criminal Procedure 29.03, subdivision 3(f). Reese did not receive a copy of the district court’s order denying his request for postconviction relief in a timely manner. According to the register of actions, a copy of the district court’s order was mailed to Reese on October 19, 2022, and then returned by mail to court administration on October 24, 2022. Reese claims that he did not receive a copy of the district court order until December 15, 2022, and then he filed the notice of appeal on December 22, 2022. Under these specific circumstances, it is reasonable for us to find good cause and apply Rule 29.03, subdivision 3(f) to extend the deadline. A 30-day extension as permitted under

the rule means Reese had until January 16, 2023, to file his notice of appeal. Because he filed the notice of appeal well within the extension period, we have jurisdiction over this case.

II.

Now we turn to the substance of Reese’s request for postconviction relief. We review a district court’s summary denial of a postconviction petition for an abuse of discretion. *Martin v. State*, 969 N.W.2d 361, 363 (Minn. 2022). “A district court abuses its discretion when it has 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.* (internal quotation marks omitted) (citation omitted). Legal conclusions are reviewed de novo and factual findings are reviewed for clear error. *Caldwell v. State*, 976 N.W.2d 131, 137 (Minn. 2022). A petition for postconviction relief may be summarily denied “if the petition, the files, and the records of the proceeding conclusively show that the petitioner is entitled to no relief.” *Griffin v. State*, 883 N.W.2d 282, 285 (Minn. 2016); Minn. Stat. § 590.04, subd. 1 (2022). In deciding whether to summarily deny a petition, the district court “presumes the facts alleged in the petition to be true.” *Griffin*, 883 N.W.2d at 285.

When a petitioner has previously filed a direct appeal, as here, Minnesota Statutes section 590.01, subdivision 4(a)(2) (2022), requires the petitioner to file for postconviction relief within 2 years of the appellate court’s disposition of the direct appeal. The limitations period, however, is not jurisdictional, but rather an affirmative defense for the State. *Munt v. State*, 984 N.W.2d 242, 250 (Minn. 2023). The State must raise the defense before the district court “or the argument is forfeited.” *Id.*

On appeal, the State asks us to dismiss Reese’s claim as untimely, but the State did not raise a timeliness objection to the district court. Accordingly, the State’s timeliness defense is forfeited, so we consider the merits of Reese’s claims.

Reese contends that a change in our court’s jurisprudence means that he is eligible for a new trial on the murder charges. Specifically, he asserts that the *Cox* decisions offer a new and novel interpretation of law regarding the proper application of Minnesota Statutes section 609.04 (2022) (providing that a defendant may be “convicted of either the crime charged or an included offense, but not both”) and the Double Jeopardy Clause. According to Reese, the *Cox I* and *Cox II* decisions clarified that when a conviction is vacated or overturned for reasons other than insufficient evidence, Double Jeopardy may not prevent a defendant from being eligible for a new trial. Reese believes that because we dismissed his felony murder conviction as a lesser-included offense, he is entitled to a new trial. He asserts that at minimum, a hearing must be held to determine if, under this new interpretation of law, he qualifies for retrial.

The State responds, by contrast, that Reese’s claims fail on the merits because neither *Cox* decision “established any new interpretation of law that could apply to [Reese’s] convictions.” Instead, the State maintains that the *Cox* decisions relied on established Confrontation Clause precedent and rules of criminal procedure that do not apply to Reese. We agree with the State.

In *Cox I*, this court granted the defendant a new murder trial based on a Confrontation Clause violation that occurred during his first trial. 779 N.W.2d at 852–53. In granting a new trial, this court relied on well-established precedent regarding a

defendant’s constitutional right to confrontation. *Id.* (holding that the grand jury testimony of a potential witness, who later did not testify at trial, was “testimonial,” so the district court violated the Confrontation Clause by admitting the testimony during trial). But even if our decision in *Cox I* had involved a new legal interpretation of the Confrontation Clause—which it did not—*Cox I* is irrelevant here because Reese’s claim is not based on a violation of the Confrontation Clause.

Our decision in *Cox II* is also not applicable here. In *Cox II*, we affirmed the defendant’s first-degree felony murder conviction after the case was remanded for a new trial and the defendant was convicted of first-degree felony murder for a second time. 820 N.W.2d at 542. On appeal, we vacated the defendant’s second-degree intentional murder conviction as a lesser-included offense. *Id.* at 552–53; *see also* Minn. Stat. § 609.04, subd. 1 (“Upon prosecution for a crime, the actor may be convicted of either the crime charged or an included offense, but not both.”). We did not, however, grant the defendant *another* new trial based on the improper conviction for a lesser-included offense because well-established precedent requires only that the court vacate that conviction. *Cox II*, 820 N.W.2d at 542–43 (citing *Spann v. State*, 740 N.W.2d 570, 573–74 (Minn. 2007)); *see also Reese*, 692 N.W.2d at 743 (citing *State v. Ture*, 353 N.W.2d 502, 517 (Minn.1984)). *Cox II* was simply an application of existing precedent—the same precedential principle we relied upon in Reese’s direct appeal to vacate his lesser-included offense—and shows that Reese is not entitled to a new trial here.

Because our decisions in *Cox I* and *Cox II* did not create a change in the law requiring a new trial in this case, the district court did not abuse its discretion by summarily denying Reese's request for postconviction relief.

CONCLUSION

For the foregoing reasons, we affirm the decision of the district court.

Affirmed.