

*This opinion is nonprecedential except as provided by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
A23-1944**

Scott Marlin Morey, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed July 22, 2024
Affirmed
Schmidt, Judge**

Clearwater County District Court
File No. 15-CR-14-522

Beau D. McGraw, McGraw Law Firm, P.A., Lake Elmo, Minnesota (for appellant)

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

Kathryn A. Lorsbach, Clearwater County Attorney, Bagley, Minnesota (for respondent)

Considered and decided by Schmidt, Presiding Judge; Worke, Judge; and
Harris, Judge.

NONPRECEDENTIAL OPINION

SCHMIDT, Judge

On appeal from the denial of appellant's second postconviction petition, appellant argues that the district court abused its discretion by summarily denying his petition as statutorily time-barred because his claims fall within the newly-discovered-evidence

exception under Minn. Stat. § 590.01, subd. 4(b)(2) (2022) and within the interests-of-justice exception under Minn. Stat. § 590.01, subd. 4(b)(5) (2022). We affirm.

FACTS

In December 2014, respondent State of Minnesota charged appellant Scott Marlin Morey with 16 counts of criminal sexual conduct involving three of his minor sons. In 2016, a jury found Morey guilty of 13 counts of felony criminal sexual conduct involving two of his sons.¹ The district court sentenced Morey to consecutive sentences totaling 406 months in prison. Morey appealed his conviction and his sentence, which we affirmed in 2017. *State v. Morey*, No. A16-1364, 2017 WL 3222747, at *3–6 (Minn. App. July 31, 2017), *rev. denied* (Minn. Oct. 17, 2017).

First petition for postconviction relief

In 2019, Morey petitioned for postconviction relief, contending that his trial attorney provided him with ineffective assistance of counsel and that the prosecutor engaged in misconduct. The district court conducted a hearing at which Morey represented himself, testified, and called as witnesses his trial attorney, his wife, and the trial prosecutor. The district court denied Morey’s petition for postconviction relief, which we affirmed. *Morey v. State*, No. A21-0207, 2021 WL 3478647, at *1 (Minn. App. Aug. 9, 2021), *rev. denied* (Minn. Oct. 19, 2021).

¹ A third son accused Morey of sexually abusing him, but those charges were removed from the amended complaint after that son died by suicide before trial.

Second petition for postconviction relief

In 2023, Morey filed his second petition seeking postconviction relief based on “newly discovered evidence.” The “new” evidence presented by Morey included (1) an expert witness letter from Dr. Thomas Nordahl claiming that Morey’s physical exams provide no evidence of past sexual abuse or assault, (2) evidence of sexual crimes against minor males committed by the lead investigator in the case against Morey, and (3) evidence of prosecutorial misconduct by the lead prosecutor in the case against Morey.

The district court summarily denied Morey’s second petition for postconviction relief as statutorily time-barred. The court noted that even if the matter was timely, Morey’s theory for postconviction relief was “nearly frivolous” and did not reach the clear and convincing standard as required by the newly-discovered-evidence exception.

Morey appeals.

ANALYSIS

We “review the summary denial of a petition for postconviction relief for an abuse of discretion.” *El-Shabazz v. State*, 984 N.W.2d 569, 573 (Minn. 2023). “A district court does not abuse its discretion when it summarily denies a postconviction petition that is time-barred.” *Martin v. State*, 969 N.W.2d 361, 363 (Minn. 2022).

A petition for postconviction relief must be filed within two years of the entry of a judgment or, if a direct appeal was filed, an appellate court’s disposition of the direct appeal. Minn. Stat. § 590.01, subd. 4(a) (2022). But a petition filed after this deadline may be treated as timely if a statutory exception applies. *Id.*, subd. 4(b) (2022). The petitioner has the burden of showing that an exception applies. *See El-Shabazz*, 984 N.W.2d at 574.

There is no dispute that Morey's second postconviction petition was filed outside of the two-year statutory time limit. Thus, to avoid the time-bar, Morey bears the burden to establish that an exception applies. *Id.* Morey argues his petition is not time-barred because two exceptions save his petition. We address each exception in turn.

A. The newly-discovered-evidence exception does not save Morey's petition from the statutory two-year time-bar.

Morey first asserts that the newly-discovered-evidence exception applies to his petition. To qualify for this exception, a postconviction petition must contain allegations that (1) newly discovered evidence exists, (2) the new evidence "could not have been ascertained by the exercise of due diligence by the petitioner or petitioner's attorney within the two-year time period for filing a postconviction petition," (3) "the evidence is not cumulative to evidence presented at trial," (4) the evidence is not being used for impeachment purposes, and (5) the evidence "establishes by a clear and convincing standard that the petitioner is innocent of the offense or offenses for which the petitioner was convicted." Minn. Stat. § 590.01, subd. 4(b)(2). All five requirements must be met for the exception to apply. *El-Shabazz*, 984 N.W.2d at 574.

1. New evidence related to the prosecutor and officer.

Morey asserts that the newly-discovered-evidence exception applies to his petition because the revelations about the lead investigating officer and the prosecutor did not come to light until after trial. But the record shows that Morey provided no dates or times as to when he became aware of the prosecutor's disciplinary actions or the officer's convictions. Based on the dates provided in the reports, the district court found that at least one of the

prosecutor's discipline actions, which occurred in 2018, was discoverable during Morey's first postconviction petition filed in 2019. The district court also found that the officer's conviction was entered in August 2021, over two years before Morey filed his second petition for postconviction relief. The district court appropriately reviewed the evidence and determined that the prosecutor's discipline and the officer's conviction occurred more than two years prior to Morey's second petition and, as such, were not timely filed within two years of the dates that the claims arose. *See* Minn. Stat. § 590.01, subd. 4(c) (2022).

Additionally, the state argues that the evidence regarding the officer and prosecutor is unrelated to Morey's case and does not establish his innocence by clear and convincing evidence. We agree. The district court did not find the "newly discovered evidence" compelling in Morey's case because his theory for relief was based on the officer's conviction "involving children other than those involved" in this case and the prosecutor's attorney discipline matters involved different cases.

2. New evidence related to the doctor's report.

Morey also claims that Dr. Nordahl's report constitutes new evidence that justifies a new trial. We disagree.

First, Dr. Nordahl reviewed Morey's medical records from April 2020. Those reports have been available for over two years. Morey's 2020 medical records cannot avoid the two-year time-bar for his 2023 petition. *See Id.*

Second, Dr. Nordahl's report makes the following qualification:

Clinically, physical findings of a person obtained through a medical examination may or may not be evident to confirm an act of sexual assault for either the alleged

perpetrator or victim. Generally, the absence of physical findings alone does not make an alleged assault impossible. And likewise, and in other words, a sexual assault may occur without detectable or enduring physical findings. Of course, physical findings may be discovered and found to be consistent with the alleged report and mechanism of a sexual assault as well. All of this applies as well when the assault is alleged to involve anal intercourse or penetration.

Dr. Nordahl qualified his opinion to note that medical records may have no relevance to confirm a sexual assault occurred. Morey largely ignores that portion of the doctor's report and, instead, cites the doctor's opinion: "Nothing in [Morey's] exhaustive work-up and medical investigation at that time including his physical exam relates to or would support a claim of past sexual abuse or assault." Given the doctor's prior paragraph that qualified the opinion, the ultimate conclusion does not establish—by clear and convincing evidence—that Morey is innocent of the offenses for which he was convicted.

Finally, Morey provides no argument as to how 2020 medical records would be relevant to conduct that occurred at least five years earlier. Such records are not "new evidence." If they were, all medical records created well after the conduct at issue would become newly discovered evidence. Such a ruling would render the two-year postconviction statute of limitations meaningless because a conviction would never be final. We decline to adopt such a rule of law that is antithetical to the postconviction deadlines and the limited exceptions to those deadlines.

B. The interests-of-justice exception does not save Morey’s petition from the two-year time-bar.

Morey argues the interests-of-justice exception precluded the district court from applying the statutory two-year time-bar to his claims related to the prosecutor, officer, and doctor’s report. To qualify under the interests-of-justice exception, a petition for postconviction relief must have substantive merit and the petitioner must not have deliberately and inexcusably delayed bringing the claim. *Wright v. State*, 765 N.W.2d 85, 90 (Minn. 2009). The interests of justice provide a petitioner with an exception to the two-year statutory time-bar only if the injustice relates to the reason the petition was filed after the time limit and the injustice caused them “to miss the primary deadline.” *Sanchez v. State*, 816 N.W.2d 550, 557 (Minn. 2012).

First, the prosecutor’s attorney discipline was in 2018 and 2020. The district court did not clearly err in determining that the discipline information was available to Morey more than two years prior to the 2023 filing of the current petition.

Second, in highly publicized criminal proceedings, the officer was charged in 2019 and convicted in 2021. Morey should have known about the charges in 2019 and 2021, both of which occurred over two years before he filed the current postconviction petition.

Finally, the district court found that the medical examination was completed in April 2020—over three years prior to the filing of Morey’s second postconviction petition filed in 2023. A doctor’s general opinion about Morey’s physical condition could have been conducted before the trial or before he filed his first petition.

None of these facts lend to the reasonable conclusion that the interests of justice requires consideration of Morey's second petition for postconviction relief. The prosecutor, officer, and doctor's report were all available to Morey—or could have been made available for the doctor's report—over two years before he filed the second postconviction petition. Further, Morey provides no reasonable explanation as to how these circumstances could have caused him to miss the two-year deadline.

The district court properly dismissed Morey's petition as statutorily time-barred.

Affirmed.