

*This opinion is nonprecedential except as provided by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
A24-0112**

Victor Cortez Shelton, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed July 29, 2024
Affirmed
Frisch, Judge**

Stearns County District Court
File No. 73-CR-18-5517

Cathryn Middlebrook, Chief Appellate Public Defender, Sean McGuire, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Janelle P. Kendall, Stearns County Attorney, Michael J. Lieberg, Chief Deputy County Attorney, St. Cloud, Minnesota (for respondent)

Considered and decided by Frisch, Presiding Judge; Ede, Judge; and Halbrooks, Judge.*

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

NONPRECEDENTIAL OPINION

FRISCH, Judge

Appellant challenges the summary denial of his petition for postconviction relief as untimely. Because the postconviction court did not abuse its discretion in determining that the petition was untimely filed and that no exception to the time-bar applies, we affirm.

FACTS

On June 13, 2019, appellant Victor Cortez Shelton pleaded guilty to receiving profit derived from prostitution in violation of Minn. Stat. § 609.322, subd. 1a(3) (2016). The district court accepted the plea, sentenced Shelton to 168 months' imprisonment, and entered his conviction on the same day.

Shelton did not file a direct appeal. On January 12, 2023, 42 months after his conviction, Shelton filed a pro se petition for postconviction relief.¹ The petition included what Shelton labeled in his table of contents as “argument X”: that Stearns County lacked jurisdiction to investigate and prosecute the crime. Shelton also asked the postconviction court to consider the physical-disability, newly-discovered-evidence, and interests-of-justice exceptions to the time-bar for seeking postconviction relief. Shelton requested an evidentiary hearing.

Shelton was then assigned counsel to represent him in the postconviction proceedings. On September 13, 2023, Shelton's counsel filed another petition for postconviction relief, asserting that Shelton's plea was not accurate because it did not

¹ The petition is stamped as filed on January 12, 2022, but the postconviction court found that the petition was filed on January 12, 2023. Neither party challenges this finding.

properly establish venue. Shelton's counsel requested that the postconviction court consider only "argument X" from Shelton's January 2023 petition and to also consider another pro se petition that Shelton intended to file in the future. Shelton's counsel requested an evidentiary hearing.

On September 25, 2023, Shelton filed another pro se petition for postconviction relief. Shelton asserted that certain sex-trafficking and prostitution statutes (1) unconstitutionally discriminate based on race, gender, age, and familial relationship; (2) permit selective discriminatory prosecution; (3) violate several civil-rights, victim-rights, and crime-related acts; (4) are unconstitutionally ambiguous and vague; (5) improperly shift the burden to the defendant; and (6) implicate double jeopardy. Shelton also challenged his criminal-history score and asserted that the physical-disability-or-mental-disease, interests-of-justice, and newly-discovered-evidence exceptions to the time-bar applied.

Respondent State of Minnesota opposed the petition, asserting in part that both the counseled and pro se petitions are barred as untimely without exception and that Shelton's guilty plea was valid.

The postconviction court summarily denied all of Shelton's petitions for postconviction relief as untimely. It determined that the only potentially applicable exception to the time-bar for the counseled petition for postconviction relief was the interests-of-justice exception but concluded that Shelton had not identified an injustice that resulted in a delay in petitioning for postconviction relief based on the inaccuracy of the plea. The postconviction court then considered whether the physical-disability-or-mental-

disease, newly-discovered-evidence, or interests-of justice exceptions to the time-bar applied to Shelton's pro se petitions for postconviction relief. The postconviction court determined that the physical-disability exception did not apply because Shelton did not assert that prolonged COVID-19 symptoms prohibited him from working on his petition or timely filing a petition for postconviction relief. The postconviction court also noted that, although Shelton contracted COVID-19 in October 2020 and the two-year deadline for filing his petition for relief expired in June 2021, Shelton did not file his first petition for postconviction relief until January 2023. The postconviction court determined that the newly-discovered-evidence exception did not apply because the evidence that Shelton offered did not establish that he is innocent of receiving profit derived from prostitution. And the postconviction court determined that the interests-of-justice exception did not apply because the identified COVID-19 and prison-related issues that Shelton experienced in preparing his petition did not explain or justify his filing the petition 18 months after the statutory deadline. Finally, the postconviction court denied Shelton's request for an evidentiary hearing.

Shelton appeals.

DECISION

On appeal, Shelton argues that the postconviction court abused its discretion by summarily denying postconviction relief because the equitable-tolling doctrine applies. In a pro se supplemental brief, Shelton argues that the postconviction court abused its discretion by determining that neither the newly-discovered-evidence nor the interests-of-justice exceptions to the time-bar apply. Shelton also asserts that the

postconviction court abused its discretion by failing to consider the merits of his claim that his sentence was incorrectly calculated. We address each argument in turn.

I. The postconviction court did not abuse its discretion by summarily denying Shelton’s petitions for postconviction relief as untimely.

A postconviction court must hold an evidentiary hearing on a petition for postconviction relief “[u]nless the petition and the files and records of the proceeding conclusively show that the petitioner is entitled to no relief.” Minn. Stat. § 590.04, subd. 1 (2022). “In determining whether an evidentiary hearing is required, a postconviction court considers the facts alleged in the petition as true and construes them in the light most favorable to the petitioner.” *Andersen v. State*, 913 N.W.2d 417, 422-23 (Minn. 2018) (quotation omitted). A postconviction court may summarily deny a petition that is time-barred unless a statutory exception applies. *Id.* at 423.

A postconviction petition may not be filed more than two years after “the entry of judgment of conviction or sentence if no direct appeal is filed,” unless one of five statutorily recognized exceptions apply. Minn. Stat. § 590.01, subd. 4 (2022). The five exceptions are: (1) a physical disability or mental disease that prevented a timely filing; (2) the existence of newly discovered evidence; (3) the retroactive application of a new interpretation of the law to a petitioner’s case; (4) under certain conditions, if the conviction occurred prior to May 1, 1980; and (5) “the petition is not frivolous and is in the interests of justice.” *Id.*, subd. 4(b). “Any petition invoking an exception . . . must be filed within two years of the date the claim arises.” *Id.*, subd. 4(c). A claim arises when the claimant

knew or should have known that the claim existed. *Sanchez v. State*, 816 N.W.2d 550, 560 (Minn. 2012).

“We review a postconviction court’s summary denial of a petition for postconviction relief for an abuse of discretion.” *Andersen*, 913 N.W.2d at 422. “A postconviction court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record.” *Id.* (quotation omitted).

It is undisputed that Shelton’s postconviction petitions were filed more than two years after the statutory deadline. On appeal, Shelton argues that the postconviction court abused its discretion by declining to apply either the equitable-tolling doctrine or statutory exceptions to the time-bar. We address each argument in turn.

A. The postconviction court did not abuse its discretion by failing to hold an evidentiary hearing to determine whether it should apply the equitable-tolling doctrine.

Shelton argues that the postconviction court abused its discretion by denying his postconviction petition without an evidentiary hearing “to determine whether the doctrine of equitable tolling operates to excuse the delay in filing the postconviction petition.” Shelton asserts that he alleged facts “pertaining to the timeliness of the petition” in need of further evidentiary development. Shelton specifically argues that an evidentiary hearing is needed to identify COVID-19 prison policies and to show that prison officials prevented him from receiving materials and that state agencies prevented him from receiving data.²

² We understand Shelton’s appellate brief as challenging only the summary denial of his pro se petitions for postconviction relief. The postconviction court denied Shelton’s counseled petition for postconviction relief as untimely and noted that it also would have denied the claim on the merits.

The state responds that Shelton forfeited any argument regarding the application of the equitable-tolling doctrine because it was not raised before the postconviction court. We agree with the state.

We generally will not consider issues that were not raised before the postconviction court. *Andersen*, 913 N.W.2d at 428 n.11 (citing *Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996)). In the postconviction proceeding, Shelton made assertions and filed evidence regarding the circumstances that prevented him from timely filing his petitions and explained his attempts to file his petition earlier. But Shelton did not argue to the postconviction court that the equitable-tolling doctrine should apply. Although the postconviction court quoted *Munt v. State*, 984 N.W.2d 242, 248-49 (Minn. 2023), which discusses the equitable-tolling doctrine, and made a finding related to the equitable-tolling analysis, that is not evidence that Shelton raised the application of the equitable-tolling doctrine before the postconviction court.³ We therefore conclude that Shelton forfeited this argument on appeal.

³ We are unaware of any case in which the Minnesota Supreme Court has decided that the equitable-tolling doctrine applies in the postconviction context. *See Sanchez*, 816 N.W.2d at 560-61 (assuming without deciding that the equitable-tolling doctrine can apply to a postconviction petition); *Roby v. State*, 808 N.W.2d 20, 30-31 (Minn. 2011) (same). Thus, even if Shelton had raised the application of the equitable-tolling doctrine before the postconviction court, we conclude that the district court did not abuse its discretion in declining to apply the doctrine to excuse the delay in his filing the postconviction petition.

B. The postconviction court did not abuse its discretion by determining that neither the newly-discovered-evidence nor the interests-of-justice exceptions to the time-bar apply.

Shelton argues that the postconviction court abused its discretion by determining that neither the newly-discovered-evidence nor the interests-of-justice exceptions to the time-bar apply to his claims.⁴ We address each issue in turn.

Newly Discovered Evidence

The newly-discovered-evidence exception to the time-bar applies if Shelton can show (1) “the existence of newly discovered evidence”; (2) the evidence “could not have been ascertained by the exercise of due diligence” by Shelton or his 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 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). The evidence is clear and convincing “only when [it] is unequivocal, intrinsically probable, and free from frailties.” *Andersen*, 913 N.W.2d at 425 (quotation omitted).

Shelton argues that the postconviction court abused its discretion by determining that the materials Shelton filed in support of his postconviction petitions are not “evidence,” Shelton could have discovered the information he claims is newly discovered

⁴ Shelton does not challenge the postconviction court’s determination that the physical-disability exception to the time-bar did not apply.

before the time-bar applied, and the information alleged in the petition does not establish by clear and convincing evidence that Shelton is innocent. We disagree.

First, we note that Shelton's postconviction claims, other than his discriminatory-enforcement claims, involve legal arguments rather than newly discovered evidence. For example, he argues that certain statutory language is unconstitutionally ambiguous and vague. We also note that some of the material that Shelton filed in support of his postconviction petition is not evidence, such as copies of cases, statutory language, and motions filed in the underlying case.

Second, the evidence Shelton offered in support of his claims that the statute is discriminatorily enforced based on race, gender, age, and familial relationship is not clear and convincing proof that Shelton is innocent of deriving profit from prostitution. Minn. Stat. § 509.01, subd. 4(b)(2). A defendant is entitled to dismissal of the charges against them if they can show discriminatory enforcement of the law. *State v. Russell*, 343 N.W.2d 36, 37 (Minn. 1984). But "the issue of discriminatory enforcement does not go to the guilt or innocence of the particular defendant." *City of Minneapolis v. Buschette*, 240 N.W.2d 500, 503 (Minn. 1976). Therefore, any evidence Shelton provided in support of his claim of discriminatory enforcement of laws does not pertain to his innocence of deriving profit from prostitution and does not trigger application of the newly-discovered-evidence exception to the time-bar.

Interests of Justice

The interests-of-justice exception applies 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). “The statutory interests-of-justice exception is only invoked in exceptional and extraordinary situations.” *Andersen*, 913 N.W.2d at 428 (quotation omitted). This exception relates to the “*reason* the petition was filed after the 2-year time limit in subdivision 4(a), not the *substantive claims* in the petition.” *Sanchez*, 816 N.W.2d at 557.

Shelton specifically argues that the postconviction court abused its discretion by determining that the interests-of-justice exception did not apply because the postconviction court should have applied “the *Gassler* factors” and incorrectly analyzed when a claim arises under the interests-of-justice exception. Shelton also argues that the delay in filing his petitions was caused by the effect of COVID-19 on his own health and his access to the law library, that the prison concealed the effect of COVID-19 and failed to protect inmates, and other prison policies were wrongfully enforced to restrict his access to research materials.

First, a postconviction court is not required to consider any particular factor in determining the application of the interests-of-justice exception in a given matter. *See Gassler v. State*, 787 N.W.2d 575, 586 (Minn. 2010) (stating that the court had “identified a non-exclusive list of factors to be considered”); *Francis v. State*, 829 N.W.2d 415, 419 (Minn. 2013) (stating that “the factors identified in *Gassler* do not form a rigid test and different factors may be dispositive in the unique circumstances of each case” (quotation omitted)); *Erickson v. State*, 842 N.W.2d 314, 319 (Minn. 2014) (stating that “[w]hen determining whether it is in the interests of justice to consider an otherwise time-barred petition for postconviction relief, we may consider several factors” (quotation omitted)).

Second, we agree with Shelton that the postconviction court’s reasoning in determining whether the interests-of-justice exception applied—that Shelton knew of the substance of his claims rather than the reason for the delay in filing—is not relevant to whether the interests-of-justice exception applied. *See Sanchez*, 816 N.W.2d at 557, 560 (stating that the interests-of-justice exception relates to the reason for the delay, rather than the substance of the claim, and that a claim arises when the claimant knew or should have known that the claim existed); Minn. Stat. § 590.01, subd. 4(c) (“Any petition invoking an exception . . . must be filed within two years of the date the claim arises.”). But any error by the postconviction court was harmless because it ultimately concluded that Shelton’s difficulty in obtaining research materials because of the pandemic, mail restrictions, and placement in segregation did not satisfy the interests-of-justice exception and that any delay in filing his postconviction petition was not caused by an injustice. *See Hooper v. State*, 838 N.W.2d 775, 784 (Minn. 2013) (reasoning that a postconviction court’s failure to evaluate a claim under the correct test was harmless because the petitioner would not have succeeded under the correct test based on the postconviction court’s findings).

Third, the postconviction court’s conclusion that Shelton’s delays did not satisfy the interests-of-justice exception was not an abuse of discretion. While the postconviction court acknowledged how COVID-19 affected Shelton’s own health and his access to the law library, the postconviction court also noted that some of the delay was caused by mail restrictions and Shelton’s time spent in segregation. Shelton stated in an affidavit that he contracted COVID-19 in October 2020 and that the law library was affected by the pandemic four months before that. Shelton submitted memoranda regarding prison

protocols during COVID-19 outbreaks in October 2020 and January 2022. Shelton also submitted correspondence with prison officials regarding delays in his access to mailed material and the denial of certain library material that was not permitted because Shelton appeared to request it on behalf of other inmates. And Shelton informed the postconviction court that he was in segregation for violence-related reasons from December 2021 through February 2022, March 31 through April 22, 2022, and April 30 through September 8, 2022, and that he tried to get his materials while in segregation so that he could continue working.

It was not an abuse of discretion for the postconviction court to determine that these causes for delay did not amount to “extraordinary circumstances” explaining the delay in filing the petition for postconviction relief under the interests-of-justice exception. While Shelton suffered from COVID-19 and COVID-19 affected prison operations, the delay in filing the petition was in part caused by Shelton’s own actions. *See Andersen*, 913 N.W.2d at 428 (reasoning that the circumstances offered to explain the delay in filing postconviction petition, including “challenges in obtaining some documents” did not explain the six-year delay); *Roberts v. State*, 856 N.W.2d 287, 293 (Minn. App. 2014) (considering the interests-of-justice exception to the time-bar and concluding that the petitioner was at fault for the delay in filing his postconviction petition), *rev. denied* (Minn. Jan. 28, 2015); *Wetsch v. State*, No. A14-1794, 2015 WL 4393422, at *2 (Minn. App. 2015) (“Restrictions to the law library and other challenges that result from a petitioner’s

incarceration are, as the [postconviction] court noted, common to ‘[e]very incarcerated pro-se inmate’ who is considering whether to file a petition for postconviction relief.”⁵

We discern no abuse of discretion in the postconviction court’s determination that neither the newly-discovered-evidence nor interests-of-justice exceptions to the postconviction time-bar apply.

II. The postconviction court did not abuse its discretion with respect to Shelton’s challenge to his sentence.

Shelton argues that the postconviction court abused its discretion by denying his postconviction challenge to his sentence as untimely. We disagree.

While “a sentence not authorized by law” may be corrected “at any time” under Minn. R. Crim. P. 27.03, subd. 9, when “the sentence at issue is imposed as part of a plea agreement, a motion to change that sentence impacts more than simply the sentence” and Minn. R. Crim. P. 27.03 does not apply.⁶ *State v. Coles*, 862 N.W.2d 477, 481 (Minn. 2015). Otherwise, “[the defendant] retains the benefit of the [agreed upon] criminal charge but the [s]tate no longer receives the benefit of the [agreed upon] sentence.” *Id.* We construe a motion to correct a sentence imposed as part of a plea agreement as a petition for postconviction relief, to which the two-year time-bar applies. *See id.* at 482 (concluding that a defendant’s challenge to his sentence imposed as part of a plea agreement was

⁵ We cite nonprecedential opinions for their persuasive authority. Minn. R. Civ. App. P. 136.01, subd. 1(c).

⁶ It is undisputed that Shelton’s conviction and sentence resulted from a plea agreement, which provided for the state’s dismissal of additional criminal charges against Shelton.

“properly viewed as a petition for postconviction relief”); Minn. Stat. § 590.01, subd. 4 (limiting the time to file a postconviction petition).

In his September 2023 pro se petition for postconviction relief, Shelton argued that three of the convictions included in his criminal-history score should have been assigned lower points. But because Shelton’s sentence was imposed as part of a plea agreement, and therefore his challenge to his sentence affects more than just his sentence, he was required to challenge the sentence within two years. And because the postconviction court properly denied Shelton’s petitions for postconviction relief as untimely, we discern no abuse of discretion by the postconviction court in declining to consider the merits of Shelton’s claim that his sentence was based on an incorrect criminal-history score.

Affirmed.