

*This opinion is nonprecedential except as provided by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
A24-0408**

Bryce Dean Dirk, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed December 9, 2024
Affirmed; motion granted
Smith, Tracy M., Judge**

Hennepin County District Court
File No. 27-CR-18-18206

Jason Steck, St. Paul, Minnesota (for appellant)

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

Mary F. Moriarty, Hennepin County Attorney, Robert I. Yount, Assistant County Attorney,
Minneapolis, Minnesota (for respondent)

Considered and decided by Harris, Presiding Judge; Larkin, Judge; and Smith,
Tracy M., Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

Appellant Bryce Dean Dirk appeals from the district court's denial of his preliminary application to vacate his conviction for second-degree unintentional felony murder under 2023 legislation (the act) providing for vacatur of convictions for aiding and

abetting felony murder in some circumstances. 2023 Minn. Laws ch. 52, art. 4, § 24, subd. 1, at 864; *see* Minn. Stat. §§ 609.185(a)(3), .19, subd. 2(1) (2016). Dirk argues that the district court erred when it determined that he is precluded from relief on the basis that he caused the death of another and was not convicted under an aiding-and-abetting theory of liability. Because the district court acted within its discretion in determining that Dirk was not convicted under an aiding-and-abetting theory and was thus ineligible for relief, we affirm.

FACTS

In November 2017, a three-year-old child died while under the care of her foster parents, Dirk and his wife. Dirk provided his account of the events that led to the child's death in a statement that he gave to police as part of his plea negotiations (proffer).

According to Dirk's proffer, the child had developed a habit of engaging in self-harm when upset. As a result, Dirk's wife, and to a lesser extent, Dirk, began regularly "swaddling" the child to help her self-soothe. Swaddling entailed wrapping the child in sheets followed by a blanket that was tied to, or tucked into, a bed so the child could not move. Over time, swaddling became a form of punishment, and Dirk's wife swaddled the child at least once a day, sometimes for hours at a time. In the two days before the child's death, Dirk's wife swaddled the child for most of each day.

On the day of the child's death, Dirk was working from home. He noticed that the child's door was closed that day and believed that his wife had again swaddled the child. Dirk did not check on the child that day because he was working and his wife was home

for most of the day.¹ The first time that Dirk checked on the child that day was in the afternoon when he went to collect her for dinner. When Dirk entered the child's room, he discovered that the child was not swaddled in the usual manner that he had expected; she was wrapped in sheets, but the blanket was tied tightly to the headboard in a manner that suspended the child off the bed and restricted her breathing. Dirk realized that the child had died while restrained. He yelled for his wife to call 911 and began CPR on the child, but he was unable to revive her.

Pursuant to a grand-jury indictment, respondent State of Minnesota charged Dirk with first-degree murder while committing child abuse, in violation of Minnesota Statutes section 609.185(a)(5) (2016), and second-degree unintentional felony murder, in violation of Minnesota Statutes section 609.19, subdivision 2(1). The indictment references three child-abuse felony offenses: child neglect resulting in substantial harm in violation of Minnesota Statutes section 609.378, subdivision 1(a)(1) (2016); child endangerment resulting in substantial harm in violation of Minnesota Statutes section 609.378, subdivision 1(b)(1) (2016); and malicious punishment of a child in violation of Minnesota Statutes section 609.377, subdivisions 1, 5 (2016). The charge descriptions in the indictment state that Dirk caused the death of the child while committing the referenced felony offenses.

¹ Dirk stated that, at around 4:15 to 4:30 p.m., his wife asked him whether he wanted anything from the store. Dirk stated that he did not realize that his wife had left for the store until he saw her return to the house around 5:15 to 5:30 p.m. while he was making dinner.

In March 2019, Dirk filed a plea petition outlining his agreement with the state that he would plead guilty to second-degree unintentional felony murder in exchange for dismissal of the first-degree murder charge and a 150-month prison sentence. During his plea hearing, the state questioned Dirk to establish the factual basis for his plea:

Q: [D]o you agree that even though you were working that day, you were still a caregiver for [the child]?

A: I was.

....

Q: And you were aware that [the child] was wrapped in several blankets confined to her room?

A: I was.

Q: Was the purpose of physically restraining [the child] in this manner punishment?

A: Yes.

Q: Was it a punishment that was employed in your household on a regular basis for [the child]?

A: Yes.

Q: And you were aware that she was in this condition in her room?

A: Yes.

Q: At some point during that day . . . were you the sole caregiver who was present in the home?

A: Yes.

Q: During the time that you were serving as the caregiver for [the child], did you ever check on her in her room to check her condition when she was physically restrained?

A: No.

Q: Did you ever supervise her when she was in that physical restraint in her bedroom?

A: On that date?

Q: On that date.

A: No.

Q: As a direct result of your failure to supervise and check on [the child], do you agree that her death was caused?

A: Yes.

Q: And sir, do you agree that your failure to supervise and check on [the child] constitutes a felony level of neglect in that her death was caused?

A: Yes.

The district court accepted the plea. The district court dismissed the first-degree murder charge and convicted Dirk of second-degree unintentional felony murder under section 609.19, subdivision 2(1), sentencing him to 150 months' imprisonment.

In November 2023, Dirk filed a preliminary application to vacate his conviction under the act, which allows individuals convicted of certain kinds of first-degree murder or second-degree unintentional felony murder “under the theory of liability for crimes of another” to apply to have their convictions vacated if they meet certain criteria. 2023 Minn. Laws ch. 52, art. 4, § 24, subd. 1, at 864; *see* Minn. Stat. §§ 609.185(a)(3), .19, subd. 2(1). In his preliminary application, Dirk included his proffer, his plea-hearing transcript, and his sentencing-hearing transcript. Dirk contended that he is entitled to relief under the act because he was convicted of violating Minnesota Statutes section 609.19, subdivision 2(1), he did not cause the death of a human being, and he was not a major participant in the underlying felony and did not act with extreme indifference to human life. The district court denied Dirk’s preliminary application.

Dirk appeals.

DECISION

In 2023, the Minnesota Legislature passed the act “to narrow the scope of liability for aiding and abetting first- and second-degree felony murder under Minn. Stat. § 609.185(a)(3) (Supp. 2023), .19, subd. 2(1) (2022).” *Raisch v. State*, 8 N.W.3d 237, 239 (Minn. App. 2024). It did so by amending Minnesota Statutes section 609.05—the aiding-and-abetting statute—to impose additional requirements for convicting a person of those

offenses under an aiding-and-abetting theory. *See* 2023 Minn. Laws ch. 52, art. 4, § 3, at 850 (codified at Minn. Stat. § 609.05, subd. 2a (Supp. 2023)).

The act also provides a mechanism for persons who were previously convicted of those offenses under an aiding-and-abetting theory and who meet requirements that mirror the new requirements in section 609.05 to apply to have their conviction vacated. *See* 2023 Minn. Laws ch. 52, art. 4, § 24, at 864-68. For an applicant previously convicted of aiding and abetting unintentional second-degree felony murder under Minnesota Statutes section 609.19, subdivision 2(1), the requirements are that the applicant “show[] by a preponderance of the evidence that [they]: (1) did not cause the death of a human being; and (2) [were] not a major participant in the underlying felony and did not act with extreme indifference to human life.” *Id.*, subd. 7(b), at 867-68.

The act lays out the procedure for handling requests for relief. *See id.*, subds. 4-7, at 865-68. A person seeking relief first submits a preliminary application. *Id.*, subd. 4, at 865. Upon receipt of the preliminary application, the district court, in its discretion, determines whether “there is a reasonable probability that the application is entitled to relief under [the act].” *Id.*, subd. 5(c), at 865. In making that determination, the district court “shall consider . . . any materials submitted with the preliminary application and may consider relevant records in the possession of the judicial branch.” *Id.*, subd. 5(d), at 866. If the district court “determines that there is not a reasonable probability that the applicant is entitled to relief,” then it must provide the applicant with a brief statement explaining how the district court reached its determination. *Id.*, subd. 5(h), at 866.

If the district court “determines that there is a reasonable probability that the applicant is entitled to relief,” it must send notice to the applicant; the applicant’s attorney, if any; and the prosecutor. *Id.*, subd. 5(g), at 866. Upon receiving that notice, the applicant may file and serve a petition for relief, and the state must respond to the petition. *Id.*, subd. 6(a), (c), at 866-67. The district court may then grant the petition if it is supported by the state, deny the petition if the new “submissions establish that there is not a reasonable probability that the applicant is entitled to relief,” or order an evidentiary hearing. *Id.*, subd. 6(e), at 867. For a petition seeking relief from a conviction of Minnesota Statutes section 609.19, subdivision 2(1), the district court may grant the petition if the petitioner proves by a preponderance of the evidence that they did not cause the death of a human being, were not a major participant in the underlying felony, and did not act with extreme indifference to human life. *Id.*, subd. 7(b), at 867-68.

Denial of a preliminary application under the act is appealable as from a denial of postconviction relief. *Raisch*, 8 N.W.3d at 242. Accordingly, we review the district court’s denial of a preliminary application for an abuse of discretion, its factual findings for clear error, and its legal conclusions de novo. *See id.*; *Riley v. State*, 819 N.W.2d 162, 167 (Minn. 2012) (describing standards when reviewing denials of postconviction relief). An abuse of discretion occurs when the district court’s decision to deny “is based on an erroneous view of the law or is against logic and the facts in the record.” *Brown v. State*, 895 N.W.2d 612, 617 (Minn. 2017) (quotation omitted).

In denying Dirk’s preliminary application, the district court explained:

Here, Dirk was not convicted under a theory of aiding and abetting. Rather, he pleaded guilty based on his own personal neglect in not checking on his three-year old foster daughter, knowing that she was physically restrained and alone in a room for hours. Dirk further admitted that his own neglect, not his actions in aiding another, caused the death of [the child].

Dirk argues that the district court exceeded the scope of its discretion in reviewing a preliminary application by implicitly making credibility determinations related to Dirk's culpability versus his wife's culpability in causing the child's death. He further argues that he is entitled to relief as a matter of law because the record demonstrates that he could only have been convicted under an aiding-and-abetting theory and contains no support to find that he caused the child's death, was a major participant in the underlying felonies, or acted with extreme indifference to human life.

Dirk does not dispute that, to qualify for relief under the act, he must have been convicted under an aiding-and-abetting theory. Indeed, as explained above, the act expressly authorizes only persons convicted of the specified felony murder offenses "under the theory of liability for crimes of another" to petition for relief under the act. 2023 Minn. Laws ch. 52, art. 4, § 24, subd. 1, at 864; *see Raisch*, 8 N.W.3d at 238 (describing the act as applying to convictions for "aiding and abetting felony murder"). Instead, Dirk challenges the district court's determination that he was not convicted under an aiding-and-abetting theory. His arguments are unpersuasive.

Dirk contends that the district court must have made an implicit finding that his statements in the proffer were not credible because the proffer established that his wife, and not he, caused the child's death. We disagree. In his proffer, Dirk admitted that the

child was malnourished, that he was concerned about how his wife treated the child, and that the child had been swaddled for hours during each of the two days preceding her death. Even if Dirk did not know that his wife had used a more severe restraint on the child on the day of her death, Dirk had reason to be concerned about the impact that his wife's typical form of swaddling had on the child. Nevertheless, Dirk failed to check on the child on the day of the child's death, despite working from home and believing that his wife had swaddled the child that day. The fact that Dirk did not restrain the child that day did not prevent Dirk's felony neglect of the child from causing her death.

Further, the record supports the district court's determination that Dirk was convicted of second-degree unintentional felony murder based on his own neglectful conduct. In the second count of the indictment, the state charged Dirk with second-degree unintentional felony murder for causing the death of the child while committing the felony-level offenses of child neglect, child endangerment, and malicious punishment of a child. Dirk was not charged under any of the theories of "liability for crimes of another" listed in Minnesota Statutes section 609.05 (2016).

While the absence of reference to section 609.05 may not be dispositive, *see State v. Whitman*, 114 N.W. 363, 364 (Minn. 1908) (holding that the defendant may be convicted of aiding and abetting the charged offense even if the charging document only charged him as a principal), Dirk's plea-hearing transcript confirms that he was not convicted under an aiding-and-abetting theory. In the hearing, Dirk pleaded guilty to second-degree unintentional felony murder. Dirk agreed with the prosecutor that he knew that his wife had swaddled the child and confined her to her room on the day of the child's death. He

agreed that, at some point on that day, he was the only caregiver present. Dirk agreed that he did not check on the child during the day and that his failure to supervise and check on the child constituted felony-level neglect. Dirk also agreed that the death of the child was directly caused by his failure to supervise and check on the child. This plea colloquy establishes that Dirk was convicted of second-degree unintentional felony murder based on his own felony neglect of the child resulting in her death.

In sum, on this record, the district court acted within its discretion in determining that Dirk is not entitled to relief under the act because he was not convicted “under the theory of liability for crimes of another.” 2023 Minn. Laws ch. 52, art. 4, § 24, subd. 1, at 864. And, having determined that there was no reasonable probability under the act that Dirk is entitled to relief, the district court followed the act by providing Dirk with a statement explaining its decision to deny his preliminary application. *See id.*, subd. 5(h), at 866. As a result, the district court did not abuse its discretion in denying Dirk’s preliminary application under the act.²

Affirmed; motion granted.

² We note that, as part of his appeal before this court, Dirk filed an addendum, which included transcripts of his wife’s plea and sentencing hearings. Respondent moved to strike the transcripts because they were not included in Dirk’s preliminary application and were not otherwise part of the appellate record. Dirk did not include his wife’s transcripts in his preliminary application and there is no indication that the district court reviewed Dirk’s wife’s transcripts in reaching its decision or that the act required the district court to do so. *See* 2023 Minn. Laws ch. 52, art. 4, § 24, subd. 5(d), at 866. As a result, we grant respondent’s motion to strike.