This opinion is nonprecedential except as provided by Minn.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
A24-0589

Albert George McIntosh, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed November 25, 2024
Affirmed
Harris, Judge

Hennepin County District Court
File No. 27-CR-15-34803

Albert G. McIntosh, Rush City, Minnesota (pro se appellant)

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

Mary F. Moriarty, Hennepin County Attorney, Mark V. Griffin, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

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

NONPRECEDENTIAL OPINION

HARRIS, Judge

In this appeal from an order denying postconviction relief, appellant argues that the postconviction court abused its discretion by denying his claims as statutorily time- and *Knaffla*-barred without an evidentiary hearing. We affirm.

FACTS

In 2017, a jury found appellant Albert George McIntosh guilty of five counts of aiding and abetting robbery, burglary, and murder. The district court denied McIntosh's motion for a downward durational departure and imposed consecutive sentences on three of the counts, for a total sentence of 462 months' imprisonment. McIntosh filed a direct appeal, arguing that (1) there was insufficient evidence to corroborate the accomplices' testimony; (2) the district court provided inadequate jury instructions; and (3) McIntosh did not knowingly, intelligently, and voluntarily waive his right to testify. *State v. McIntosh*, No. A17-0920, 2018 WL 3014656, at *1 (Minn. App. June 18, 2018), *rev. denied* (Minn. Sept. 18, 2018). McIntosh also filed a pro se supplemental brief arguing in part that the district court erred by admitting various videos and text messages because they were unrelated to the crimes committed in Minneapolis but were related to a case in St. Paul where he was acquitted. *Id.* at *5. In June 2018, we affirmed McIntosh's convictions and concluded that the state produced sufficient evidence corroborating the testimony of his two accomplices and that McIntosh did not make any argument about how the admitted video and text message evidence from the St. Paul case prejudiced him. *Id.* In September 2018, the Minnesota Supreme Court denied review, and McIntosh did not file a petition for a writ of certiorari with the United States Supreme Court.

In January 2024, McIntosh filed a petition for postconviction relief. McIntosh argued that his appellate counsel was ineffective because under theories of double jeopardy and collateral estoppel the district court erred by admitting video evidence and text messages from the St. Paul case where he was acquitted. The postconviction court determined that McIntosh's claims were statutorily and procedurally barred and summarily denied relief. McIntosh appeals.

DECISION

I. The district court did not abuse its discretion by summarily denying McIntosh's petition for postconviction relief.

Under Minnesota's postconviction statutes, a person convicted of a crime may seek relief by filing a petition claiming that the conviction "violated the person's rights under the Constitution or laws of the United States or of the state." Minn. Stat. § 590.01, subd. 1(1) (2022). "The person seeking postconviction relief bears the burden of establishing by a preponderance of the evidence that his claims merit relief." *Crow v. State*, 923 N.W.2d 2, 10 (Minn. 2019). And although the postconviction statute has been interpreted as providing broad review of criminal convictions, the petitioner must comply with the statutory and procedural requirements that limit our review. *See Deegan v. State*, 711 N.W.2d 89, 94 (Minn. 2006) (stating that the first review of a conviction by a postconviction court is similar in scope to a direct appeal); *Carlton v. State*, 816 N.W.2d 590, 601 (Minn. 2012) (concluding that the statutory two-year time limit for filing a petition for postconviction relief was intended to act as a statute of limitations).

We review the denial of a postconviction petition for an abuse of discretion. *Williams v. State*, 5 N.W.3d 399, 405 (Minn. 2024). "A postconviction 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." *Pearson v. State*, 891 N.W.2d 590, 596 (Minn. 2017) (quotation omitted). "Legal issues are reviewed de novo" and "we do not reverse the postconviction court's findings unless they are clearly erroneous." *Id.* (quotation omitted).

A. McIntosh's postconviction petition was untimely and McIntosh did not establish that an exception to the statutory two-year time limit applied.

The postconviction court determined that McIntosh's claims were statutorily barred because McIntosh filed his petition more than two years after the disposition of his direct appeal and McIntosh did not invoke the interests-of-justice exception within two years of the date the claim arose.[1] We conclude that the postconviction court did not abuse its discretion.

A postconviction petition is statutorily time-barred if it is filed "more than two years after the later of: (1) the entry of judgment of conviction or sentence if no direct appeal is filed; or (2) an appellate court's disposition of petitioner's direct appeal." Minn. Stat. § 590.01, subd. 4(a)(1)-(2) (2022). Here, McIntosh's postconviction petition was untimely because it was filed more than five years after his direct appeal was finalized in 2018.[2]

There are five exceptions to the two-year statutory time limit.[3] *Id.*, subd. 4(b) (2022). A petitioner bears the burden of establishing that an exception applies. *Brocks v.*

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[1] The postconviction court also determined that the other exceptions McIntosh raised in his petition were inapplicable, and McIntosh does not challenge this determination on appeal. *See* Minn. Stat. § 590.01, subd. 4(b)(3)-(4) (2022) (providing exceptions to the two-year time limit when petitioner asserts new interpretation of law and establishes it should be applied retroactively or when petitioner was convicted and sentenced prior to May 1, 1980, and asserts a significant change in the law should be applied retroactively).

[2] McIntosh's conviction became final in May 2018—90 days after the supreme court denied review. *See Berkovitz v. State*, 826 N.W.2d 203, 207 (Minn. 2013).

[3] 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

State, 883 N.W.2d 602, 604 (Minn. 2016). McIntosh claims that his appeal satisfies the interests-of-justice exception, which allows the court to hear a petition for postconviction relief 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) (2022). The interests-of-justice exception is "implicated only in exceptional and extraordinary situations." *Caldwell v. State*, 976 N.W.2d 131, 141 (Minn. 2022). And "the interests-of-justice referred to in subdivision 4(b)(5) relate to the *reason* the petition was filed after the 2 year time limit in subdivision 4(a), not the *substantive claims* in the petition." *Id.* (quoting *Sanchez v. State*, 816 N.W.2d 550, 557 (Minn. 2012)).

McIntosh argues that the postconviction court failed to apply the correct interests-of-justice test, citing *Gassler v. State*, 787 N.W.2d 575 (Minn. 2010).[4] Specifically, McIntosh argues that the postconviction court erred by not determining whether his petition was frivolous and without merit or if it was permitted to be heard even though time-barred because he raised "sub-claims," including constitutional errors and ineffective assistance of appellate counsel.[5] We are unpersuaded.

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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." Minn. Stat. §590.01 subd. 4.

[4] *Henderson v. State*, 906 N.W.2d 501, 507 (Minn. 2018), abrogated a portion of *Gassler*, holding that when determining whether to summarily deny relief, a postconviction court must accept the evidence as true.

[5] McIntosh argues that his appellate counsel was ineffective for not raising collateral estoppel and double jeopardy claims related to text message and video evidence from the St. Paul case. Then, McIntosh argues that, because he was denied his right to counsel, the district court and postconviction court lacked subject matter jurisdiction.

Under the interests-of-justice exception, a claim must be brought within two years from "the date the claim arises." Minn. Stat. § 590.01, subd. 4(c) (2022). The date a "claim arises" is interpreted under an objective "knew or should have known" standard, not when a defendant subjectively realizes that they have a claim. *Sanchez*, 816 N.W.2d at 558-60. "'Claim' refers to an event that supports a right to relief under the asserted exception." *Bee Yang v. State*, 805 N.W.2d 921, 925 (Minn. App. 2011), *rev. denied* (Minn. Aug. 7, 2012). The determination of when an interests-of-justice claim arose to trigger the two-year time limit is a question of fact that this court reviews for clear error. *Sanchez*, 816 N.W.2d at 560.

Here, the postconviction court determined that McIntosh's petition was not brought within two years of the date the claim arose because his claim regarding ineffective assistance of appellate counsel would have been known at the time of his direct appeal in 2018 and noted that McIntosh raised a similar issue in his pro se supplemental brief. This finding was not clearly erroneous. At the time his direct appeal was filed, McIntosh knew or should have known what arguments his appellate counsel did and did not raise, including arguments related to collateral estoppel and double jeopardy. *See* Minn. R. Crim. P. 28.02, subd. 5(13) (providing that the state public defender's office must file and provide a copy of a brief to a defendant proceeding pro se or filing a supplemental brief.) McIntosh could have brought a postconviction petition alleging ineffective assistance of appellate counsel. *See Sanchez*, 816 N.W.2d at 560 (concluding that interests-of-justice claim based on ineffective assistance of counsel arose when the trial court informed the defendant that his appeal had not been filed because at that time the defendant knew or should have known that his attorney was ineffective for not filing an appeal). On this record, it appears McIntosh was aware that his appellate counsel did not challenge the admission of the evidence from the St. Paul case because McIntosh raised the issue in a pro se supplemental brief during his direct appeal.

McIntosh also argues that the interests-of-justice exception still applies, even though the postconviction petition was not brought within two years from the date the claim arose. This argument is also unpersuasive. McIntosh does not allege any reason why he could not discover the basis for the interests-of-justice claim earlier or could not otherwise diligently pursue his claim. *See id.* at 562 (concluding that, even if the two-year time limit for filing a postconviction petition under the interests-of-justice exception is subject to equitable tolling, a petitioner is not entitled to relief on this basis if state actors are not alleged to have prevented the petitioner from discovering the basis of the interests-of-justice claim, and the petitioner was not otherwise diligently pursuing his claim).

In sum, the district court properly applied the interests-of-justice exception because McIntosh did not provide any reasons for filing his petition after the two-year time limit. And because McIntosh did not bring his postconviction petition within two years from the date of claim, the postconviction court did not abuse its discretion by denying McIntosh's petition for postconviction relief as time-barred.

B. The postconviction court did not abuse its discretion by denying McIntosh's postconviction petition without an evidentiary hearing.

A postconviction court must hold an evidentiary hearing on a petition for postconviction relief "[u]nless the petition, files, and record from the proceeding conclusively show that the petitioner is entitled to no relief." Minn. Stat. § 590.04, subd. 1 (2022); *see Lynch v. State*, 749 N.W.2d 318, 320 (Minn. 2008) ("A petitioner is entitled to an evidentiary hearing unless the petition and the files and records of the proceedings conclusively show that the petitioner is entitled to no relief." (quotations omitted)). When determining whether the petitioner is entitled to an evidentiary hearing, the postconviction court is required to consider the facts alleged in the petition as true and construe them in the light most favorable to the petitioner. *Henderson*, 906 N.W.2d at 507. "[T]he burden is on a petitioner to show facts entitling the petitioner to relief." *Allwine v. State*, 994 N.W.2d 528, 541 (Minn. 2023).

"We review the ultimate decision by the postconviction court to grant or deny an evidentiary hearing for an abuse of discretion." *Caldwell v. State*, 853 N.W.2d 766, 770 (Minn. 2014).

Here, McIntosh's arguments contain no factual disputes. And the record supports the postconviction court's denial of McIntosh's request for a hearing because, even when the facts are viewed as true and in the light most favorable to relief, McIntosh did not meet his burden to show that his claims were not statutorily time-barred or that his appellate counsel provided ineffective assistance.[6]

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[6] The postconviction court also found that McIntosh was not entitled to an evidentiary hearing because his claims were *Knaffla*-barred. *Knaffla* is a procedural rule that "bars all claims that the appellant should have known at the time of direct appeal." *Buggs v. State*, 734 N.W.2d 272, 274 (Minn. 2007) (quotations omitted); *see State v. Knaffla*, 243 N.W.2d 737, 741 (Minn. 1976). There are two exceptions to this general rule: (1) "if the claim's novelty was so great that its legal basis was not reasonably available when direct appeal was taken" or (2) "when fairness so requires and when the petitioner did not deliberately

In sum, McIntosh's ineffective-assistance-of-appellate-counsel claim was statutorily time-barred because McIntosh did not file his petition within two years from the date the claim arose. To the extent that McIntosh reframes the issues and raises arguments related to collateral estoppel and lack of subject matter jurisdiction, these claims are also statutorily time-barred because they were known at the time of direct appeal. *See Riley v. State*, 792 N.W.2d 831, 834 (Minn. 2011) (holding that appellant's petition for postconviction relief that included argument that indictment violated double jeopardy, res judicata, and collateral estoppel was time-barred); *Martin v. State*, 969 N.W.2d 361, 364 (Minn. 2022). Therefore, the postconviction court did not abuse its discretion in denying McIntosh's postconviction petition without an evidentiary hearing.

Affirmed.

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and inexcusably fail to raise the issue on direct appeal." *Lynch*, 749 N.W.2d at 321 (quoting *State v. Leake*, 737 N.W.2d 531, 535 (Minn. 2007)). Because we conclude that McIntosh's claims are statutorily time-barred under section 590.01, subdivision 4(b), we need not address whether McIntosh's claims are also *Knaffla*-barred. *See Caldwell*, 976 N.W.2d at 138 n.7 (holding that appellant's claims are time-barred and refusing to consider whether the claims are also procedurally barred under *Knaffla*).