

*This opinion is nonprecedential except as provided by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
A24-1480**

State of Minnesota, petitioner,
Appellant,

vs.

Brooks Ellery Kurr,
Respondent.

**Filed July 14, 2025
Affirmed
Segal, Judge***

Scott County District Court
File No. 70-CR-13-20740

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

Ronald Hovevar, Scott County Attorney, Elisabeth M. Johnson, Assistant County Attorney, Shakopee, Minnesota (for appellant)

Anders J. Erickson, Johnson Erickson Criminal Defense, Minneapolis, Minnesota (for respondent)

Considered and decided by Bjorkman, Presiding Judge; Bratvold, Judge; and Segal, Judge.

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

NONPRECEDENTIAL OPINION

SEGAL, Judge

Appellant State of Minnesota challenges the constitutionality of the retroactivity provision of a 2023 law that increased the degree of culpability required for the offenses of aiding and abetting first- and second-degree felony murder.¹ *See* 2023 Minn. Laws ch. 52, art. 4, § 24, at 864-68. Respondent Brooks Ellery Kurr sought relief under the retroactivity provision from his 2014 conviction. The district court found Kurr eligible for relief, vacated his conviction for aiding and abetting felony-murder, and convicted him of the underlying predicate felony offense. The state asserts that the retroactive application of the act to persons who were previously convicted is unconstitutional because it violates the separation of powers under Minnesota’s constitution and the Contract Clause of both the federal and state constitutions. We affirm.

FACTS

Pursuant to a plea agreement, Kurr was convicted in 2014 of aiding and abetting second-degree unintentional felony murder in violation of Minnesota Statutes section 609.19, subdivision 2(1) (2012). The murder victim was fatally shot by Kurr’s accomplice, A.C., while the victim was being robbed. In the plea colloquy, Kurr admitted that he had identified the murder victim as a good robbery target and that he drove A.C. to the victim’s residence to carry out the robbery. Kurr also acknowledged that, even though he stayed in the car during the offense, he knew A.C. was armed with a loaded firearm when A.C.

¹ We refer to the retroactivity provision hereinafter as “the act.”

entered the victim's home for the robbery, and that A.C. fatally shot the victim and then robbed not only the victim but also his 15-year-old nephew who was present in the home. Kurr averred, however, that he became aware that A.C. had shot the murder victim only after the crime was completed. Under the terms of the plea agreement, Kurr agreed to testify against A.C., to plead guilty to aiding and abetting second-degree unintentional felony murder, and to accept an aggravated sentence based on his admission of the presence of two aggravating factors. The district court sentenced Kurr to an upward durational departure of 240 months in prison.

After serving about half of his sentence, Kurr applied for relief under the act. As noted above, the Minnesota legislature amended the provisions governing liability for aiding and abetting first- and second-degree felony murder in 2023. *See* 2023 Minn. Laws ch. 52, art. 4, § 3, at 850-51. The amendment provides, in relevant part, that to “be held criminally liable [for aiding and abetting second-degree felony murder,] section 609.19, subdivision 2, clause (1), the defendant must have been a major [participant] in the underlying felony and [must have] acted with extreme indifference to human life.” Minn. Stat. § 609.05, subd. 2a(b) (Supp. 2023); *see* 2023 Minn. Laws ch. 52, art. 4, § 3, at 850. Prior to the amendment, a person could be found guilty of aiding and abetting any crime, including felony murder, “if the person intentionally aids, advises, hires, counsels, or conspires with or otherwise procures the other to commit the crime.” Minn. Stat. § 609.05, subd. 1 (2022).

The act provides a limited window of time during which persons previously convicted of aiding and abetting first- or second-degree felony murder, but who are still

under sentence for the offense, may apply for a vacation of their conviction. 2023 Minn. Laws ch. 52, art. 4, § 24, at 865. If the district court determines that the petitioner is entitled to relief under the act, the district court is required to vacate the felony-murder conviction and to either:

- (1) resentence the petitioner for the most serious remaining offense for which the petitioner was convicted; or
- (2) enter a conviction and impose a sentence for any other predicate felony arising out of the course of conduct that served as the factual basis for the conviction vacated by the court.

Id., subd. 7(c).

To qualify for vacation of a second-degree felony-murder conviction, the act requires a petitioner to “show[] by a preponderance of the evidence that the petitioner: (1) did not cause the death of a human being; and (2) was not a major participant in the underlying felony and did not act with extreme indifference to human life.”² 2023 Minn. Laws ch. 52, art. 4, § 24, at 867-68.

After obtaining approval of his preliminary application, which is a required first step in the process, *id.*, subd. 4, Kurr filed a petition to vacate his conviction.³ The state objected to the petition on the ground that the act was unconstitutional. The state maintained that

² In 2024, the retroactivity provision was amended by replacing “and” with “or” so that the provision requires proof that the defendant was “a major participant in the underlying felony *or* did not act with extreme indifference to human life.” 2024 Minn. Laws, ch. 123, art. 4, § 20, at 2269 (emphasis added).

³ If the district court determines that “there is a reasonable probability that the applicant is entitled to relief,” the court is to notify the parties, and the petitioner can then file and serve a petition to vacate the judgment. *Id.*, subds. 5(c), (g), 6(a).

the act violated the separation of powers and constituted an unconstitutional impairment of contract. The state also challenged an order of the Chief Justice that overrode a provision of the act that required persons seeking relief to first file a preliminary application with the Chief Judge of the Ramsey County District Court. *Order Regarding the Filing of Requests for Relief in Aid and Abet Felony Murder Cases*, ADM09-8010 (Minn. Aug. 18, 2023). The Chief Justice ordered that preliminary applications are to be filed and reviewed in the district court in the county where the conviction was entered instead of all applications being filed and reviewed in Ramsey County District Court. *Id.* The state argued that the order infringed on the powers of the legislature. In response, Kurr asserted that the state lacked standing to bring the constitutional challenges to the act and defended the constitutionality of the Chief Justice's order.

The district court agreed with Kurr that the state lacked standing, concluding that the constitution protects "individual rights of citizens, not the rights of government agencies." The district court also rejected the state's constitutional challenges on the merits. The district court acknowledged the disadvantage to the state of "retroactive criminal laws that impact cases that were charged, negotiated and disposed of without knowledge" and stated: "It is not difficult to imagine that had this potential law change been known to the prosecuting authorities, cases might have been handled differently." But the district court held that the act was, nevertheless, constitutional.

As to the state's challenge to the propriety of the Chief Justice's order, the district court agreed with Kurr's characterization of the order as "merely procedural" and found that it did not intrude on the powers of the legislative branch.

On the merits of the petition, the district court determined that Kurr proved by a preponderance of the evidence that he was entitled to relief under the act. The district court thus vacated his conviction for aiding and abetting second-degree felony murder, convicted Kurr of first-degree aggravated robbery, the underlying predicate offense, and resentenced him. Based on Kurr's prior admission to the presence of aggravating factors, the district court granted an upward durational departure of 114 months' imprisonment. With credit for time served of 132 months of his original 240-month sentence, the revised sentence entitled Kurr to release from prison.

The state now appeals.

DECISION

On appeal, the state challenges the district court's determination that the state lacked standing and that the act and the Chief Justice's order are constitutional.⁴ The state argues that the act and the Chief Justice's order violate the separation of powers because (a) the legislature invaded the authority of the judiciary by providing for the retroactive vacation of final judgments of conviction, and (b) the judiciary invaded the authority of the legislature when the Chief Justice issued her order, which the state alleges rewrote the plain language of the act. The state also argues (a) that it has standing to assert the Contract

⁴ Kurr clarified at oral argument that he was maintaining a standing challenge to only the state's Contract Clause argument, not the state's standing to assert its separation-of-powers arguments. We therefore do not address the state's standing to assert its separation-of-powers argument.

Clause violation because it suffered harm by losing the benefit of its plea agreement, and (b) that the act unconstitutionally impairs the obligations of that agreement.⁵

Challenges to a party's standing and to the constitutionality of a statute present questions of law that an appellate court reviews de novo. *Minn. Voters All. v. Hunt*, 10 N.W.3d 163, 167 (Minn. 2024) ("We review the existence of standing de novo."); *see also State v. Melde*, 725 N.W.2d 99, 102 (Minn. 2006) (providing that the constitutionality of a statute is a question of law that is reviewed de novo). In reviewing constitutional challenges to legislation, we presume that "Minnesota statutes are constitutional and will strike down a statute as unconstitutional only if absolutely necessary." *State v. Cox*, 798 N.W.2d 517, 519 (Minn. 2011) (citation omitted). "To prevail, a party challenging the constitutionality of a statute must demonstrate beyond a reasonable doubt that the statute violates a constitutional provision." *Id.*

I. The State's Separation of Powers Claims

a. The retroactivity provision of the act does not violate the separation of powers.

The state asserts that the legislature violated the separation of powers under the Minnesota constitution when it provided for the retroactive vacation of a final judgment of

⁵ The state also clarified at oral argument that it was asserting no challenge on appeal to the district court's application of the act. In other words, the state is not challenging either the district court's determination that Kurr was eligible for relief, or its decision to vacate his conviction for aiding and abetting felony-murder, convict him of a single count of first-degree aggravated robbery, and resentence him to 114 months' imprisonment.

conviction. The separation-of-powers principle is embodied in article III of the Minnesota Constitution. Minn. Const. art. III, § 1. It provides that:

The powers of government shall be divided into three distinct departments: legislative, executive and judicial. No person or persons belonging to or constituting one of these departments shall exercise any of the powers properly belonging to either of the others except in the instances expressly provided in this constitution.

Id. “Generally, the constitution empowers the legislative branch to legislate or make the laws, the executive branch to execute or carry out the laws, and the judicial branch to interpret and enforce the laws.” *In re Welfare of J.J.P.*, 831 N.W.2d 260, 268 (Minn. 2013). “Separation-of-powers principles are intended, in part, to protect each branch of government from incursion by the others.” *Bond v. United States*, 564 U.S. 211, 222 (2011).

The state maintains that the legislature usurped the judiciary’s role by requiring final judgments of conviction to be vacated if the petitioner satisfies his or her burden of proof set out in the act.⁶ It contends that the retroactivity provision of the act thereby “contradict[s] the strong policies favoring the finality of judgments,” particularly when, as here, the petition was submitted over the prosecutor’s objection.

We begin our analysis with the uncontroverted premise that it is within the prerogative of the legislature to create a law with retroactive effect. *In re Individual 35W Bridge Litig.*, 787 N.W.2d 643, 651 (Minn. App. 2010) (noting that

⁶ As noted above, Kurr is not challenging on appeal the issue of whether the state has standing to assert that the powers of the judicial branch were violated by the retroactivity provision of the law, and we therefore do not address that issue.

the legislature is empowered "to enact retroactive legislation"), *aff'd*, 806 N.W.2d 820 (Minn. 2011). It is also undisputed that the legislature clearly and expressly stated its intention that the act is to have retroactive application. *See Raisch v. State*, 8 N.W.3d 237, 242 n. 4 (Minn. App. 2024) (noting that the act "specifically applies retroactively and contains its own time limit" for filing an application for preliminary approval). This, however, still leaves open for analysis the state's argument that the retroactivity provision of the act unconstitutionally infringes on the powers of the judicial branch.

Resolution of this issue turns on whether the act is substantive or procedural in nature. *Reynolds v. State*, 888 N.W.2d 125, 131-32 (Minn. 2016). The role of the legislature is to determine substantive law. *State v. Lindsey*, 632 N.W.2d 652, 658 (Minn. 2001). "The legislature has the power to declare what acts are criminal and to establish the punishment for those acts," but it is within the powers of the judicial branch to "regulate[] the method by which the guilt or innocence of one who is accused of violating a criminal statute is determined." *Id.*

Kurr argues that the act did not infringe on the powers of the judicial branch because the act is substantive in nature. We agree. As the supreme court recently highlighted, the act "grants eligible individuals a positive legal right—the right to petition to have their convictions vacated" through postconviction relief. *State v. Griffin*, 20 N.W.3d 57, 59, (Minn. 2025) (holding that denial of a preliminary application for relief under the retroactivity provision for a person previously convicted of aiding and abetting first-degree felony murder is an appealable, final order). The act also reserves to the judiciary the task of determining whether the petitioner is entitled to relief, thereby maintaining the

judiciary’s decision-making powers in interpreting and applying the retroactivity provision. *See State v. Schnell*, 933 N.W.2d 393, 405 (Minn. 2019) (recognizing that it is “emphatically . . . the province and duty of the judicial department, to say what the law is”). And, if the district court finds that the petitioner is eligible for relief, the act leaves it to the district court to determine the alternative conviction and revised sentence. *See Buckner v. Robichaud*, 992 N.W.2d 686, 690 (Minn. 2023) (noting, in addressing separation of powers, that “courts have inherent authority to ensure that they can perform their essential function of deciding cases”); *Sela Invs., Ltd. LLP v. J.H.*, ____ N.W.3d ____, 2025 WL 1153918 at *4-5 (Minn. App. Apr. 21, 2025) (holding that a statute that deprives the judiciary of any decision-making authority in whether to expunge eviction records violates the separation-of-powers doctrine by, among other things, “infringing on the district court’s inherent authority to hear and decide cases”), *petition for rev. filed* (Minn. May 21, 2025).

The state argues that the act, nevertheless, unconstitutionally infringes on the powers of the judiciary because it interferes with the finality of judgments. In support of its position, the state relies on a United States Supreme Court case, *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, (1995). *Plaut* addressed the issue of retroactivity in the context of an amendment to the Securities Exchange Act of 1934. *Id.* at 213. The amendment effectively abrogated a recent Supreme Court decision by legislating a longer statute of limitations than the supreme court had determined was applicable. *Id.* at 211. The amendment required federal courts to reopen, upon motion, cases in private civil actions that had been dismissed based on the shorter limitations period

previously dictated by the Supreme Court. *Id.* In *Plaut*, the Supreme Court recognized that Congress could constitutionally pass laws with retroactive effect, but that it could not require the reopening of final judgments, at least not under the facts of the case, without violating the powers of the judiciary to issue final judgments. *Id.* at 236-40.

Plaut is distinguishable for at least two reasons. First, it was decided under the United States Constitution and concerned the separation of powers between congress and the federal courts. This case, as Kurr argues, concerns the separation of powers under our state constitution and we have not identified, nor has the state cited, any Minnesota cases adopting the finality-of-judgments reasoning of *Plaut* when interpreting the separation of powers under our state constitution.

Second, *Plaut* involved civil final judgments in cases between two private parties. *Id.* at 213-15. Final judgments of conviction in criminal cases are treated somewhat differently under the law and are subject not only to review on direct appeal but also through postconviction and habeas corpus proceedings. *See* Minn. R. Crim. P. 28.02, subd. 2 (right of appeal from an adverse final judgment or denial of postconviction relief); Minn. Stat. ch. 590 (2024) (postconviction proceedings); *see also State ex rel. Dinneen v. Tahash*, 136 N.W.2d 847, 851 (Minn. 1965) (noting that “conventional notions of finality of litigation may not stand in the way of review where an infringement of constitutional rights is alleged and that the principle of res judicata is no longer applicable to habeas corpus proceedings”).

We therefore conclude that the retroactivity provision does not unconstitutionally intrude on the powers of the judiciary.⁷

b. The order of the Chief Justice did not violate the separation of powers.

The state next argues that the judicial branch violated separation-of-powers principles by rewriting the procedure set out in the act “and institut[ing] a new procedure” in violation of legislative intent. We conclude that the Chief Justice’s order was well within the inherent authority of the courts.

The act provides that a petitioner seeking postconviction relief from liability for the crimes of another must first “submit a preliminary application to the Ramsey County District Court,” regardless of where the underlying criminal case was venued. 2023 Minn. Laws ch. 52, art. 4, § 24, subd. 4. Upon receiving the application, “the court administrator of the Ramsey County District Court” must direct the filing “to the chief judge or judge

⁷ In its reply brief, the state argues that the law also intrudes on executive branch powers by leaving to the district court the decision of which offense a petitioner is to be convicted of in lieu of the felony-murder conviction. The state asserts that this intrudes on the exclusive prerogative of the state to make charging decisions. At oral argument, Kurr asserted that the argument may not be considered because the state only raised the argument in its reply brief, not its principal brief. Generally, we do not consider new theories of appeal asserted for the first time in an appellant’s reply brief. *See Moorhead Econ. Dev. Auth. v. Anda*, 789 N.W.2d 860, 887 (Minn. 2010). Moreover, even if we considered the merits of this argument, it is not well grounded. The act dictates that the district court is to convict the petitioner of either the most serious of any of the other offenses of which the petitioner was found guilty in the same case or the predicate underlying felony offense. 2023 Minn. Laws ch. 52, art. 4, § 24, subd. 7(b). Under these circumstances, the state made the charging decision on the other offenses and determined the predicate felony to pursue on the aiding and abetting felony-murder conviction. We thus discern no unconstitutional infringement of executive branch powers.

acting on the chief judge’s behalf” for assignment “to a judge in said district.” *Id.*, subd. 5.

Within a few weeks of the effective date of the act, the Chief Justice of the Minnesota Supreme Court issued an order regarding the filing of preliminary applications. *Order Regarding the Filing of Requests for Relief in Aid and Abet Felony Murder Cases*, ADM09-8010 (Minn. Aug. 18, 2023). The order, citing subdivision 5(b) of the act, which allows “[t]he judicial branch [to] . . . appoint a special master to review preliminary applications and . . . assign additional staff as needed,” states that “[t]he efficient administration of justice requires” that preliminary applications are to be filed and reviewed in “the judicial district in the county where the conviction was entered,” instead of Ramsey County District Court. *Id.*

On appeal, the state contends that the judiciary intruded on the powers of the legislature by rewriting the unambiguous language of the statute. We discern no such violation. The only change imposed by the Chief Justice’s order was a change of venue for filing and review of preliminary applications; it worked no substantive change in the act. The preliminary applications are still to be reviewed by judges of the district court, applying the criteria dictated in the act. The applicants are denied no substantive right and we can imagine no harm to the state by reason of this order. To the contrary, we presume that the state would prefer the filing of preliminary applications in the same county as the county attorney’s office that prosecuted the underlying case.

Moreover, caselaw recognizes “the legitimate role of the [Minnesota] Supreme Court in the orderly and effective administration of justice.” *In re Pub. Hearing on*

Vacancies in Jud. Positions in Fifth Jud. Dist., 375 N.W.2d 463, 470 (Minn. 1985) (discussing the supreme court’s authority to determine a judicial vacancy). This role is reflected in statutes that grant the supreme court “broad residual powers.” *Id.* (citing Minn. Stat. § 2.724 (1984) (other citations omitted)). Section 2.724 recognizes that:

When public convenience and necessity require it, the [C]hief [J]ustice of the supreme court may assign any judge of any court to serve and discharge the duties of judge of any court in a judicial district not that judge’s own at such times as the [C]hief [J]ustice may determine.

. . . .

. . . To promote and secure more efficient administration of justice, the [C]hief [J]ustice of the supreme court of the state shall supervise and coordinate the work of the courts of the state.

Minn. Stat. § 2.724, subds. 1-2 (2024); *see also* Minn. Stat. § 480.16 (2024) (authorizing the Chief Justice to assign judges as necessary to permit “the courts of this state [to] function with maximum efficiency”).

Finally, the order is consistent with the plain language of the act that authorizes the judicial branch to assign a special master and additional staff “as needed” for the review of preliminary applications.⁸ We thus reject the state’s challenge to the Chief Justice’s order.

⁸ We further note that the legislature did not seek to abrogate the Chief Justice’s order when it amended the law in 2024, even though the order was issued approximately four months before the start of the 2024 legislative session. We “presume that the legislature acts with full knowledge of previous statutes and existing caselaw.” *Pecinovsky v. AMCO Ins. Co.*, 613 N.W.2d 804, 809 (Minn. App. 2000), *rev. denied* (Minn. Sept. 26, 2000); *see also* Minn. Stat. § 645.17(4) (2024) (“[W]hen a court of last resort has construed the language of a law, the legislature in subsequent laws on the same subject matter intends the same construction to be placed upon such language.”).

II. The Act Does Not Violate the Contract Clause of the Federal and State Constitutions.

The Contract Clause of the United States and Minnesota constitutions prohibits, in virtually identical language, the passage of laws by the state that impair the obligation of contracts. U.S. Const. art. I, § 10, cl. 1; Minn. Const. art. I, § 11. The Contract Clause, however, does not of itself prohibit the state “from repealing or amending statutes or from enacting legislation with retroactive effects.” *Peterson v. Humphrey*, 381 N.W.2d 472, 475 (Minn. App. 1986) (citing *United States Tr. Co. v. New Jersey*, 431 U.S. 1, 17 (1977), *rev. denied* (Minn. Apr. 11, 1986)).

The state argues that the act violates the Contract Clause by impairing plea agreements reached between the state and defendants. In response, Kurr argues that the state lacks standing and that the claim fails on the merits.

Turning first to the issue of standing, Kurr contends that the Bill of Rights, of which the Contract Clause is a part, protects the rights of people “from the improper exercise of state government power” and provides no avenue for the state to claim a violation of its rights by a legislative action. Kurr cites state and federal cases that underscore the intent of the drafters to protect individual rights. *See, e.g., State v. Lessley*, 779 N.W.2d 825, 833 (Minn. 2010); *Whirlpool Corp. v. Ritter*, 929 F.2d 1318, 1322 (8th Cir. 1991).

And, indeed, in cases where the courts have imposed constitutional limitations on the retroactive application of statutes in the criminal arena, it has been to protect the rights of defendants, not the state. *See, e.g., Collins v. Youngblood*, 497 U.S. 37, 43 (1990)

(instructing that “[l]egislatures may not retroactively . . . *increase* the punishment for criminal acts” (emphasis added)).

The state argues, however, that it has standing under an exception carved out under Minnesota law, which provides that “a public official with ministerial duties might . . . have standing when the rights of the state or the public interest are involved.” *Metro. Sports Facilities Comm’n. v. County of Hennepin*, 451 N.W.2d 319, 321 (Minn. 1990) (quotation omitted). The *Metropolitan Sports Facilities Commission* case cited by the state, however, did not involve the Contract Clause; it involved a county’s challenge to the constitutionality of a tax exemption granted to a professional sports facility as being without a public purpose. *Id.* at 320-21.

Even if we were to assume, without deciding, that the state has standing to bring its Contract Clause challenge, we would not sustain the challenge. It is true that, generally, contract principles are applied in interpreting the terms of a plea agreement. *See, e.g., In re Ashman*, 608 N.W.2d 853, 858 (Minn. 2000); *United States v. Swisshelm*, 848 F.3d 1157, 1159 (8th Cir. 2017). But while “[p]lea agreements are *like* contracts . . . they are not contracts, and therefore contract doctrines do not always apply to them.”⁹ *United States v. Olesen*, 920 F.2d 538, 541 (8th Cir. 1990); *see also United States v. Ritchison*, 887 F.3d 365, 369 (8th Cir. 2018) (noting that “contract

⁹ Federal caselaw is binding as to the state’s federal constitutional challenge and, because it is consistent with Minnesota law, we deem it persuasive as to the state’s challenge under the Minnesota constitution. *See Citizens for a Balanced City v. Plymouth Congregational Church*, 672 N.W.2d 13, 20 (Minn. App. 2003) (instructing that federal caselaw, while not binding, may be persuasive and should be accorded “due deference”).

principles provide a *useful means by which to analyze*” plea agreements, but “that plea agreements are not contracts, and therefore contract doctrines do not always apply to them.” (quotations omitted)); *Puckett v. United States*, 556 U.S. 129, 137 (2009) (noting that “the analogy [of plea agreements to contracts] may not hold in all respects”).

Moreover, the state’s challenge here is not that the district court erred in interpreting the *terms* of Kurr’s plea agreement. The state instead complains that a state law disadvantages the state, arguing that the act promotes what the state deems to be bad policy—leniency for those aiding and abetting felony murder even when the offender did not play a major role in the crime. But setting policy is the prerogative of the legislative branch, not the executive.

We thus reject the state’s Contract Clause claim under both the state and federal constitutions.

Affirmed.