

*This opinion is nonprecedential except as provided by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
A24-1777**

Russell Vincent Winbush, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed July 21, 2025
Affirmed
Halbrooks, Judge***

Pine County District Court
File No. 58-CR-16-76

Russell V. Winbush, Rochester, Minnesota (pro se appellant)

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

Reese Frederickson, Pine County Attorney, Pine City, Minnesota (for respondent)

Considered and decided by Wheelock, Presiding Judge; Ross, Judge; and
Halbrooks, Judge.

NONPRECEDENTIAL OPINION

HALBROOKS, Judge

On appeal from the denial of his petition for postconviction relief, pro se appellant argues that the district court abused its discretion by denying his petition as untimely

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

because he established the following three exceptions to the two-year statutory time limit for filing a petition for postconviction relief: (a) physical disability or mental illness; (b) newly discovered evidence; and (c) the interests of justice. Because we discern no abuse of discretion, we affirm.

FACTS

In January 2016, law enforcement searched the residence that appellant Russell Vincent Winbush shared with his mother and discovered 25 grams of methamphetamine, materials associated with the manufacture of methamphetamine, and a sawed-off shotgun. Winbush was then charged with: (1) second-degree controlled substance crime—possession of 25 grams or more of a mixture containing methamphetamine; (2) possession of chemical reagents with intent to manufacture methamphetamine; (3) fifth-degree controlled-substance crime; (4) possession of a firearm by a person convicted of a crime of violence; and (5) possession of a short-barrel shotgun.

A jury found Winbush guilty as charged, and the district court sentenced him on all five offenses. The last conviction to be sentenced was the second-degree controlled-substance offense, for which Winbush's criminal-history score was seven, that resulted in a presumptive sentence between 92 and 129 months in prison. The district court then sentenced Winbush to 129 months in prison.

On appeal, this court affirmed Winbush's convictions and sentences for second-degree controlled-substance crime, possession of a firearm by a person convicted of a violent crime, and possession of a short-barrel shotgun. *State v. Winbush*, 912 N.W.2d 678, 686-87 (Minn. App. 2018), *rev. denied* (Minn. May 29, 2018). We reversed

Winbush's sentences for possession of chemicals with intent to manufacture and fifth-degree controlled-substance crime, because they were part of the same behavioral incident as the second-degree controlled-substance crime. *Id.* at 685. On remand, the district court resentenced Winbush to 117 months in prison. This court later affirmed Winbush's 117-month sentence in an order opinion. *State v. Winbush*, No. A18-1787 (Minn. App. June 14, 2019), *rev. denied* (Minn. Aug. 20, 2019).

In July 2024, Winbush filed a petition for postconviction relief, alleging that he received ineffective assistance of trial and appellate counsel. He argued that his untimely postconviction petition should be considered due to "a physical disability or mental disease of drug addiction" and "newly discovered evidence," and because his petition "is not frivolous and is in the interests of justice." The district court summarily denied Winbush's petition and later denied his request for reconsideration. This appeal follows.

DECISION

Winbush challenges the district court's decision to summarily deny his petition for postconviction relief. This court reviews such a decision for an abuse of discretion. *Munt v. State*, 984 N.W.2d 242, 249 (Minn. 2023). "A district court abuses its discretion when it "exercises its discretion in an arbitrary and capricious manner, bases its ruling on an erroneous view of the law, or makes clearly erroneous factual findings." *Paul v. State*, 20 N.W.3d 48, 54, (Minn. 2025) (quotation omitted). We review a district court's legal conclusions de novo and its findings of fact for clear error. *Greer v. State*, 836 N.W.2d 520, 522 (Minn. 2013).

A district court may summarily deny a postconviction petition that is untimely under Minn. Stat. § 590.01, subd. 4(a) (2024), which limits the time for filing the petition to within two years of an appellate court’s disposition of the petitioner’s direct appeal. Here, Winbush’s conviction became final in August 2018, 90 days after the supreme court denied review of this court’s opinion affirming his convictions. *See Berkovitz v. State*, 826 N.W.2d 203, 207 (Minn. 2013). Winbush filed his postconviction petition in July 2024, well over five years after his conviction became final. As such, Winbush’s postconviction petition is time-barred under the two-year time limit set forth in section 590.01, subdivision 4(a).

There are five exceptions to the two-year statutory time limit. Minn. Stat. § 590.01, subd. 4(b) (2024). 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.* A petitioner bears the burden of establishing that an exception applies. *Brocks v. State*, 883 N.W.2d 602, 604 (Minn. 2016).

Winbush contends that three of the exceptions set forth in section 590.01, subdivision 4(b), are applicable here. Specifically, he argues that the district court abused its discretion in declining to hear his untimely petition because (a) a drug addiction precluded a timely assertion of his claim; (b) he discovered new evidence; and (c) his petition is not frivolous and should be heard in the interests of justice. Winbush argues

further that, if his postconviction petition is considered on the merits, he would be able to establish that he was denied the effective assistance of counsel.

A. Physical Disability or Mental Disease

Minnesota law provides that an otherwise untimely postconviction petition may be considered if “the petitioner establishes that a physical disability or mental disease precluded a timely assertion of the claim.” Minn. Stat. § 590.01, subd. 4(b)(1). Winbush argues that this exception applies because a “[m]ental disability of drug addiction” prevented him from timely filing his postconviction petition. We disagree.

In *Brown v. State*, the supreme court concluded that section 590.01, subdivision 4(b)(1), did not apply when the documents submitted by Brown did not suggest that he had a mental illness or that he was incapable of asserting a claim. 863 N.W.2d 781, 787 (Minn. 2015). The same reasoning is applicable here.

In support of his postconviction petition, Winbush listed courses or programs that he completed while incarcerated, which he argues demonstrates his drug addiction. But as the district court determined, these courses or programs “provide[] nothing to establish” Winbush’s position that “a drug addiction precluded a timely assertion” of Winbush’s postconviction petition. Rather, the record reflects that many of the courses Winbush completed while incarcerated were computer software courses. These types of courses indicate that Winbush possessed the basic skills to bring his postconviction petition in a timely manner. And the fact that he was incarcerated during much of the relevant time frame further discredits Winbush’s position that a drug addiction prevented him from

timely filing his petition. Accordingly, Winbush has failed to establish that the physical-disability-or-mental-illness exception is applicable.

B. Newly Discovered Evidence

Under the newly discovered evidence exception to the statutory time bar, a petitioner must prove that the evidence

(1) is newly discovered; (2) could not have been ascertained by the exercise of due diligence by the petitioner or the petitioner's attorney within the 2-year time-bar for filing a petition; (3) is not cumulative to evidence presented at trial; (4) is not for impeachment purposes; and (5) establishes by the clear and convincing standard that petitioner is innocent of the offenses for which he was convicted.

Riley v. State, 819 N.W.2d 162, 168 (Minn. 2012); *see* Minn. Stat. § 590.01, subd. 4(b)(2).

“All five requirements must be satisfied to obtain relief.” *Paul*, 20 N.W.3d at 56.

Winbush appears to argue that the following evidence is newly discovered evidence: (1) a transcript of a 911 call, (2) an interview between his mother and an investigator from the Office of Public Defense, and (3) a letter from the local sheriff on January 4, 2024, in response to a data request. But Winbush fails to argue, or otherwise establish, how any of this alleged newly discovered evidence establishes his innocence. Because Winbush cannot establish the fifth requirement as stated in *Riley*, the newly discovered evidence exception is not applicable. *See id.* (stating that all five requirements must be satisfied).

C. Interests of Justice

Under the interests-of-justice exception to the statutory time bar, a petitioner may file for postconviction relief after the two-year deadline 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 v. State*, 913 N.W.2d 417, 428 (Minn. 2018) (quotation omitted). This exception relates to the “*reason* the petition was filed after the [two]-year time limit in subdivision 4(a), not the *substantive claims* in the petition.” *Sanchez v. State*, 816 N.W.2d 550, 557 (Minn. 2012); *see Hannon v. State*, 957 N.W.2d 425, 435-36 (Minn. 2021) (stating that the interests-of-justice exception “focuses on why the petition was filed after the [two]-year time limit” and that the petitioner “must allege an injustice that caused the delay in filing the petition” (quotation omitted)).

Winbush appears to claim that his untimely postconviction petition should be considered in the interests of justice because he received ineffective assistance of counsel and because there was a conflict of interest related to the Office of Public Defense representing both him and his brother in an unrelated matter. But Winbush knew of these issues within two years after his conviction became final, and he fails to establish why, in light of his awareness of these issues, his postconviction petition could not have been filed within the two-year statutory time limit. Therefore, Winbush is unable to establish that the interests-of-justice exception to the statutory time-bar is applicable. And because Winbush is unable to establish that any of the exceptions to the two-year statutory time limit are applicable, we need not consider the merits of Winbush’s ineffective-assistance-of-counsel arguments.

Affirmed.