

*This opinion is nonprecedential except as provided by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
A24-1810**

Gabriel Robert Kimbrough, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed August 11, 2025
Reversed and remanded
Larkin, Judge**

Ramsey County District Court
File No. 62-CR-17-3422

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

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

John J. Choi, Ramsey County Attorney, Michelle A. Monteiro, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Considered and decided by Larkin, Presiding Judge; Bentley, Judge; and Cleary, Judge.*

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

NONPRECEDENTIAL OPINION

LARKIN, Judge

Appellant challenges the district court's denial of his second preliminary application to vacate his conviction for aiding and abetting second-degree felony murder. We reverse and remand.

FACTS

In 2017, respondent State of Minnesota charged appellant Gabriel Robert Kimbrough with aiding and abetting second-degree felony murder under Minn. Stat. §§ 609.05, subd. 1, .19, subd. 2(1) (2016), and aiding and abetting second-degree intentional murder under Minn. Stat. §§ 609.05, subd. 1, .19, subd. 1(1) (2016).

Kimbrough pleaded guilty to the felony-murder charge, and the state dismissed the remaining charge. As part of the plea agreement, Kimbrough agreed to testify against his codefendant and cousin, Ryan Fore. When pleading guilty, Kimbrough stated that Fore and another man, Edward Williams, went to a residential location to meet BL to purchase marijuana. Kimbrough knew that Fore was armed with a gun. Kimbrough also knew that Fore and Williams were going to rob BL, and he admitted that his "role" was to send BL to the backyard, where Fore would be waiting. It is undisputed that Fore shot and killed BL in the backyard during the robbery. Kimbrough admitted that the robbery led to BL's murder.

The district court accepted Kimbrough's guilty plea, entered a judgment of conviction for aiding and abetting second-degree felony murder under Minn. Stat. §§ 609.05, subd. 1, .19, subd. 2(1), and sentenced Kimbrough to serve 159 months in prison

for his role in BL's death. The sentence constituted a downward durational departure, which the district court granted on the ground that Kimbrough played a minimal role in the murder. Kimbrough did not appeal his conviction or seek postconviction relief.

In December 2023, Kimbrough applied to vacate his conviction under a newly enacted law, which provides a process to vacate a conviction of aiding and abetting second-degree felony murder. 2023 Minn. Laws ch. 52, art. 4, § 24, at 864-68. The district court denied Kimbrough's preliminary application, determining that he was not entitled to relief because he was a major participant in the crime. In reaching that determination, the district court relied on a summary of a 2018 interview of Fore, which was contained in Fore's presentence-investigation report. In that interview, Fore stated that Kimbrough gave him a gun and that he and Kimbrough went to get Williams so they would have another person with a gun during the robbery. The district court determined that it was "reasonably foreseeable" that the "deadly weapon" that Kimbrough gave Fore "would be used in the underlying felony."

In February 2024, Kimbrough filed a handwritten letter with the district court stating that the preliminary application to vacate his conviction was submitted by his attorney without his permission and was "not authorized." Kimbrough asserted that he did not provide Fore with a gun. His letter stated: "[T]he statement of the facts that you utilized to come to your decision was not accurate, and I ask that you truly look into what happened because I can assure you that I 100% did not have a weapon, nor did I provide a weapon in this instance."

In September 2024, Kimbrough, with the assistance of a new attorney, reapplied to vacate his conviction.¹ In his second preliminary application, Kimbrough challenged Fore’s statement to probation, arguing that it was not reliable and was not made under oath. Kimbrough’s second preliminary application included a copy of his sentencing order, his first preliminary application, the district court’s order denying that application, and his plea-hearing transcript. It also included information regarding his incarceration status.

The district court denied Kimbrough’s second preliminary application. The court again relied on Fore’s presentence-investigation report and concluded that Kimbrough was both a major participant in the offense and acted with extreme indifference to human life because he coordinated the robbery, lured BL to the robbery site, and provided a deadly weapon to Fore knowing that it would be used in the robbery.

Kimbrough appeals the district court’s denial of his second preliminary application.

DECISION

In 2023 and 2024, the legislature enacted a process that allows a person convicted of aiding and abetting second-degree² felony murder to petition the district court for vacation of that conviction. 2023 Minn. Laws ch. 52, art. 4, § 24, at 864-68, *amended by* 2024 Minn. Laws ch. 123, art. 4, §§ 19-21, at 2268-71. We refer to these 2023 and 2024

¹ 2024 amendments authorized reapplication after clarifying that an applicant must establish either that he was not a major participant *or* that he did not act with extreme indifference to human life. *See* 2024 Minn. Laws ch. 123, art. 4, §§ 19-21, at 2268-71.

² The Act also authorizes relief from a conviction of aiding and abetting first-degree felony murder under Minn. Stat. § 609.185(a)(3) (2024), but we reference only second-degree felony murder in this opinion. 2023 Minn. Laws ch. 52, art. 4, § 24, at 864.

session laws collectively as “the Act.”³ The legislature passed the Act “to narrow the scope of liability for aiding and abetting . . . second-degree felony murder.” See *Raisch*, 8 N.W.3d at 239 (discussing the 2023 session law).

Under Minnesota’s aiding and abetting statute, “[a] person is criminally liable for a crime committed by another 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. A person liable under that standard “is also liable for any other crime committed in pursuance of the intended crime if reasonably foreseeable by the person as a probable consequence of committing or attempting to commit the crime intended.” *Id.*, subd. 2 (2016). In 2023, the aiding and abetting statute was amended to restrict liability as follows: “A person may not be held criminally liable for [second-degree felony murder] for a death caused by another unless the person was a major participant in the underlying felony and acted with extreme indifference to human life.” 2023 Minn. Laws ch. 52, art. 4, § 3, subd. 2a(b), at 850.

Overview of the Act

The Act provides that a person convicted of second-degree felony murder “under the theory of liability for crimes of another and who is in the custody of the commissioner

³ The Act is not codified in the Minnesota statutes, likely because the application procedure for seeking relief from an aiding and abetting felony-murder conviction is time-limited. See *Raisch v. State*, 8 N.W.3d 237, 242 n.3 (Minn. App. 2024) (discussing the 2023 session law), *rev. denied* (Minn. Nov. 19, 2024); see also 2024 Minn. Laws ch. 123, art. 4, § 21, at 2271 (extending the deadline for certain persons seeking relief to October 1, 2026).

of corrections or under court supervision is entitled to petition to have the person’s conviction vacated pursuant to this section.” *Id.*, § 24, subd. 1, at 864. The Act states:

Subd. 3. Notification. (a) By September 1, 2024, the commissioner of corrections shall notify individuals convicted [of second-degree felony murder] of the right to file a preliminary application for relief if:

. . . .

(2) the person was convicted [of second-degree felony murder] and the person:

(i) did not cause the death of a human being; and
(ii) was not a major participant in the underlying felony or did not act with extreme indifference to human life.

(b) The notice shall include the address of the Ramsey County District Court court administration.

(c) The commissioner of corrections may coordinate with the judicial branch to establish a standardized notification form.

See 2024 Minn. Laws ch. 123, art. 4, § 19, at 2268-69 (amending the 2023 session law and permitting the right to seek relief if the defendant “was not a major participant in the underlying felony” *or* “did not act with extreme indifference to human life” rather than “was not a major participant in the underlying felony” *and* “did not act with extreme indifference to human life”).

To obtain relief under the Act, a convicted person must first submit a preliminary application. 2023 Minn. Laws ch. 52, art. 4, § 24, subd. 4, at 865. Next, the district court must determine whether to approve the preliminary application; if the district court does so, the applicant may file a petition to vacate the conviction. *Id.*, subds. 5-6, at 865-67. The relevant part of the Act provides:

Subd. 4. Preliminary application. (a) An applicant shall submit a preliminary application to the Ramsey County District Court.⁴ The preliminary application must contain:

(1) the applicant's name and, if different, the name under which the person was convicted;

(2) the applicant's date of birth;

(3) the district court case number of the case for which the person is seeking relief;

(4) a statement as to whether the applicant was convicted following a trial or pursuant to a plea;

(5) a statement as to whether the person filed a direct appeal from the conviction, a petition for postconviction relief, or both;

(6) a brief statement, not to exceed 3,000 words, explaining why the applicant is entitled to relief under this section from a conviction for the death of a human being caused by another; and

(7) the name and address of any attorney representing the applicant.

(b) The preliminary application may contain:

(1) the name, date of birth, and district court case number of any other person charged with, or convicted of, a crime arising from the same set of circumstances for which the applicant was convicted; and

(2) a copy of a criminal complaint or indictment, or the relevant portions of a presentence investigation or life imprisonment report, describing the facts of the case for which the applicant was convicted.

(c) The judicial branch may establish a standardized preliminary application form, but shall not reject a preliminary application for failure to use a standardized form.

Id., subd. 4, at 865 (footnote added).

⁴ The Act requires the applicant to submit a preliminary application to the Ramsey County District Court, regardless of where the criminal case was venued. 2023 Minn. Laws ch. 52, art. 4, § 24, subds. 4(a), 5(a), at 865. But on August 18, 2023, the supreme court ordered that, in the interests of the efficient administration of justice, applicants shall submit their preliminary application in the district court where the conviction was entered. *Order Regarding the Filing of Requests for Relief in Aid and Abet Felony Murder Cases*, ADM09-8010 (Minn. Aug. 18, 2023).

The Act directs the district court's review of a preliminary application as follows:

Subd. 5. Review of preliminary application. (a) Upon receipt of a preliminary application, the court administrator of the Ramsey County District Court shall immediately direct attention of the filing thereof to the chief judge or judge acting on the chief judge's behalf who shall promptly assign the matter to a judge in said district.

(b) The judicial branch may appoint a special master to review preliminary applications and may assign additional staff as needed to assist in the review of preliminary applications.

(c) Within 90 days of the Ramsey County District Court receiving the preliminary application, the reviewing judge shall determine whether, in the discretion of that judge, *there is a reasonable probability that the application is entitled to relief under this section.*

(d) In making the determination under paragraph (c), the reviewing judge shall consider the preliminary application and any materials submitted with the preliminary application and *may consider relevant records in the possession of the judicial branch.*

Id., subd. 5(a)-(d), at 865-66 (emphasis added).

The Act provides that the district court may summarily deny an application if:

(1) the application does not contain the information required under subdivision 4, paragraph (a);

(2) the applicant is not in the custody of the commissioner of corrections or under court supervision;

(3) the applicant was not convicted of [second-degree felony murder] for crimes committed before August 1, 2023;
or

(4) the issues raised in the application are not relevant to the relief available under this section or have previously been decided by the court of appeals or the supreme court in the same case.

Id., subd. 5(e), at 866. A subsequent preliminary application may be “summarily” denied on grounds not applicable here. *Id.*, subd. 5(f), 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 it reached its determination. *Id.*, subd. 5(h), at 866. In which case, “the applicant cannot proceed to the second step” of the application process. *Raisch*, 8 N.W.3d at 240.

If, however, the reviewing judge determines that there is a reasonable probability that the applicant is entitled to relief, the district court “shall send notice” to the applicant and the applicant’s attorney, if any, the prosecuting attorney, and if the applicant is without counsel, to the state public defender. 2023 Minn. Laws ch. 52, art. 4, § 24, subd. 5(g), at 866. Next, “the individual seeking relief shall file and serve a petition to vacate the conviction.” *Id.*, subd. 6(a), at 866-67. The petition must contain the information required in a preliminary application, and it may contain “other relevant information,” such as “police reports, trial transcripts, and plea transcripts involving the petitioner or any other person investigated for, charged with, or convicted of a crime arising out of the same set of circumstances” underlying the petitioner’s conviction. *Id.*

The Act requires the prosecuting attorney to “respond to the petition by answer or motion.” *Id.*, subd. 6(c), at 867. The prosecuting attorney’s response may “serve notice of the intent to support the petition or include a statement explaining why the petitioner is not entitled to relief along with any supporting documents.” *Id.* The petitioner “may file a reply” to the prosecutor’s response. *Id.*, subd. 6(d), at 867. Next, the district court must

do one of three things: (1) if the prosecutor supports the petition, “schedule the matter for sentencing or resentencing,” (2) deny the petition “if additional information or submissions establish that there is not a reasonable probability that the applicant is entitled to relief,” or (3) “schedule the matter for a hearing and issue any appropriate order regarding submission of evidence or identification of witnesses.” *Id.*, subd. 6(e), at 867. Any hearing “shall” be “conducted pursuant to Minnesota Statutes, section 590.04,” which governs hearings on petitions for postconviction relief. *Id.*, subd. 6(f), at 867.

Ultimately, a petitioner who was convicted of aiding and abetting second-degree felony murder is entitled to relief if he shows the following circumstances by a preponderance of the evidence: (1) he did not cause the death of a human being and (2) he either was not “a major participant in the underlying felony” or he did not “act with extreme indifference to human life.” 2024 Minn. Laws ch. 123, art. 4, § 20, subd. 7(b), at 2269. As used in the Act, “‘major participant’ has the meaning given in Minnesota Statutes, section 609.05, subdivision 2a, paragraph (c).” 2023 Minn. Laws ch. 52, art. 4, §24, subd. 2, at 864. A major participant includes a person who “provided a deadly weapon to another participant where it was reasonably foreseeable that the weapon would be used in the underlying felony.” Minn. Stat. § 609.05, subd. 2a(c)(1) (Supp. 2023).

Kimbrough’s Assertions of Error

Kimbrough contends that “the district court abused its discretion by misapplying the preliminary application process that the Legislature created within the Act.” Kimbrough asserts the following errors: (1) the district court summarily denied his application without relying on the specific circumstances permitting a summary denial, (2) the district court

did not apply the required reasonable-probability standard, (3) the district court did not effectuate the legislature’s intent, and (4) the district court improperly conducted its own investigation into the facts of the case and prematurely ruled on the merits.

Denial of a preliminary application under the Act is appealable as a denial of postconviction relief. *Raisch*, 8 N.W.3d at 242; *see State v. Griffin*, 20 N.W.3d 57, 61 (Minn. 2025) (order) (stating that the language of Minnesota’s postconviction statute “is broad enough to encompass an appeal from the denial of a preliminary application under the Act”). We review the denial of postconviction relief—including a denial without a hearing—for an abuse of discretion. *Brown v. State*, 895 N.W.2d 612, 617 (Minn. 2017). The Minnesota Supreme Court recently stated that because it had treated the denial of a preliminary application as “a denial of a petition for postconviction relief for purposes of [its] jurisdiction . . . the same standard of review—abuse of discretion” should apply. *State v. Griffin*, ___ N.W.3d ___, ___, 2025 WL 2155167, at *6 (Minn. July 30, 2025). An abuse of discretion occurs when a decision “is based on an erroneous view of the law or is against logic and the facts in the record.” *Id.* (quotation omitted). We review findings of fact for clear error and legal conclusions de novo. *Id.*

Kimbrough notes that if “a district court’s discretionary decision is premised on a misinterpretation of a statute, [we] review[] the district court’s legal conclusions related to the interpretation of the statute de novo.” Although Kimbrough raises the issue of statutory interpretation, he does not engage in the relevant analysis, which first determines whether the relevant language is ambiguous or clear. *See State v. Torrez*, ___ N.W.3d ___, ___,

2025 WL 1572387, at *3 (Minn. June 4, 2025). If statutory language is not ambiguous, we apply the statute’s plain language to effectuate legislative intent. *Id.*

Summary Denial of Relief

We first address Kimbrough’s assertion that the district court summarily denied relief. Again, the Act provides that a preliminary application may be “summarily” denied for the following reasons: (1) the application does not include statutorily required information, (2) the applicant is not in custody or under court supervision, (3) the applicant was not convicted of an applicable felony-murder offense, or (4) the issues raised are irrelevant or have been previously determined by an appellate court. 2023 Minn. Laws ch. 52, art. 4, § 24, subd. 5(e), at 866. As Kimbrough argues, the district court did not identify any of those reasons as the basis for its denial of his second preliminary application. Thus, under the plain language of the Act, the district court did not summarily deny Kimbrough’s second preliminary application for relief.

Reasonable-Probability Standard

We next address Kimbrough’s assertion that the district court did not apply the required reasonable-probability standard. Again, the Act states that when the district court reviews a preliminary application, “the reviewing judge *shall* determine whether, in the discretion of that judge, there is a reasonable probability that the application is entitled to relief under this section.” *Id.*, subd. 5(c), at 865 (emphasis added). An applicant may not advance from a preliminary application to a petition to vacate his conviction if there is not a reasonable probability that the applicant is entitled to relief. *See Raisch*, 8 N.W.3d at 240

(stating that the applicant “cannot proceed to the second step” if the district court rejects the preliminary application).

The district court explained its denial of Kimbrough’s second preliminary application as follows:

As an aider and abettor, [Kimbrough] planned, set up, and coordinated the armed robbery, and provided his deadly weapon (the gun used in the first-degree aggravated robbery), and thus was a major participant in the commission of the crime. Additionally, this Court concludes that [Kimbrough] acted with extreme indifference to human life when he set up and lured the victim to the site where he was going to be robbed.

In sum, the district court concluded that Kimbrough was not entitled to relief because he was a “major participant” and acted “with extreme indifference to human life.” *See* 2024 Minn. Laws ch. 123, art. 4, § 20, subd. 7(b)(2), at 2269.

Kimbrough argues that the district court did not apply the required reasonable-probability standard in reaching that conclusion, noting that the district court did not cite to or discuss that standard. Kimbrough’s argument puts form over substance. Although the district court did not use the term “reasonable probability” when explaining its decision, the district court relied on Fore’s assertion during his presentence investigation that Kimbrough provided the murder weapon. In doing so, the district court noted that it could consider relevant records in the possession of the judicial branch when making its determination “under paragraph (c).” *See* 2023 Minn. Laws ch. 52, art. 4, § 24, subd. 5(d), at 866. “Paragraph (c)” refers to the reasonable-probability determination that the district court “shall” make when reviewing a preliminary application. *Id.*, subd. 5(c), at 865. On

this record, we are satisfied that the district court made a reasonable-probability determination.

Legislative Intent

Kimbrough also argues that the district court did not “effectuate the Legislature’s stated intent to allow any individual who is in custody” and who “was convicted of aiding and abetting felony murder” to “petition the district court to vacate a felony murder conviction.” He argues that the legislature “clearly intended that *any* applicant convicted of aiding and abetting felony murder [who] is in custody should be allowed to petition the district court to vacate a felony murder conviction.” Essentially, Kimbrough asserts that so long as a preliminary applicant has a conviction for second-degree felony murder and is in custody, there is a reasonable probability that the applicant is entitled to relief.⁵

Kimbrough’s assertion is refuted by the plain language of the Act, which clearly distinguishes between a right to petition for relief and a right to relief itself. The Act states that although certain individuals are “*entitled to petition*” to have their convictions vacated,

⁵ Kimbrough complains that “the judicial branch’s approved preliminary application form indicates that the preliminary application should be granted if the applicant was convicted of aiding and abetting felony murder, is in custody or under supervision, and merely asserts—by checking a box—that he is entitled to relief under the Act.” His point is well taken. Although the Act states that the application “must contain” a brief statement explaining why the applicant is “entitled to relief” and that failure to do so is grounds for summary denial, the judicial branch’s standardized preliminary-application form indicates that “an additional statement . . . further explaining why you are entitled to relief” is optional. 2023 Minn. Laws ch. 52, art. 4, § 24, subds. 4(a)(6), 5(e)(1), at 865-66; Minn. Jud. Branch, *Form: CRM1502 Preliminary Application (Request) to Vacate Conviction of Aid/Abet Felony Murder*, <https://mncourts.gov/getforms/criminal/form-crm1502-preliminary-application-request-to-vacate-conviction-of-aidabet-felony-murder>. [<https://perma.cc/VB6G-6BMK>].

the district court must ultimately authorize the petition. *Id.*, subds. 1, 5-7, at 864-68 (emphasis added). And the district court cannot authorize a petition unless it determines—based on its review of a preliminary application—that “there is a reasonable probability that the [applicant] is *entitled to relief*.” *Id.*, subds. 5(c) (emphasis added), (g), 6, at 865-67. Finally, the Act clearly states that a person is “entitled to relief” from a conviction of aiding and abetting second-degree felony murder if the person “shows by a preponderance of the evidence” that the person “did not cause the death of a human being” and either was “not 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, subd. 7(b), at 2269.

“[A] statute should be read and construed as a whole so as to harmonize and give effect to all its parts.” *State v. Johnson*, 995 N.W.2d 155, 160 (Minn. 2023). When the relevant provisions of the Act are read together and construed as a whole, they establish that a person is “entitled to petition” to have a conviction vacated so long as the district court determines that the person’s preliminary application shows a reasonable probability that the person is “entitled to relief.” See 2023 Minn. Laws. ch. 52, art. 4, § 24, subds. 1, 5-6, at 864-67. And a person is “entitled to relief” so long as he shows that he did not cause a death and that he was not “a major participant in the underlying felony” or that he “did not act with extreme indifference to human life.” 2024 Minn. Laws ch. 123, art. 4, § 20, subd. 7(b), at 2269. Contrary to Kimbrough’s assertion, an applicant is not entitled to petition to vacate a conviction based only on the assertions that he has been convicted of aiding and abetting second-degree felony murder and that he is in custody for that offense. Thus, when ruling on Kimbrough’s second preliminary application, the district court did

not err by considering whether Kimbrough was a major participant or acted with extreme indifference to human life.

The District Court's Decision on the Merits

Kimbrough contends that “even if the district court was allowed to rule on the merits of [his] request for relief, the district court’s ruling constituted an abuse of discretion.” Kimbrough argues that “during the preliminary application process the district court is not permitted to make factual and legal determinations regarding whether the applicant satisfies the requirements necessary for relief.” Two circumstances are relevant here.

First, when making a reasonable-probability determination at the preliminary-application stage, the district court does not have the benefit of a fully developed record. See 2023 Minn. Laws ch. 52, art. 4, § 24, subd. 5(c), (d), at 865-66. A preliminary applicant’s submissions may include:

- (1) the name, date of birth, and district court case number of any other person charged with, or convicted of, a crime arising from the same set of circumstances for which the applicant was convicted; and
- (2) a copy of a criminal complaint or indictment, or the relevant portions of a presentence investigation or life imprisonment report, describing the facts of the case for which the applicant was convicted.

Id., subd. 4(b), at 865.

An opportunity to fully develop the record does not result unless the district court approves a preliminary application and authorizes the applicant to file a petition. *Id.*, subds. 5(g), 6, at 866-67. In which case, the petition may:

contain any other relevant information, including police reports, trial transcripts, and plea transcripts involving the

petitioner or any other person investigated for, charged with, or convicted of a crime arising out of the same set of circumstances for which the petitioner was convicted.

Id., subd. 6(a), at 866-67.

Moreover, the prosecuting attorney is not allowed to participate in the proceeding until the petition stage.⁶ *See id.*, subd. 6(a) (requiring petitioner to file and serve petition in the judicial district where the conviction occurred), (b) (requiring prosecutor to notify victim of underlying offense that petition was filed), (c) (requiring prosecutor to respond to the petition), at 866-67. The prosecuting attorney must respond to the petition, and the response may “include a statement explaining why the petitioner is not entitled to relief along with any supporting documents.” *Id.*, subd. 6(c), at 867.

Second, a district court generally is not allowed to resolve material factual disputes based on an undeveloped record at the preliminary stage of a legal proceeding. For example, under Minnesota’s postconviction statute, 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) (2024). An evidentiary hearing on a postconviction petition must be held unless “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 (2024).

⁶ The state argues: “There is additional evidence in the records of [Kimbrough] and his co-defendants that also shows [Kimbrough] was a major participant who acted in extreme indifference to human life. Because the State was not a party to the preliminary application process, this evidence was not included in the Court’s review or in its order. The incomplete record is a significant challenge for the State in defending on Appeal a decision where the State had no role in the initial application or its review.”

The Minnesota Supreme Court has stated:

The postconviction court must hold an evidentiary hearing to resolve factual disputes that are material to determining the legal issues raised in the postconviction petition when those factual disputes were not resolved in the proceedings resulting in a conviction. The showing required for an evidentiary hearing is lower than that required for a new trial. Any doubts as to whether to conduct an evidentiary hearing should be resolved in favor of granting the hearing.

Thoresen v. State, 965 N.W.2d 295, 303 (Minn. 2021) (quotation and citations omitted).

In *Raisch*, we held that a denial of a preliminary application under the Act based on a determination that there is not a reasonable probability that the applicant is entitled to relief “is an appealable order as from a denial of postconviction relief.” 8 N.W.3d at 238. In reaching that conclusion, we noted the similarities between the Act and Minnesota’s postconviction statutes.⁷ *Id.* at 241. Based on those similarities, we were “persuaded that the postconviction remedy is broad enough to encompass the preliminary application procedure in the act.” *Id.* at 242; see *Griffin*, 2025 WL 2155167, at *6 (noting that because denial of a preliminary application had been treated as denial of postconviction relief for purposes of jurisdiction, the same standard of review should govern). We are again influenced by our postconviction jurisprudence—including *Thoresen*—when reviewing the district court’s application of the Act here.

Although the district court found that Kimbrough “was not the shooter and did not admit to having a gun,” it credited Fore’s presentence assertion that “Kimbrough gave

⁷ Indeed, the Act states that a hearing on a petition “shall be . . . conducted pursuant to Minnesota Statutes, section 590.04.” 2023 Minn. Laws ch. 52, art. 4, § 24, subd. 6(f), at 867; see Minn. Stat. § 590.04 (2024) (governing hearings on a postconviction petition).

[Fore] a gun.” The district court noted that during the execution of a search warrant at the address where Kimbrough had been staying, police “recovered a 9mm gun that another codefendant had described Kimbrough as having at the meeting prior to the shooting, ” the gun contained “9mm rounds,” and “[t]his ammunition matched the casings recovered where the victim had been shot.”

The district court explained its decision to deny Kimbrough’s second preliminary application as follows:

Upon review of the facts as explained by [Kimbrough] and codefendant Fore, it is the conclusion of this court that [Kimbrough] was a major participant in the underlying felony. [Kimbrough] acted with extreme indifference to human life when he set up the robbery and *provided a deadly weapon to another participant*, where it was reasonably foreseeable—and in this case known to [Kimbrough]—that the weapon would be used (in this case to rob a drug dealer) in the underlying felony.

(Emphasis added.) The district court concluded that Kimbrough “provided his deadly weapon (the gun used in the first-degree aggravated robbery), and thus was a major participant in the commission of the crime.” The district court also concluded that Kimbrough “acted with extreme indifference to human life when he set up the robbery and provided a deadly weapon to another participant.”

In short, the district court’s decision to deny Kimbrough’s second preliminary application was clearly based on its finding that Kimbrough provided the gun that was used in the underlying offense. But whether Kimbrough provided the gun to Fore is a factual

dispute that was not resolved in the proceedings underlying Kimbrough’s conviction.⁸ As Kimbrough argues, “there is nothing in the record in this case that establishes that [he] provided the firearm to [Fore] that was used to kill the victim.” Moreover, the factual dispute regarding whether Kimbrough gave Fore the murder weapon is material to a determination of the legal issues raised in Kimbrough’s second preliminary application: whether he was a major participant and whether he acted with extreme indifference to human life. Under these circumstances, the district court should not have resolved that material factual dispute without an evidentiary hearing.⁹ See *Thoresen*, 965 N.W.2d at 303.

⁸ Because the district court’s decision was based on an unresolved factual dispute, this case is unlike *Griffin*. In that case, the supreme court affirmed the district court’s denial of a preliminary application because “[t]he facts established at trial and described in Griffin’s prior appeals,” as well as the supreme court’s “prior holding that the trial evidence supported a reasonable inference that Griffin shot [the victim] with an intent to kill him,” supported the district court’s rejection of “Griffin’s apparent claim that he did not cause the death of a human being.” *Griffin*, 2025 WL 2155167, at *7 (quotation and citation omitted).

⁹ We are also concerned that the district court’s decision is based on an extra-record document. Although the Act authorizes the district court to consider “relevant records in the possession of the judicial branch” when making its reasonable-probability determination, its reliance on Fore’s presentence-investigation report is problematic because that document is confidential, and Kimbrough potentially did not have access to it. 2023 Minn. Laws ch. 52, art. 4, § 24, subd. 5(d), at 866; see Minn. R. Pub. Access to Recs. of Jud. Branch 4, subd. 1(b) (stating that records gathered at the request of the court to assist in assigning an appropriate sentence are generally not accessible to the public). In addition, Fore’s presentence-investigation report is not part of the record in this appeal, and we generally are not authorized to consider extra-record documents. See Minn. R. Civ. App. P. 110.01 (“The documents filed in the [district] court, the exhibits, and the transcript of the proceedings, if any, shall constitute the record on appeal in all cases.”).

We recognize that the district court and the parties were in uncharted territory when applying the Act in this case. As the state indicated to this court at oral argument, “[a]ll parties are learning our way with this statute.” Nonetheless, because the district court relied on a finding of material fact that was not resolved in the underlying proceeding and because that finding was based on an undeveloped record, we conclude that the district court abused its discretion in denying Kimbrough’s second preliminary application. We therefore reverse the district court’s denial of Kimbrough’s second preliminary application, and we remand to allow Kimbrough to file a petition to vacate his conviction.

Reversed and remanded.