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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A25-0626**

Leneil James Colbert, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed February 17, 2026
Reversed and remanded
Ede, Judge**

Ramsey County District Court
File No. 62-CR-21-6336

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

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

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

Considered and decided by Johnson, Presiding Judge; Ross, Judge; and Ede, Judge.

NONPRECEDENTIAL OPINION

EDE, Judge

Appellant challenges the district court's denial of his fifth preliminary application to vacate his conviction of aiding and abetting second-degree unintentional felony murder. Because we conclude that the district court abused its discretion in denying appellant's fifth

preliminary application, we reverse and remand with instructions that the court permit appellant to file a petition to vacate the conviction.

FACTS

Underlying Charge, Trial, and Direct Appeal

In November 2021, respondent State of Minnesota charged appellant Leneil James Colbert with aiding and abetting second-degree unintentional felony murder, in violation of Minnesota Statutes section 609.19, subdivision 2(1) (2020). The charge arose from an incident involving the armed robbery and death of A.C. The matter proceeded to a trial, after which a jury found Colbert guilty as charged. In March 2023, the district court sentenced Colbert to 180 months' imprisonment.

Colbert appealed his conviction, we affirmed in July 2024, and the Minnesota Supreme Court denied further review in October of that year. *See State v. Colbert*, No. A23-0811, 2024 WL 3321090, at *1–7 (Minn. App. July 8, 2024), *rev. denied* (Minn. Oct. 15, 2024). As relevant here, our opinion discusses the following evidence supporting the jury's guilty verdict.

“Testimony at trial established that Colbert had orchestrated a plan, which was executed by several others, to rob A.C.” *Id.* at *1. The robbery, which occurred in August 2021, resulted in A.C.'s “shooting death.” *Id.* Our opinion describes “considerable evidence [in the trial record] that Colbert intentionally aided and abetted in robbing A.C.,” including: “evidence that Colbert told [an accomplice] to watch for [prostitution] clients to rob, and that [the accomplice] told Colbert where A.C. was staying and that he had a significant amount of money”; “evidence that Colbert enlisted [another accomplice's] help

in robbing A.C., and that Colbert contacted others when [that accomplice] backed out of the plan”; “cellphone data showing Colbert in communication with his accomplices throughout the night of the robbery”; and “surveillance footage corroborating . . . [his accomplices’] testimony.” *Id.* at *5. We concluded that “[t]his evidence shows that Colbert knew his associates were going to rob A.C. and that he intended on aiding their efforts.” *Id.* Although our opinion refers to an accomplice’s testimony that, after the robbery, the accomplice “tossed the guns that were used to shoot A.C. off a bridge at Colbert’s direction,” it does not discuss any evidence that Colbert had provided guns to his accomplices for use in the robbery. *Id.* at *2. And our opinion—which notes testimony that Colbert had told an accomplice who was not present during the robbery that it “had gone bad, and that [the accomplice] better hope that A.C. survives”—does not state that it was reasonably foreseeable that Colbert’s actions would cause A.C. to die or suffer great bodily harm. *Id.*

First Preliminary Application

In 2023 and 2024, the Minnesota Legislature enacted and amended a session law that establishes a process for individuals convicted of aiding and abetting felony murder—including the charge of aiding and abetting second-degree unintentional felony murder at issue here—to petition the district court for vacation of that conviction if certain conditions are met. 2023 Minn. Laws ch. 52, art. 4, § 24, at 864–68 (“the 2023 Session Law”),¹

¹ The 2023 Session Law also “narrow[ed] the scope of liability for aiding and abetting first- and second-degree felony murder under Minn. Stat. § 609.185(a)(3) (Supp. 2023), .19, subd. 2(1) (2022).” *Raisch v. State*, 8 N.W.3d 237, 239 (Minn. App. 2024) (citing 2023 Minn. Laws ch. 52, art. 4, § 3, at 850 (codified at Minn. Stat. § 609.05, subd. 2a (Supp.

amended by 2024 Minn. Laws ch. 123, art. 4, §§ 19–21, at 2268–71 (“the 2024 Amendment”) (collectively, “the Act”).² The Act contains several provisions elaborated on below. For present purposes, it bears mentioning that an individual is “entitled to relief if . . . [they] show by a preponderance of the evidence” that they (1) “did not cause the death of a human being” (“the first prong”) and (2) were either “not a major participant in the underlying felony *or* did not act with extreme indifference to human life” (“the second prong”). 2024 Minn. Laws ch. 123, art. 4, § 20, subd. 7(b), at 2269 (emphasis added).

Prior to, during, and after Colbert’s direct appeal of his conviction, Colbert filed five preliminary applications for relief under the Act.³ Representing himself, Colbert filed his first preliminary application in December 2023, before we affirmed his conviction on direct appeal in July 2024. In denying Colbert’s first preliminary application, the district

2023))), *rev. denied* (Minn. Nov. 19, 2024). More specifically, “[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 (emphasis added).

² The Act is not codified in the Minnesota Statutes and the application procedure for seeking relief from an aiding and abetting felony-murder conviction is time-limited. *See Raisch*, 8 N.W.3d at 242 n.3 (observing that the 2023 Session Law “is not codified in any chapter of the Minnesota Statutes, likely because the application procedure for seeking relief from an aiding and abetting felony-murder conviction [under the 2023 Session Law provided that it] expire[d] [on] October 1, 2025” (citing 2023 Minn. Laws ch. 52, art. 4, § 24, subd. 4(d), at 865)); *see also* 2024 Minn. Laws ch. 123, art. 4, § 21, at 2271 (extending the deadline for certain persons seeking relief under the Act to October 1, 2026).

³ The district court judge who considered and denied Colbert’s five preliminary applications is a different judicial officer than the judge who presided over Colbert’s trial and sentencing.

court made the following findings of fact based on the sentencing transcript rather than testimony or other evidence introduced at trial:

During the trial, the jury learned that . . . [Colbert] was leading a criminal organization specializing in sex trafficking, drugs, and guns. *See* Transcript, Sentencing, filed September 5, 2023, *Index # 181* at 16. He used the proceeds of his criminal activity to house, clothe, feed his family and others, [and] to create leverage and gain loyalty so that others would do his criminal bidding. *Id.* In this case, [Colbert] planned the robbery. *Id.* He put his accomplices and his guns up to this targeted attack on the victim. *Id.* at 17. During the trial, the jury heard testimony from [an accomplice] about how . . . [Colbert] directed him and the other co-defendants to rob the victim at the parking ramp of the Spring Hill Suites. *Id.* . . . [Colbert] was not present at the scene of the murder. *Id.* at 26. However, the jury found that . . . [Colbert] had committed this murder as part of a group of three or more people. *Id.* at 18.

The pages of the sentencing transcript cited by the district court correspond to arguments by the parties—mainly the state—in support of their respective sentencing recommendations.

In particular, all but one of the cited pages reflect the following contentions by the prosecutor:

- “Colbert led a criminal organization specializing in sex trafficking, drugs, and guns. He use[d] the proceeds of his criminal activity to house, clothe, feed his family, and others, [and] to create leverage, to gain loyalty, and to get others to do his will.”
- “Colbert put his goons and guns up to this. . . . Colbert planned the robbery of [A.C.] . . . We heard testimony from . . . [an accomplice] about how . . . Colbert directed him and explained the plan to rob [A.C.] at the parking ramp of the Spring Hill Suites.”
- “The jury made a finding that . . . Colbert had committed this murder as part of a group of three or more people.”

The one cited reference to Colbert’s sentencing argument was:

- “[T]he Court needs to focus on the conduct of . . . [Colbert] and make a finding that his participation was less serious than the typical participant in an unintentional murder; and that typically would involve being present at the scene, being active, possessing a firearm, things like that; . . . none of those factors are present here.”

In its conclusions of law, the district court acknowledged that Colbert “met the first prong” because he “did not cause the death of the victim,” noting that he “may not have been the shooter that caused the death.” The district court still determined that Colbert’s “application fails as it relates to being a major participant,” reasoning that “his role was more than the look-out or unsuspecting get-away-driver.” Citing some of the aforementioned pages of the sentencing transcript, the district court explained its ruling as follows:

[Colbert] planned and coordinated the underlying felony robbery. The co-defendants used [Colbert’s] guns. *See* Transcript, Sentencing, filed on September 5, 2023, *Index # 181* at 17, 18. As an aider and abettor, . . . [Colbert] planned, coordinated, provided his deadly weapons (the guns used in the first-degree aggravated robbery), and thus was a major participant in the commission of the crime. Therefore, . . . [Colbert] does not qualify and is not entitled to review or relief under the [2023 Session Law].

Colbert did not appeal the district court’s denial of his first preliminary application.

Second, Third, and Fourth Preliminary Applications

In early 2024, Colbert again represented himself in filing his second, third, and fourth preliminary applications, all of which the district court summarily denied.

As to the second and third preliminary applications, the district court noted its decisions to deny the preceding preliminary applications and reasoned that the second and third preliminary applications did “not contain any additional information described in

subdivision 4, paragraph (b),” of the 2023 Session Law and were “submitted by someone other than an attorney representing” Colbert.

As to the fourth preliminary application, which the district court denied in April 2024, the court again noted its decisions to deny the preceding preliminary applications and that Colbert “did meet the first prong” because he “did not directly cause the death of the victim.” But the district court again cited the sentencing transcript in determining that Colbert

was still a major participant in the death of the victim. *See* Sentencing Transcript, Index #179. [Colbert] recruited the people who were going to commit the robbery and targeted this specific victim. *Id.* [at] 29, 30. After the first failed robbery, [Colbert] and his codefendants persisted to make sure the crime was committed. *Id.* [Colbert] and his people tried to rob the victim a second time, and unfortunately, the death of the victim occurred. *Id.* As an aider and abettor, . . . [Colbert] planned, coordinated, and provided his deadly weapon (the guns used in the first-degree aggravated robbery), and was a major participant in the commission of the crime. Therefore, [Colbert] does not qualify and is not entitled to review or relief under the [2023 Session Law].

The district court’s order denying Colbert’s fourth preliminary application refers to pages from the sentencing transcript different from those referenced in the court’s order denying his first preliminary application. The sentencing-transcript pages cited in the district court’s order denying Colbert’s fourth preliminary application describe the court’s reasons for imposing the 180-month sentence and state in relevant part:

[T]he court clearly sees that . . . Colbert is a hundred percent responsible in aiding and abetting the unintentional murder of [A.C.] and he should do the time.

However, the court also has to look at the fact that the court is fully aware that he planned it, he was in charge of the prostitute initially that involved [A.C.] making [A.C.] a target. He recruited the people who [were] going to commit the robbery. He remained persistent. He refused to give up at the first try. The first attempt did not work out. And while even those people who attempted to rob [A.C.] were at the hotel, and they were not able to locate him, cellphone records indicate that . . . Colbert maintained contact with the prostitute to call [A.C.] back to the hotel so he [could] be robbed. So clearly the planning took place, clearly . . . Colbert was running this operation, and due to his persistence, [it] result[ed] in [A.C.'s] death [The] first attempt was not successful. They sen[t] another group to go in. Eventually, they robbed [A.C.] and, in that process, they killed [A.C.]

So I do hold . . . Colbert responsible a hundred percent in aiding and abetting. But at the end of the day, as we determined, this is still an aiding and abetting case. He wasn't even at the scene, even though he was in charge of it. He was the mastermind. He planned it. He recruited [the] people that [were] going to do the job. But at the end of the day, he did not pull the trigger himself. And [based on] the other people who[] [are] responsible for pulling the trigger, . . . the court finds that there's no substantial compelling reason . . . [for] an aggravated sentence in this matter.

And . . . the court also finds [that] there's no substantial and compelling reason [for a downward dispositional departure] . . . [because of] the planning that he put into place to commit this crime, the persistence that he put into place, . . . [including] plann[ing] a meeting before the group went out to do the robbery resulting in [the] killing [of A.C.]

Colbert did not appeal the district court's denial of his second, third, and fourth preliminary applications.

Fifth Preliminary Application and Appeal

In February 2025, an attorney (Colbert's counsel in this appeal) filed the fifth preliminary application in the district court on Colbert's behalf. Among other things,

Colbert cited the 2024 Amendment and argued that he “was not a major participant,” that he “did not act with extreme indifference to human life,” and that “there is a reasonable probability that . . . [he] is entitled to relief.” Later that month, the district court summarily denied the fifth preliminary application, again noting its decisions to deny the preceding preliminary applications and that the “fifth preliminary application does not contain any additional information described in subdivision 4, paragraph (b), of the [2023 Session law].” As a result, the district court determined that Colbert’s “fifth preliminary application may be summarily denied.” In its order denying the fifth preliminary application, the district court did not address whether it had determined on the second prong that Colbert was a major participant or had acted with extreme indifference to human life.

This appeal follows.

DECISION

Colbert asserts that the district court abused its discretion in summarily denying his fifth preliminary application because the court made findings of fact unsupported by the record and, based on its plain meaning, misapplied the Act. He requests that we reverse and that, on remand, he be permitted to petition the district court to vacate his conviction of aiding and abetting second-degree unintentional felony murder. The state counters that “the district court did not abuse its discretion by relying on the materials submitted with the [fifth] preliminary application, as well as other portions of the record, in considering the [fifth] preliminary application.” And the state maintains that the district court “made appropriate factual findings and applied the correct standard.” But the state concedes that “[a] limited remand is appropriate to correct the district court’s failure to make findings

required by the 2024 Amendment.” The state therefore asks that our remand instructions require only that the district court supplement its findings accordingly.

As we explain in the following analysis, we agree with Colbert’s arguments both that reversal is warranted and that it is appropriate on remand for the district court to permit Colbert to file petition to vacate his conviction of aiding and abetting second-degree unintentional felony murder. We begin by summarizing the relevant legal framework before reviewing the district court’s order denying Colbert’s fifth preliminary application.

A. Standard of Review and Applicable Law

A district court’s order denying a preliminary application under the Act is appealable as a denial of postconviction relief. *Raisch*, 8 N.W.3d at 242. Appellate courts review the denial of a preliminary application under the Act for an abuse of discretion. *State v. Griffin*, 24 N.W.3d 247, 254 (Minn. 2025). A district court abuses its discretion when its decision “is based on an erroneous view of the law or is against logic and the facts in the record.” *Id.* at 255 (quotation omitted). Appellate courts review findings of fact for clear error and legal conclusions de novo. *Id.* Issues of statutory interpretation are also reviewed de novo. *State v. Holl*, 966 N.W.2d 803, 808 (Minn. 2021).

An appellate court’s “aim in interpreting a statute is to effectuate the intent of the Legislature.” *State v. Velisek*, 986 N.W.2d 696, 699 (Minn. 2023) (quotation omitted). “The first step in statutory interpretation is to determine whether the statute’s language is ambiguous.” *Id.* (quotation omitted). “If a statute is unambiguous, [appellate courts] apply its plain meaning.” *Id.* at 700 (quotation omitted). “To determine the plain meaning of a statute, [appellate courts] first construe words and phrases in the statute according to rules

of grammar and according to their common and approved usage.” *Id.* (quotations omitted). Appellate courts “examine a statute as a whole, considering the entire statute, not just the specific phrase at issue.” *Id.*

Neither party argues that the Act is ambiguous. Because it is unambiguous, we are bound by its plain meaning, *see id.*, which provides for the following procedures. An individual is entitled to petition to vacate a conviction of aiding and abetting felony murder—like the conviction at issue here—if they are in the custody of the Minnesota Commissioner of Corrections or under court supervision based on such a conviction. 2023 Minn. Laws ch. 52, art. 4, § 24, subd. 1, at 864. To do so, subdivision 4(a) of the 2023 Session Law provides that such an individual must first submit a preliminary application that contains:

- (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.

Id., subd. 4(a), at 865. And under subdivision 4(b) of the 2023 Session Law, 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.” *Id.*, subd. 4(b), at 865.

If the district court determines that there is a reasonable probability that the applicant is entitled to relief under the Act, the applicant may file a petition to vacate their conviction. *Id.*, subds. 5–6, at 865–67. The Act prescribes the district court’s review of a preliminary application in relevant part as follows:

(c) Within 90 days of . . . 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., subds. 5(c)–(d), at 865–66. “[R]elevant records in the possession of the judicial branch,” *id.*, subd. 5(d), at 866, include appellate decisions arising from the underlying conviction. *See Griffin*, 24 N.W.3d at 255–56 (holding that “[t]he facts established at trial and described in [the defendant’s] prior appeals,” along with the Minnesota Supreme Court’s “prior holding that the trial evidence supported a reasonable inference that [the defendant] shot [the victim] with an intent to kill him, support[ed] the district court’s

rejection of [the defendant’s] apparent claim that he did not cause the death of a human being” (emphasis added) (quotation omitted)).

As referenced earlier, for purposes of subdivision 5(c), above, subdivision 7 of the Act states that an individual is ultimately “entitled to relief if . . . [they] show by a preponderance of the evidence” that, as to the first prong, they “did not cause the death of a human being,” and that, as to the second prong, they were either “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 (emphasis added). Because “major participant” and “extreme indifference to human life,” *id.*, are “two alternate concepts” that are “separated by the disjunctive ‘or,’” the plain meaning of the Act requires, with respect to the second prong, “that only one of the possible factual situations be present in order for the [Act] to be satisfied,” *State v. Loge*, 608 N.W.2d 152, 155 (Minn. 2000).

Prior to the 2024 Amendment, the second prong’s phrasing in the 2023 Session Law linked “major participant” and “extreme indifference to human life” in the conjunctive, meaning that an individual was entitled to relief only if they showed *both* that they were “not a major participant in the underlying felony *and* [that they] did not act with extreme indifference to human life.” 2023 Minn. Laws ch. 52, art. 4, § 24, subd. 7(b)(2), at 868 (emphasis added). In other words, before the 2024 Amendment became effective in May 2024,⁴ district courts did not need to address *both* aspects of the second prong and could

⁴ The 2024 Amendment became effective on May 25, 2024, which was “the day following [its] final enactment” on May 24, 2024. 2024 Minn. Laws ch. 123, art. 4, § 21, at 2271, 2417; *see also Luna-Pliego v. State*, 904 N.W.2d 916, 918 (Minn. App. 2017) (explaining

deny preliminary applications based on a determination that there was no “reasonable probability that the application” could “show by a preponderance of the evidence” *either* that the applicant was “a major participant in the underlying felony” *or* that the applicant “did not act with extreme indifference to human life.” *Id.*, subds. 5(c), 7(b)(2), at 865, 868. The 2024 Amendment permits eligible applicants to reapply if they were previously denied relief based on the second prong of the 2023 Session Law:

(a) An individual who was denied relief under Laws 2023, chapter 52, article 4, section 24, for a conviction under Minnesota Statutes, section 609.19, subdivision 2, clause (1), due to a determination that the individual was not a major participant in the underlying felony and did not act with extreme indifference to human life, and who is now eligible for relief under the changes made in this act, may reapply for relief.

2024 Minn. Laws ch. 123, art. 4, § 21, at 2270.

“‘[M]ajor 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. Under that definition, a person is a “major participant” if they:

- (1) used a deadly weapon during the commission of the underlying felony or provided a deadly weapon to another participant where it was reasonably foreseeable that the weapon would be used in the underlying felony;
- (2) caused substantial bodily harm to another during the commission of the underlying felony;
- (3) coerced or hired a participant to undertake actions in furtherance of the underlying felony that proximately caused the death, and where it was reasonably foreseeable that such actions would cause death or great bodily harm; or

that a statute that was “effective the day following final enactment” became effective the day after the governor signed the bill into law).

(4) impeded another person from preventing the death either by physical action or by threat of physical action where it was reasonably foreseeable that death or great bodily harm would result.

Minn. Stat. § 609.05, subd. 2a(c) (2024). The Act provides no definition for “extreme indifference to human life.” 2024 Minn. Laws ch. 123, art. 4, § 20, subd. 7(b), at 2269.

A district court may summarily deny a preliminary 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[, as relevant here, aiding and abetting second-degree unintentional 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.

2023 Minn. Laws ch. 52, art. 4, § 24, subd. 5(e), at 866. And a district court may summarily deny a “second or successive preliminary application” if “any prior application was denied for a reason other than that it did not contain the information required under subdivision 4, paragraph (a),” and:

- (1) the reviewing judge previously determined that there was a reasonable probability that the applicant was entitled to relief, but a court determined that the petitioner did not qualify for relief under subdivision 7;
- (2) a previous application was submitted by an attorney representing the applicant; or
- (3) the reviewing judge previously determined that there was not a reasonable probability that the applicant is entitled to relief, the second or successive preliminary application does not contain any additional information described in subdivision 4, paragraph (b), and the second or successive preliminary

application was submitted by someone other than an attorney representing the applicant.

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” on a preliminary application, it must send notice to the applicant including “a brief statement explaining the reasons the reviewing judge concluded that there is not a reasonable probability that the applicant is entitled to relief.”

Id., subd. 5(h), at 866. Upon such a determination, “the applicant cannot proceed to the second step” of the application process—the filing of a petition to vacate the conviction.

Raisch, 8 N.W.3d at 240.

Based on this legal framework, we next apply the Act to the issues presented in this appeal.

B. The district court abused its discretion in denying Colbert’s fifth preliminary application.

The district court’s order summarily denying Colbert’s fifth preliminary application notes the court’s decisions to deny the preceding preliminary applications and that the “fifth preliminary application does not contain any additional information described in subdivision 4, paragraph (b), of the [2023 Session law].” Thus, the district court determined that the “fifth preliminary application may be summarily denied.”

Based on our analysis below of all possible grounds set forth in the Act under which the district court could deny the fifth preliminary application—i.e., (1) summary denial as a successive preliminary application, (2) summary denial as a first preliminary application, and (3) denial premised on a determination that there is no reasonable probability that

Colbert is entitled to relief under the Act—we conclude that the district court abused its discretion.

1. Summary Denial as Successive Preliminary Application

Under the plain meaning of the Act, the district court did not have the discretion to summarily deny Colbert’s fifth preliminary application as successive.

Although the fifth preliminary application was a “successive preliminary application” and Colbert’s “prior application[s] [were] denied for a reason other than that [they] did not contain the information required under subdivision 4, paragraph (a),” of the 2023 Session Law, none of the other requirements for summary denial of a successive preliminary application were met. 2023 Minn. Laws ch. 52, art. 4, § 24, subd. 5(f), at 866.

The district court had not “previously determined that there was a reasonable probability that . . . [Colbert] was entitled to relief, but . . . [nonetheless] determined that . . . [Colbert] did not qualify for relief under subdivision 7” of the 2023 Session Law. *Id.*, subd. 5(f)(1), at 866. None of the “previous application[s] [were] submitted by an attorney representing” Colbert. *Id.*, subd. 5(f)(2), at 866. And particularly because the disjunctive phrasing of the second prong in the 2024 Amendment required that the district court address whether Colbert could establish a reasonable probability that he is entitled to relief by showing either that he was not a “major participant” or that he did not “act with extreme indifference to human life,”⁵ the lack of such a decision by the court on both

⁵ As noted above, the 2024 Amendment expressly allowed Colbert to reapply for relief because the district court denied his first and fourth preliminary applications based on its determination as to the second prong of the 2023 Session Law that he was ineligible only as a “major participant,” but not also as an individual who “act[ed] with extreme

aspects of the second prong means that it had not “previously determined that there was not a reasonable probability that . . . [Colbert] is entitled to relief.” 2023 Minn. Laws ch. 52, art. 4, § 24, subd. 5(f)(3), at 866. Moreover, because counsel filed the fifth preliminary application on Colbert’s behalf, it “was [not] submitted by someone other than an attorney representing” Colbert. *Id.*⁶

2. Summary Denial as First Preliminary Application

The plain meaning of the Act also did not grant the district court the discretion to summarily deny Colbert’s fifth preliminary application under the provisions relating to summary denial of a first preliminary application. 2023 Minn. Laws ch. 52, art. 4, § 24, subd. 5(e), at 866. The fifth preliminary application did “contain the information required under subdivision 4, paragraph (a).” *Id.*, subd. 5(e)(1), at 866. Colbert is “in the custody of the commissioner of corrections.” *Id.*, subd. 5(e)(2), at 866. He was convicted in March

indifference to human life.” *See* 2024 Minn. Laws ch. 123, art. 4, § 21, at 2270; *see also* 2023 Minn. Laws ch. 52, art. 4, § 24, subd. 7, at 867. The 2024 Amendment became effective in May 2024, after the district court denied Colbert’s fourth preliminary application in April of that year and before he filed his fifth preliminary application in February 2025, which the court denied later that month. *See* 2024 Minn. Laws ch. 123, art. 4, § 21, at 2271, 2417.

⁶ We acknowledge that Colbert’s fifth preliminary application “does not contain any additional information described in subdivision 4, paragraph (b).” *Id.*, subd. 5(f)(3), at 866. But because the requirements for summary denial of a successive preliminary application under subdivision 5(f)(3) are stated in the conjunctive, as reflected by the use of “and” to join the three operative clauses, we conclude that the district court did not have the discretion to summarily deny the fifth preliminary application based on this aspect of the Act. *See State v. Irby*, 967 N.W.2d 389, 395 (Minn. 2021) (acknowledging “that ‘and’ is most frequently used in the joint sense” and stating that the Minnesota Supreme Court “presume[s] that ‘and’ is used in the joint sense unless the specific context of a statute unambiguously proves otherwise”).

2023 of aiding and abetting second-degree unintentional felony murder based on conduct “committed before August 1, 2023.” *Id.*, subd. 5(e)(3), at 866.⁷ And “the issues raised in the [fifth preliminary] application are . . . relevant to the relief available under” the Act and “have [not] previously been decided by the court of appeals or the supreme court in . . . [this] case.” 2023 Minn. Laws ch. 52, art. 4, § 24, subd. 5(e)(4), at 866.

3. Denial Based on No Reasonable Probability of Entitlement to Relief

Insofar as the district court’s order denying Colbert’s fifth preliminary application incorporated its preceding orders denying his preliminary applications by reference thereto, the court abused its discretion in determining that the fifth preliminary application did not establish a reasonable probability that Colbert is entitled to relief by basing its decision on an erroneous view of the law and by making findings of fact unsupported by the record. *See Griffin*, 24 N.W.3d at 254.

As mentioned above, to determine that the fifth preliminary application presents no reasonable probability of entitlement to relief under the Act, the district court was required to “consider the preliminary application” and “any materials submitted with the preliminary application,” and the court was permitted to “consider relevant records in the possession of the judicial branch.” 2023 Minn. Laws ch. 52, art. 4, § 24, subds. 5(c)–(d), at 865–66. Under subdivision 7 of the Act, the district court needed to evaluate whether there was a reasonable probability that Colbert could “show by a preponderance of the evidence that” he met the first prong because he “did not cause the death of a human being,”

⁷ The offense occurred in August 2021. *Colbert*, 2024 WL 3321090, at *1.

and that he met the second prong because he was either “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 (emphasis added). And while the Act does not define “extreme indifference to human life,” *id.*, the district court had to determine whether Colbert was a “major participant” based on “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. Reasonable Probability that Colbert Did Not Cause the Death of a Human Being

The parties do not dispute the district court’s determinations in its orders denying Colbert’s first and fourth preliminary applications that Colbert “met the first prong” because he “did not cause the death of a human being.” 2023 Minn. Laws ch. 52, art. 4, § 24, subd. 7(b)(1), at 867. And we discern no abuse of discretion in these determinations by the district court.

b. Reasonable Probability that Colbert Was Not a Major Participant in the Underlying Felony

The district court ruled in its orders denying Colbert’s first and fourth preliminary applications that he was a “major participant in the commission of the crime.” But the district court did not identify the subparagraph of the major-participant definition that the court determined applied to Colbert under subdivision 2a(c) of Minnesota Statutes section 609.05.

Neither the district court’s factual findings nor the record before the court reflect that Colbert “caused substantial bodily harm to [A.C.] during the commission of the

underlying felony” or “impeded another person from preventing the death either by physical action or by threat of physical action where it was reasonably foreseeable that death or great bodily harm would result.” Minn. Stat. § 609.05, subd. 2a(c)(2), (4). Indeed, the district court found that Colbert “was not present at the scene of the murder.” And the state makes no argument that these aspects of the major-participant definition apply to Colbert. We therefore turn to the remaining subparagraphs of the major-participant definition. *See id.*, subd. 2a(c)(1), (3).

The district court’s reasoning in its orders denying Colbert’s first and fourth preliminary applications suggest that it relied on subparagraph (1) of the major-participant definition—that Colbert “provided a deadly weapon to another participant where it was reasonably foreseeable that the weapon would be used in the underlying felony.” *Id.*, subd. 2a(c)(1). The district court determined: that Colbert “planned and coordinated the underlying felony robbery”; that Colbert “recruited the people who were going to commit the robbery and targeted this specific victim”; that, “[a]fter the first failed robbery, [Colbert] and his codefendants persisted to make sure the crime was committed”; that “[t]he co-defendants used [Colbert’s] guns”; that Colbert “and his people tried to rob the victim a second time, and unfortunately, the death of the victim occurred”; and that, “[a]s an aider and abettor, . . . [Colbert] planned, coordinated, provided his deadly weapons (the guns used in the first-degree aggravated robbery), and thus was a major participant in the commission of the crime.” For two reasons, however, we conclude based on the record that the district court’s decision to deny Colbert’s fifth preliminary application cannot be sustained under subparagraph (1) of the major-participant definition.

First, the district court’s findings of fact underlying its determinations are unsupported by the record and therefore clearly erroneous. *See Griffin*, 24 N.W.3d at 255. The district court relied on portions of the sentencing transcript in both its orders denying Colbert’s first and fourth preliminary applications. While the Act does allow the district court to “consider relevant records in the possession of the judicial branch,” 2023 Minn. Laws ch. 52, art. 4, § 24, subd. 5(d), at 866, and the cited pages of the sentencing transcript include the prosecutor’s arguments that “Colbert led a criminal organization specializing in sex trafficking, drugs, and guns” and that he “put his goons and guns up to this,” we are not convinced that a district court may rely only on sentencing arguments—without reference to supporting testimony or other evidence introduced at trial, or to a statement of facts in an appellate decision arising from a conviction challenged under the Act—as a basis for factual findings in support of a determination that there is no reasonable probability that an applicant is entitled to relief.⁸ *See* 2023 Minn. Laws ch. 52, art. 4, § 24, subd. 5(c), at 865; *cf. State v. Segura*, 2 N.W.3d 142, 164 (Minn. 2024) (citing with approval the district court’s jury instruction that “the attorneys’ arguments were not evidence”). This is all the more so because, in denying Colbert’s preliminary applications, the only portion of the sentencing transcript cited by the district court that contains statements by the court during the sentencing hearing includes no findings by the court that

⁸ We also note that one portion of the sentencing transcript cited by the district court differs from the court’s determinations that “[t]he co-defendants used [Colbert’s] guns” and that Colbert “provided [them] his deadly weapons (the guns used in the first-degree aggravated robbery)”: defense counsel’s argument that “possessing a firearm” was not “present here.”

Colbert provided guns to his accomplices or that it was reasonably foreseeable that such weapons would be used in the robbery.

Second, while the state argues on appeal that the district court’s findings of fact are supported by pointing to evidence in the trial record relating to Colbert’s role in planning the robbery and recruiting people to commit it—facts that we identified in our decision on Colbert’s direct appeal, *Colbert*, 2024 WL 3321090, at *1 (observing that “[t]estimony at trial established that Colbert had orchestrated a plan, which was executed by several others, to rob A.C.”)—the state notably cites no evidence that Colbert provided guns to his accomplices or that it was reasonably foreseeable that such weapons would be used in the robbery.⁹ And although our opinion in Colbert’s direct appeal refers to an accomplice’s testimony that, after the robbery, the accomplice “tossed the guns that were used to shoot A.C. off a bridge at Colbert’s direction,” it makes no mention of evidence that Colbert had provided guns beforehand to his accomplices for use in the robbery or that it was reasonably foreseeable that such weapons would be used in committing the crime. *Colbert*, 2024 WL 3321090, at *2.

For similar reasons, the state’s contention that we can affirm the district court’s major-participant determination based on subparagraph (3) of the applicable definition is likewise unpersuasive. That provision requires that Colbert “coerced or hired a participant to undertake actions in furtherance of the underlying felony that proximately caused the

⁹ Because our decision in Colbert’s direct appeal was filed prior to his fifth preliminary application and the district court’s order denying that application, the district court could consider it as part of the “relevant records in the possession of the judicial branch.” 2023 Minn. Laws ch. 52, art. 4, § 24, subd. 5(d), at 866; *see also Griffin*, 24 N.W.3d at 255–56.

death” and that “it was reasonably foreseeable that such actions would cause death or great bodily harm.” Minn. Stat. § 609.05, subd. 2a(c)(3).

For starters, there is no express reference to subparagraph (3) of the major-participant definition in any of the district court’s orders denying Colbert’s preliminary applications, and the state concedes that “the district court did not rely on this factor in its ruling” on Colbert’s fifth preliminary application. The state nevertheless highlights the district court’s determination that Colbert “used the proceeds of his criminal activity to house, clothe, feed his family and others, [and] to create leverage and gain loyalty so that others would do his criminal bidding.” But this determination at best goes only to whether Colbert “coerced or hired a participant to undertake actions in furtherance of the underlying felony that proximately caused the death,” not whether “it was reasonably foreseeable that such actions would cause death or great bodily harm.” Minn. Stat. § 609.05, subd. 2a(c)(3).

In addition, as explained above, the state’s citations to the underlying trial record identify no evidence of reasonable foreseeability. Nor does our opinion in Colbert’s direct appeal state that it was reasonably foreseeable that Colbert’s actions would cause A.C. to die or suffer great bodily harm, as required by subdivision 2a(c)(3) of Minnesota Statutes section 609.05. At the very least, there is some tension between the inference necessary for a determination at the preliminary-application stage of these proceedings that this reasonable-foreseeability requirement has been met and the observation in our opinion on Colbert’s direct appeal that he had told an accomplice who was not present during the robbery that it “had gone bad, and that [the accomplice] better hope that A.C. survives.” *Colbert*, 2024 WL 3321090, at *2.

In short, we conclude that the district court abused its discretion in denying Colbert’s fifth preliminary application based on its determination that he was “a major participant in the underlying felony.” 2024 Minn. Laws ch. 123, art. 4, § 20, subd. 7(b), at 2269.

c. Reasonable Probability that Colbert Did Not Act with Extreme Indifference to Human Life

As the parties acknowledge, the district court did not decide in any of its orders denying Colbert’s preliminary applications whether he had established a reasonable probability that he is entitled to relief based on a showing that he did not “act with extreme indifference to human life.” 2024 Minn. Laws ch. 123, art. 4, § 20, subd. 7(b), at 2269. Thus, that ground supplies no basis for affirming the district court’s decision. For three reasons, we decline the state’s invitation to remand for a determination by the district court “on this issue alone” or to otherwise decide the issue ourselves.

First, we are mindful that the 2023 Session Law allowed the district court to deny Colbert’s first through fourth preliminary applications based only on a determination that there was no reasonable probability that the applications could show by a preponderance of the evidence that Colbert was “a major participant in the underlying felony.” 2023 Minn. Laws ch. 52, art. 4 § 24, subds. 5(c), 7(b)(2), at 865, 868. But the plain meaning of the 2024 Amendment—which became effective in May 2024, prior to the filing of Colbert’s fifth preliminary application and the district court’s resulting order thereon, *see* 2024 Minn. Laws ch. 123, art. 4, § 21, at 2271, 2417—required that the district court’s order denying the fifth preliminary application not only address the major-participant aspect of the second

prong, but also consider whether Colbert had “act[ed] with extreme indifference to human life.” *Id.*, § 20, subd. 7(b), at 2269. Contrary to the plain meaning of the Act and without explanation, the district court did not analyze the extreme-indifference aspect of the second prong in denying Colbert’s fifth preliminary application, despite his citation of the 2024 Amendment and express argument that he “did not act with extreme indifference to human life.” Given the record before us, we see no reasoned basis to remand this issue for consideration at the preliminary-application stage when it was already before the district court once and the court did not address it.

Second, and more importantly, because we have concluded that the district court abused its discretion in determining that the fifth preliminary application did not establish a reasonable probability that Colbert was “not a major participant in the underlying felony”—which itself is a sufficient ground to reverse the court’s decision and remand for Colbert to file a petition to vacate the conviction—we need not remand for an extreme-indifference determination as to Colbert’s fifth preliminary application. *See id.*

And third, even assuming without deciding that we could make an extreme-indifference determination in the first instance on appeal, the state identifies no specific evidence in the record before the district court that would support such a determination.¹⁰ Instead, the state merely asserts that “this court could review the record and submissions

¹⁰ For the reasons set forth above, we need not decide whether an extreme-indifference determination is a factual finding, a legal conclusion, or a mixed question of law and fact. If this issue requires a factual finding, however, we are without authority to provide one because “appellate courts may not sit as factfinders and cannot make or modify findings of fact.” *Mason-Kimmons v. State*, 26 N.W.3d 858, 869 n.10 (Minn. 2025) (quotation omitted).

and make its own determination that the preliminary application should be denied after finding there is no reasonable probability [Colbert] can meet his burden of proving he did not act with extreme indifference to human life.” And at a bare minimum, we are reluctant to make such a determination at this stage of the proceedings given a suggestion in the record that Colbert was not completely indifferent to human life: the observation in our opinion on Colbert’s direct appeal that Colbert told an accomplice that he “better hope that A.C. survives.” *Colbert*, 2024 WL 3321090, at *2.

In sum, because we conclude that the district court abused its discretion in denying Colbert’s fifth preliminary application, we reverse and remand with instructions that the district court permit Colbert to file a petition to vacate his conviction of aiding and abetting second-degree unintentional felony murder.¹¹

Reversed and remanded.

¹¹ We express no opinion on the merits of Colbert’s request for relief under the Act, nor do we suggest that the district court must allow Colbert to advance to the hearing stage of the process after the court permits him to file a petition. The district court retains the discretion to deny a petition filed by Colbert on remand, without a hearing, “if additional information or submissions establish that there is not a reasonable probability that . . . [he] is entitled to relief under this section.” 2023 Minn. Laws ch. 52, art. 4, § 24, subd. 6(e)(2), at 867.