

*This opinion is nonprecedential except as provided by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
A25-1526**

Robert Ian Agarano, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed May 11, 2026
Affirmed
Johnson, Judge**

Scott County District Court
File No. 70-CR-19-5263

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

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

Ronald Hocesvar, Scott County Attorney, Elisabeth M. Johnson, Assistant County Attorney, Shakopee, Minnesota (for respondent)

Considered and decided by Schmidt, Presiding Judge; Johnson, Judge; and Larson, Judge.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

In 2019, Robert Ian Agarano pleaded guilty to three counts of first-degree criminal sexual conduct and was sentenced to three consecutive 144-month prison terms. He did not pursue a direct appeal. In 2025, Agarano petitioned for postconviction relief, arguing

that he received ineffective assistance of counsel with respect to his guilty plea and his sentence. The postconviction court denied the petition without an evidentiary hearing, reasoning that the petition is untimely because Agarano did not file it within two years of final judgment or within two years of the date on which his ineffective-assistance claim arose. We conclude that the postconviction court did not err and, therefore, affirm.

FACTS

In March 2019, the state charged Agarano with three counts of first-degree criminal sexual conduct, in violation of Minn. Stat. § 609.342, subd. 1(a), (g), (h)(iii) (2016). The state alleged that Agarano sexually abused a stepdaughter from 2017 to 2019, when she was between the ages of 10 and 12 years old. The state further alleged that Agarano admitted that he sexually penetrated the stepdaughter on multiple occasions.

Agarano retained a private attorney. The case was scheduled for a jury trial in August 2019. Before the scheduled trial date, the state offered Agarano a plea agreement by which he would plead guilty to one count and the state would seek an executed sentence of 144 months of imprisonment. The prosecutor informed Agarano's attorney that, if Agarano declined the offer, the state would file an amended complaint with additional charges and would seek consecutive sentencing. Four days before the scheduled trial date, Agarano's attorney sent an e-mail message to members of Agarano's family in which she described the plea offer and stated that, in light of his admission, Agarano had "decided to accept the offer, taking his exposure to prison down . . . to the 144 months." Agarano's attorney further stated that she intended to argue for a downward sentencing departure.

Agarano did not plead guilty on the date for which trial was scheduled. The state filed an amended complaint that charged Agarano with eight counts of first-degree criminal sexual conduct. In September 2019, the state made a second plea offer. Agarano agreed to plead guilty to three counts, with the understanding that the state would seek consecutive sentencing and that his attorney would argue for a sentence of 144 months.

At sentencing in January 2020, the state urged the district court to impose three consecutive 144-month sentences. Agarano's attorney called three character witnesses: his former wife, his sister, and his jail pastor. Agarano spoke in allocution, admitting the sexual abuse, expressing remorse, and apologizing to his stepdaughter. Agarano's attorney did not make any argument regarding the sentence to be imposed. The district court imposed three consecutive sentences of 144 months of imprisonment, for a total of 432 months. Agarano did not pursue a direct appeal.

More than five years later, on March 7, 2025, Agarano filed a motion (which we construe as a petition) for postconviction relief, with the assistance of a different retained attorney. Agarano alleged that he received ineffective assistance of counsel during plea negotiations between July and September of 2019, at sentencing in January 2020, and after sentencing. He acknowledged the two-year statute of limitations for postconviction petitions and invoked the interests-of-justice exception to the statute of limitations. He requested an evidentiary hearing.

With his petition, Agarano filed an affidavit that he executed in February 2025. He stated in the affidavit that he wanted to accept the state's first plea offer but that his attorney advised against it and that he accepted the state's second plea offer because he had no other

options. He stated that he expected his attorney to argue for a 144-month sentence but that she did not make an argument for a 144-month sentence or for concurrent sentences. He further stated that, after he was imprisoned, his first attorney “promised to pursue concurrent sentences with the Scott County Attorney’s Office” and “promised to pursue an appeal of the 432-month sentence.” Agarano attached to his petition a letter that his first attorney sent to him in June 2020, when he was in prison. The letter states, in relevant part, “I am researching the sentencing matter that we discussed in our last phone call and will send you a summary as soon as I can.” Agarano did not state whether he had any communication with his first attorney after her June 2020 letter. He merely stated, “By the time I learned [the first attorney] failed to keep her promises and had done nothing, the time to file an appeal of my sentence passed.”

The state filed an answer in which it argued that Agarano’s petition is untimely and that he did not allege facts capable of proving that his ineffective-assistance claim arose within two years of his March 7, 2025 petition. The state asserted that “when petitioner learned that his appeal was never filed” is unknown because “no date is included” in Agarano’s affidavit. Agarano’s postconviction attorney later filed a document captioned “response to state’s answer,” arguing that Agarano’s claim “did not arise until spring 2024” because it was not until then that “he knew or should have known that he had a claim.”

In July 2025, the postconviction court filed an order in which it denied Agarano’s petition without an evidentiary hearing. The postconviction court focused on whether Agarano had filed his petition within two years of the date his claim arose. The postconviction court acknowledged Agarano’s statement that he learned after the

expiration of the appeal deadline that his first attorney did not file a notice of appeal. But the postconviction court noted that Agarano “provides no other information as to exactly when he learned an appeal had never been filed.” The postconviction court reasoned that, under an objective standard, Agarano “knew or should have known he had a claim well before March 7, 2023,” which was “more than two years after the June 25, 2020 letter and three years after his sentencing.” Accordingly, the postconviction court concluded that Agarano “failed to establish that his claim accrued within two years of the filing of his petition for postconviction relief.” Agarano appeals.

DECISION

Agarano argues that the postconviction court erred by denying his petition without an evidentiary hearing.

A person seeking postconviction relief must file a postconviction petition within a two-year limitations period. Minn. Stat. § 590.01, subd. 4(a) (2024). The limitations period begins upon the later of “(1) the entry of judgment of conviction or sentence if no direct appeal is filed; or (2) an appellate court’s disposition of petitioner’s direct appeal.” *Id.* If the two-year limitations period has expired, the postconviction court nonetheless may consider the petition if any one of five exceptions applies. *Id.*, subd. 4(b).

In this case, Agarano invoked the interests-of-justice exception to the two-year statute of limitations. Under that exception, a postconviction petition filed after the two-year limitations period may be considered if “the petition is not frivolous and is in the interests of justice.” *Id.*, subd. 4(b)(5). But a petition relying on an exception to the two-year statute of limitations is subject to another limitations period, which provides that the

petition “must be filed within two years of the date the claim arises.” *Id.*, subd. 4(c). For these purposes, a postconviction claim arises “when the petitioner knew or should have known that he had a claim.” *Sanchez v. State*, 816 N.W.2d 550, 560 (Minn. 2012).

Accordingly, “[a] postconviction petitioner is not entitled to relief or an evidentiary hearing on an untimely petition unless he can demonstrate that ‘he satisfies one of the [statutory] exceptions . . . and that application of the exception is not time-barred.’” *Roberts v. State*, 856 N.W.2d 287, 290 (Minn. App. 2014) (quoting *Riley v. State*, 819 N.W.2d 162, 168 (Minn. 2012)), *rev. denied* (Minn. Jan. 28, 2015). “If the petitioner does not demonstrate that an exception applies and that application of the exception is timely, the postconviction court may summarily deny the petition as untimely.” *Id.* This court applies an abuse-of-discretion standard of review to a postconviction court’s summary denial of a postconviction petition. *Allwine v. State*, 994 N.W.2d 528, 535 (Minn. 2023).

Agarano contends that the date on which his ineffective-assistance claim arose—*i.e.*, when he knew or should have known that he had a claim—is a factual dispute and that the postconviction court erred by denying the petition without an evidentiary hearing. He asserts that an evidentiary hearing “would have allowed [him] the opportunity to present testimony and evidence to meet his burden of establishing that his claim arose after March 7, 2023.” In response, the state argues that a postconviction petitioner must allege facts that would entitle him to relief and that Agarano failed to allege facts that would support a finding that he did not know and should not have known of his claim until after March 7, 2023.

A postconviction petition must contain “a statement of the facts and the grounds upon which the petition is based.” Minn. Stat. § 590.02, subd. 1(1) (2024). The “petitioner’s allegations must be more than argumentative assertions without factual support.” *Matakis v. State*, 862 N.W.2d 33, 37 (Minn. 2015) (quotation omitted). A postconviction court must hold an evidentiary hearing 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). But a postconviction court “need not hold an evidentiary hearing when the petitioner alleges facts that, if true, are legally insufficient to entitle him to the requested relief.” *Tichich v. State*, 4 N.W.3d 114, 119-20 (Minn. 2024) (quotation omitted). Stated differently, “an evidentiary hearing is not required unless facts are alleged which, if proved, would entitle a petitioner to the requested relief.” *Matakis*, 862 N.W.2d at 36 (quotation omitted); *see also Allwine*, 994 N.W.2d at 547.

As Agarano acknowledges, the viability of his postconviction action depends on when he knew or should have known that his postconviction claim arose. He claims that he received ineffective assistance of counsel during three phases of his case: (1) plea negotiations, (2) sentencing, and (3) an appeal after final judgment or some other means of reducing his sentence. The parties focus their arguments on the third part of Agarano’s claim. It appears to be undisputed that Agarano cannot establish the interests-of-justice exception with respect to the first and second parts of his claim because his affidavit makes clear that he was present when his first attorney engaged in allegedly deficient performance in connection with his guilty plea and sentencing and that he was dissatisfied with the attorney’s performance at those times. *See Pearson v. State*, 946 N.W.2d 877, 884-85

(Minn. 2020) (concluding that defendant knew or should have known of ineffectiveness claims because he was present at hearings when attorney did not make arguments).

The disputed issue on appeal is when Agarano knew or should have known that the third part of his postconviction claim arose. According to Agarano, his claim arose “when he learned that his attorney did not appeal his convictions and sentence.” Agarano’s petition states that his first attorney’s June 2020 letter was “well past” the 90-day period in which to file a notice of appeal. But his petition does not allege any particular date on which he learned or believed that his first attorney had not filed a timely appeal. He asserts only that he learned of his first attorney’s failure to file a timely appeal at some unspecified date after the failure had occurred: “By the time I learned [the first attorney] failed to keep her promises and had done nothing, the time to file an appeal of my sentence passed.”

Agarano bears the burden of proof on factual issues necessary to postconviction relief. *See State v. Turnage*, 729 N.W.2d 593, 599 (Minn. 2007). The sparse information in his petition and affidavit, if assumed to be true, is insufficient to satisfy the interests-of-justice exception with respect to the third part of his postconviction claim. Agarano’s allegations and statements do not establish that he did not know and should not have known until after March 7, 2023—almost three years after he last had any communication with his first attorney—that she had not filed a timely appeal. It would not be reasonable for Agarano to believe, as late as March 7, 2023, that his first attorney had not yet failed to file an appeal. Such a belief would be objectively unreasonable in light of the 90-day period in which a defendant may appeal from a final judgment of conviction or sentence. *See* Minn. R. Crim. P. 28.02, subds. 2(1), 4(3)(a), 28.05, subd. 1(1). Agarano should have

known well before March 7, 2023, that he had an ineffective-assistance claim against his first attorney for her failure to file a timely appeal. In *Rossberg v. State*, 932 N.W.2d 6 (Minn. 2019), the supreme court rejected the appellant’s invocation of the interests-of-justice exception by stating, “Even when liberally construed, Rossberg’s petition does not allege any facts explaining the reason for his delay in filing his petition” *Id.* at 9-10. The same is true here. Agarano has not alleged facts that, if true, would establish that his postconviction petition was filed within two years of the date when he knew or should have known that his ineffectiveness claim had arisen.

We note Agarano’s contention that he did not know that he had a postconviction claim until the spring of 2024. But Agarano did not make such an allegation in his petition or such a statement in his affidavit. He relies on a document that is, in essence, a reply memorandum, in which his postconviction attorney wrote, “It wasn’t until petitioner and his family began seeking help from other lawyers, in the spring of 2024, that he knew or should have known that he had a claim.” But that statement is not evidence and is not based on any evidence; it is merely an argument by Agarano’s postconviction attorney. In his reply brief, Agarano characterizes the document as an amended petition. *Cf.* Minn. Stat. § 590.03 (2024). But the document is not labeled as an amendment, and Agarano never sought leave to amend his postconviction petition. Consequently, the document does not augment the allegations in Agarano’s petition or the statements in his affidavit.

In sum, the postconviction court did not err by denying Agarano’s postconviction petition without an evidentiary hearing.

Affirmed.