

*This opinion is nonprecedential except as provided by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
A25-2015**

Perry Earl Williams, III, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed July 13, 2026
Reversed and remanded
Schmidt, Judge**

Ramsey County District Court
File No. 62-CR-19-8221

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, Charlotte Higgins, Special Assistant County Attorney, St. Paul, Minnesota (for respondent)

Considered and decided by Cochran, Presiding Judge; Ross, Judge; and Schmidt, Judge.

NONPRECEDENTIAL OPINION

SCHMIDT, Judge

Appellant Perry Earl Williams, III, challenges the district court's denial of his second 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 second application, we reverse and remand.

FACTS

In 2020, Williams pleaded guilty to aiding and abetting second-degree unintentional felony murder. At the plea hearing, Williams admitted that he and his codefendant each carried a gun and drove to the victim's girlfriend's apartment with the intent to kill the victim. When they saw the victim, co-defendant got out of the car, ran up to the victim, and shot him six times in the back. Williams got into the driver's seat of the car, co-defendant got into the passenger seat, and they drove away. The district court accepted the guilty plea. At sentencing, the district court convicted Williams of aiding and abetting second-degree unintentional felony murder and sentenced him to 243 months in prison.

In 2023, the district court denied Williams' first preliminary application to petition to vacate his conviction under 2023 Minn. Laws ch. 52, art. 4, § 24 (the Act). In 2025, Williams filed a second preliminary application, which the district court denied again. The court found that Williams "was much more than just the get-away driver" as he and his co-defendant went to the scene "with premeditation and intent to kill." The district court noted that they both possessed guns that they intended to use, and that Williams "used" the gun by possessing a "deadly weapon (firearm) during the commission of the underlying felony (intentional murder) and thus satisfies the definition of a major participant in the commission of the crime." The district court concluded that Williams "has no reasonable probability that he is entitled to relief under the Act."

Williams appeals.

DECISION

Williams challenges the denial of his second preliminary application to petition to vacate his conviction for aiding and abetting attempted second-degree felony murder. *See* 2023 Minn. Laws ch. 52, art. 4, § 24 at 864, *amended by* 2024 Minn. Laws ch. 123, art. 4, §§ 19-21 at 2269. To qualify for relief, Williams needed to show “by a preponderance of the evidence” (1) that he “did not cause the death of a human being” and (2) that he “was not a major participant” in the crime or “did not act with extreme indifference to human life.” 2024 Minn. Laws ch. 123, art. 4, § 20, subd. 7(b)(1)-(2), at 2269.

To seek relief under the Act, a petitioner first submits a preliminary application. 2023 Minn. Laws ch. 52, art. 4, § 24, subd. 4, at 865-66. If the district court determines “there is a reasonable probability that the applicant is entitled to relief,” it must grant the preliminary application, and petitioner may proceed to the next stage of the process. *Id.* If the court denies the petition, it must either schedule an evidentiary hearing or issue an order with a memorandum explaining why there is not a reasonable probability that petitioner is entitled to relief. *Id.* “A district court’s denial of a preliminary application effectively terminates the [petitioner’s] opportunity to seek relief under the [A]ct” and is, therefore, an appealable order. *Raisch v. State*, 8 N.W.3d 237, 241 (Minn. App. 2024).

We review the district court’s order denying the preliminary application for an abuse of discretion. *State v. Griffin*, 24 N.W.3d 247, 254 (Minn. 2025). The district court’s factual findings are reviewed for clear error and its legal conclusions de novo. *Id.* at 255.

Williams raises several arguments that the district court abused its discretion in denying his application. We need address only two issues to reach our decision.

A. The district court abused its discretion when it resolved issues of material fact as to whether Williams used a firearm.

Williams argues the district court abused its discretion by resolving fact disputes as to whether he used a firearm in summarily denying his preliminary application. We agree.

Whether Williams “used” a firearm is a material fact related to whether he was a “major participant” under the Act. *See* Minn. Stat. § 609.05, subd. 2a(c)(1) (2024). A “major participant” is defined, in part, as someone who “used a deadly weapon during the commission of the underlying felony . . . where it was reasonably foreseeable that the weapon would be used in the underlying felony.” *Id.*

The district court determined that Williams could not prove by a preponderance of the evidence that he was not a “major participant” in the murder. The court found that Williams, “by his own admission, used by possessing, a deadly weapon (firearm) during the commission of the underlying felony (intentional murder) and thus satisfies the definition of a major participant in the commission of the crime.” The district court based these findings on Williams’ plea colloquy.

But Williams’ plea colloquy does not establish that he “used” the firearm. The relevant portion of the plea hearing reads:

STATE: Okay. How many weapons did you guys have?

WILLIAMS: Two.

STATE: Okay. So did each of you have one?

WILLIAMS: Yes.

STATE: Okay. What kind did you have?

WILLIAMS: I had a Glock 20, 10[-]millimeter.

STATE: And what kind did [co-defendant] have?

WILLIAMS: A Glock. I believe it was [a] 19.

STATE: It was a 9[-]millimeter, right?

WILLIAMS: Yes.

. . . .

STATE: Okay. And what did [co-defendant] do when he ran up on [the victim]?

WILLIAMS: He started shooting.

STATE: Okay. Do you remember he fired about—he fired multiple shots at [the victim], right?

WILLIAMS: Yeah. I think it was like se—I think like seven.

STATE: Okay. We—I think we have six 9[-]millimeter casings at the scene.

WILLIAMS: Oh, yeah, that could be.

The plea hearing established only that Williams possessed a gun. Whether Williams “used” the firearm was not resolved during the plea colloquy. Thus, we conclude that the district court clearly erred by finding Williams “used” the gun. That question of fact cannot be resolved at the preliminary-application stage based upon the plea hearing record. Rather, that question requires an evidentiary hearing. The district court, therefore, clearly erred in finding that Williams used a firearm based solely on the plea-hearing record.

B. The district court abused its discretion when it failed to analyze whether Williams acted with extreme indifference to human life.

Williams argues that the district court abused its discretion by not analyzing whether he acted with extreme indifference to human life. We agree.

To qualify for relief from a second-degree felony-murder conviction, a petitioner must show by a preponderance of the evidence that they were “not a major participant in the underlying felony” or that they “did not act with extreme indifference to human life.” 2024 Minn. Laws ch. 123, art. 4, § 20, subd. 7(b)(2), at 2269.¹ Under the amended Act, “major participant” and “extreme indifference to human life” are separated by the disjunctive “or,” meaning they are two alternate concepts. *See State v. Loge*, 608 N.W.2d 152, 155 (Minn. 2000) (“These two alternate concepts are separated by the disjunctive ‘or,’ not ‘and.’ Unlike the use of the word ‘and,’ ‘or’ signifies the distinction between two factual situations. We have long held that in the absence of some ambiguity surrounding the legislature’s use of the word ‘or,’ we will read it in the disjunctive and require that only one of the possible factual situations be present in order for the statute to be satisfied.”). Thus, the plain language of the Act required that Williams satisfy just one of the two scenarios. 2024 Minn. Laws ch. 123, art. 4, § 20, subd. 7(b)(2) at 2269.

¹ The district court likely did not address “extreme indifference” because before the 2024 amendments, the Act “linked ‘major participant’ and ‘extreme indifference to human life’ in the conjunctive,” entitling a petitioner to relief “only if they showed *both* that they were ‘not a major participant . . . and [that they] did not act with extreme indifference to human life.’” *Colbert v. State*, A25-0626, 2026 WL 446201 at *7 (Minn. App. Feb. 17, 2026) (quoting 2023 Minn. Laws ch. 52, art. 4, § 24, subd. 7(b)(2), at 868 (emphasis and third alteration in original)). But the law in effect at the time Williams filed his second preliminary application separated “major participant” from “extreme indifference” with an “or,” meaning Williams only needs to establish one to receive relief under the Act.

Williams’ second preliminary application asserts that he “is entitled to relief because: . . . (3) he will establish by a preponderance of the evidence . . . that he was not a major participant in the underlying felony *and did not act with extreme indifference to human life.*” (emphasis added). The district court did not address whether Williams acted “with extreme indifference to human life” as required by the disjunctive language of the Act. Thus, we reverse and remand for the district court to consider Williams’ second preliminary application as to whether he acted “with extreme indifference to human life.”

Reversed and remanded.