

*This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A13-0934**

Silvia Lopez,  
A/K/A Manda Gutierrez, petitioner,  
Appellant,

vs.

State of Minnesota,  
Respondent.

**Filed April 7, 2014  
Affirmed  
Smith, Judge**

Lincoln County District Court  
File No. 41-K5-01-000206

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(for appellant)

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Glen A. Petersen, Lincoln County Attorney, Tyler, Minnesota (for respondent)

Considered and decided by Connolly, Presiding Judge; Chutich, Judge; and Smith,  
Judge.

**UNPUBLISHED OPINION**

**SMITH**, Judge

We affirm the district court's denial of appellant's petition for postconviction relief because the petition is time-barred under Minn. Stat. § 590.01, subd. 4 (2012).

## FACTS

Appellant Silvia Lopez is a native of Mexico who has lived in the United States for more than 26 years. In December 2001, respondent State of Minnesota charged Lopez with one count of wrongfully obtaining public assistance. On April 18, 2002, Lopez executed a four-page plea petition, which included a one-sentence advisory regarding potential immigration consequences for noncitizen defendants. When the plea petition was submitted to the district court, Lopez's attorney noted that he had not gone through it with Lopez; Lopez had merely read through the petition with an interpreter. After stating that she understood the charges against her and that she wished to waive the rights enumerated in the plea petition, Lopez admitted that between 1996 and 2000 she received public assistance for her and her children and failed to inform the applicable human services agency that she was employed and that an adult male (the children's father) was living in her home. The district court accepted her guilty plea, stayed imposition of her sentence, and imposed conditions of probation, which included 150 days of house arrest and payment of restitution.

More than nine years later, in May 2011, Lopez's son—a U.S. citizen—filed a petition with U.S. Citizenship and Immigration Services (USCIS) to help Lopez become a lawful permanent resident. Lopez applied to adjust her status to that of a lawful permanent resident. Recognizing that her 2002 conviction may present a barrier, Lopez subsequently applied to waive this potential ground of inadmissibility. On March 1, 2012, USCIS concluded that the conviction at issue constitutes a “crime involving moral

turpitude” and renders Lopez ineligible to adjust her status to that of lawful permanent resident; USCIS also denied Lopez’s waiver application.

On November 19, 2012, Lopez moved to withdraw her guilty plea under Minn. R. Crim. P. 15.05. Lopez argued that, because her attorney did not explain the immigration consequences of her guilty plea, the guilty plea was not accurate, voluntary, and intelligent, and her attorney provided ineffective assistance of counsel. Following a hearing and additional written argument, the district court concluded that Lopez’s claims are time-barred and denied her request for postconviction relief.

### **D E C I S I O N**

“[A] motion to withdraw a guilty plea made after sentencing must be raised in a petition for postconviction relief.” *Lussier v. State*, 821 N.W.2d 581, 586 n.2 (Minn. 2012). An appellate court “review[s] the denial of postconviction relief for an abuse of discretion,” reviewing legal conclusions de novo and factual findings for clear error. *Greer v. State*, 836 N.W.2d 520, 522 (Minn. 2013).

Generally, if no direct appeal is filed, a person must file a petition for postconviction relief within two years of “the entry of judgment of conviction or sentence.” Minn. Stat. § 590.01, subd. 4(a). However, “[a] person whose conviction became final before August 1, 2005, had until July 31, 2007, to file a timely postconviction petition.” *Lussier*, 821 N.W.2d at 586 (citing Act of June 2, 2005, ch. 136, art. 14, § 13, 2005 Minn. Laws 901, 1098). And an otherwise untimely petition may be considered if it meets one of five exceptions—including the interests-of-justice

exception—and is “filed within two years of the date the claim arises.” Minn. Stat. § 590.01, subd. 4(b), (c).

Lopez concedes that if her petition does not satisfy the interests-of-justice exception, it is untimely. We regrettably conclude that the petition does not satisfy the exception. Under the interests-of-justice exception, a district court may consider a postconviction petition if the petitioner establishes “that the petition is not frivolous and is in the interests of justice.” *Id.*, subd. 4(b)(5). The supreme court has “made clear” that “the interests-of-justice referred to in [this subdivision] relate to the *reason* the petition was filed after the 2-year time limit in subdivision 4(a), not the *substantive claims* in the petition.” *Sanchez v. State*, 816 N.W.2d 550, 557 (Minn. 2012).

In other words, the interests-of-justice exception is triggered by an injustice that *caused* the petitioner to miss the primary deadline in subdivision 4(a), not the *substance* of the petition. When the only injustice claimed is identical to the substance of the petition, and the substance of the petition is based on something that happened before or at the time a conviction became final, the injustice simply cannot have caused the petitioner to miss the 2-year time limit in subdivision 4(a), and therefore is not the type of injustice contemplated by the interests-of-justice exception in subdivision 4(b)(5).

*Id.* Here, the claimed injustice—that Lopez was unaware of her guilty plea’s negative immigration consequences—is identical to the substance of the petition and is based on events that happened before her conviction became final. Although the *substance* of the petition likely has merit, Lopez has not identified any injustice that has *caused* her to miss the primary deadline. Lopez has not established that an injustice exists that entitles her to invoke the interests-of-justice exception to the statute of limitations.

Moreover, even if the exception applied, Lopez's petition still would be time-barred. The relevant exception extends the filing deadline to two years from the date the claim arose. Minn. Stat. § 590.01, subd. 4(c). A petitioner's claim "arises when a petitioner knew or should have known that [s]he had a claim." *Sanchez*, 816 N.W.2d at 560. This is an objective, rather than a "subjective, actual knowledge standard." *Id.* at 558. Because a "crime involving moral turpitude" would have rendered Lopez ineligible to adjust her status at the time of her conviction, her claim arose in April 2002. *See* 8 U.S.C. § 1182 (a)(2)(A)(i)(I) (2000). Because Lopez brought her petition more than two years after this date, the petition would be untimely, even if the interests-of-justice exception applied.

We believe it unfortunate that USCIS denied Lopez's waiver application, but that decision is beyond the scope of our review. Under controlling law, the district court correctly concluded that Lopez's petition for postconviction relief is time-barred under Minn. Stat. § 590.01, subd. 4.

**Affirmed.**