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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A12-0267**

James Joseph Klaseus, petitioner,  
Appellant,

vs.

State of Minnesota,  
Respondent.

**Filed March 18, 2013  
Affirmed  
Schellhas, Judge**

Nicollet County District Court  
File No. 52-K4-94-000055

David W. Merchant, Chief Appellate Public Defender, Anders J. Erickson, Assistant  
Public Defender, St. Paul, Minnesota (for appellant)

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michelle Zehnder Fischer, Nicollet County Attorney, Kezia B. Killion, Assistant County  
Attorney, St. Peter, Minnesota (for respondent)

Considered and decided by Kalitowski, Presiding Judge; Worke, Judge; and  
Schellhas, Judge.

**UNPUBLISHED OPINION**

**SCHELLHAS, Judge**

Appellant challenges the district court's denial of postconviction relief. We affirm.

## FACTS

In February 1994, respondent State of Minnesota charged appellant James Klaseus with first-degree criminal sexual conduct in violation of Minn. Stat. § 609.342, subs. 1(a), 2 (1992), for “sexual[ly] penetrat[ing] . . . a 2 1/2 year old child . . . while [Klaseus] was more than 36 months older than said child.” According to a document, entitled “SCHEDULE OF DOCUMENTS USED FOR ALFORD\GUILTY PLEA HEARING,” filed September 20, 1994, through a plea agreement with the state, Klaseus agreed to plead guilty to second-degree criminal sexual conduct. At a hearing on September 30, 1994, Klaseus pleaded guilty as an *Alford* plea to second-degree criminal sexual conduct and answered “[n]o” to the question, “Do you make any claim you’re innocent of the charge?” Klaseus affirmed that he had discussed “at some length” with his attorney the night before the plea hearing “what an Alford plea is” and had discussed with his attorney “the packet of information that was going to be given to the Judge as . . . part of this.”

At the plea hearing, the district court admitted six exhibits, provided by the state, to which Klaseus made no objection. Klaseus’s attorney noted that he had compiled the exhibits with the state’s attorney and that the exhibits, “if seen through the eyes of a jury[,] would most likely result in a conviction.” The prosecutor described the exhibits as including evidence that Klaseus admitted to “penetrating the 2 1/2 year old victim’s[—L.D.’s—] vagina with his finger” and fondling L.D.’s breasts on February 12, 1994; L.D. informed her parents that Klaseus “touched” L.D. “[i]n her privates” and “played with her pointies”; L.D.’s father and mother observed L.D. say “Oowie” and “Hurt” “a couple

of times” when L.D. “put her hand down to her vagina area”; Klaseus subsequently admitted to a fellow prisoner with whom he was in jail that he had “abused other children besides the one that he [was] charged with, or the one that he was already convicted of”; and, when asked by the prisoner if he realized how much harm he had caused L.D., Klaseus said, “[H]uh, she will get over it.” The district court admitted the six exhibits and stated that it “accept[ed] [Klaseus’s] plea of guilty.”

On October 31, 1994, the district court sentenced Klaseus to 52 months’ imprisonment but stayed execution of the sentence and placed Klaseus on supervised probation. Among other things, the probation terms required Klaseus to “have no unsupervised contact with any child under the age of 14 years.” The record does not reflect that anyone informed Klaseus that he had a right to appeal his conviction or sentence.

The record includes a document, dated October 11, 2007, regarding an alleged probation violation by Klaseus. The document states, “You have the right to appeal the determination of this Court,” “[t]he right to be represented by an attorney” and that, if Klaseus could not afford an attorney, “one will be appointed for you.” Klaseus signed the document and waived his right to counsel. The court accepted Klaseus’s admission that he violated his probation terms by “having contact with children under the age of 14.”

On November 19, 2009, Klaseus, assisted by counsel, moved the district court to modify his probation terms to permit him to have “unsupervised contact with his fiancé’s children” and to “move in” with her and her children. The court record does not contain a

copy of the court's order in response to this motion, but Klaseus's subsequent requests of the court imply that the court denied this motion.

On October 26, 2011,<sup>1</sup> Klaseus, unassisted by counsel, sought to withdraw his *Alford* plea to second-degree criminal sexual conduct by filing a "Post-Conviction Motion," alleging ineffective assistance of counsel in 1994. Klaseus claimed that his counsel ignored "key evidence," failed to cross-examine his sisters, and "force[d] and manipulated" him to confess to the crime "without a real defense." On November 21, Klaseus signed a document, entitled "WAIVER OF COUNSEL," which, in part, stated:

4. Notwithstanding my right to be represented in a post-conviction proceeding by the Office of the Appellate Public Defender, I wish to waive that right and represent myself pro se. I understand that by this waiver I am permanently waiving my right to the assistance of the attorneys in the Appellate Public Defender's Office or any other attorney retained at public expense.

On December 16, without conducting an evidentiary hearing, the postconviction court denied Klaseus's request for relief because, among other reasons, his postconviction-relief "[m]otion" was "procedurally deficient," Klaseus had pleaded guilty more than 17 years earlier, and the facts upon which Klaseus sought to withdraw his plea were matters known at the time of plea and sentencing.

On February 16, 2012, Klaseus filed this appeal from the postconviction court's order. Klaseus subsequently, with the assistance of counsel, moved this court to stay his appeal and remand to the district court to enable him to file an amended postconviction petition. *Klaseus v. State*, No. A12-267, at \*1 (Minn. App. Apr. 27, 2012) (order). In

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<sup>1</sup> The document is dated October 6, 2011.

support of the motion, Klaseus's counsel explained that, after reviewing the transcripts, he concluded that meritorious issues were not raised in Klaseus's pro se postconviction-relief petition, including the validity of his *Alford* plea. *Id.* at \*2. On April 27, this court denied Klaseus's motion to stay his appeal because, among other reasons, Klaseus offered only conclusory descriptions of the issues he sought to raise through further postconviction proceedings. *Id.*

Klaseus later filed a second motion to stay his postconviction appeal and remand to the district court to enable him to file an amended postconviction petition. *Klaseus v. State*, No. A12-267, at \*1 (Minn. App. June 1, 2012) (order). Based on counsel's "more particularized statement of the facts or issues he [sought] to raise in an amended postconviction petition," this court granted the motion, ordering Klaseus to file his amended postconviction petition by June 29 and noting that this court's order "shall not be construed as an expression of opinion on the merits of the amended petition." *Id.* at \*2.

On June 28, Klaseus petitioned the district court to allow him to withdraw his September 30, 1994 *Alford* plea, arguing that the factual basis for his plea "was insufficient" "because it was not accurate according to the requirements articulated in *State v. Theis*, 742 N.W.2d 643 (Minn. 2007)." The postconviction court denied the petition, and this court therefore dissolved the stay of Klaseus's appeal. *Klaseus v. State*, No. A12-0267, at \*1-2 (Minn. App. Aug. 22, 2012) (order).

## D E C I S I O N

An appellate court "will reverse a decision of the postconviction court only if that court abused its discretion." *Lussier v. State*, 821 N.W.2d 581, 588 (Minn. 2012)

(quotation omitted). “A postconviction 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.” *Riley v. State*, 819 N.W.2d 162, 167 (Minn. 2012) (quotation omitted). An appellate court reviews the postconviction court’s legal conclusions de novo and factual determinations under a clearly erroneous standard. *Id.* An appellate court does not reverse the postconviction court’s factual determinations unless they are not factually supported by the record. *Id.*

Klaseus petitioned the district court for postconviction relief on October 26, 2011, and again in his amended petition on June 28, 2012. In both petitions, Klaseus challenged his October 31, 1994 conviction. The postconviction court denied Klaseus’s petitions on the basis that they were untimely under Minn. Stat. § 590.01, subd. 4(a) (2010), rejecting Klaseus’s interests-of-justice argument because the court determined that Klaseus knew or should have known that his *Alford* plea was deficient in 2007 when the supreme court decided *State v. Theis*, 742 N.W.2d 643 (Minn. 2007).<sup>2</sup> See Minn. Stat. § 590.01, subd. 4(a)(1) (prohibiting a petitioner, who did not directly appeal, from petitioning for postconviction relief “more than two years after . . . the entry of judgment of conviction or sentence”).

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<sup>2</sup> In *Theis*, the supreme court concluded that a defendant’s *Alford* plea was not accurate because the defendant “did not acknowledge . . . that evidence described at the plea hearing would be sufficient for a jury to find him guilty beyond a reasonable doubt of fifth-degree criminal sexual conduct.” 742 N.W.2d at 649–50. Here, Klaseus’s attorney, not Klaseus, acknowledged that the evidence described at the plea hearing, “if seen through the eyes of a jury[,] would most likely result in a conviction.”

Because Klaseus did not directly appeal his October 31, 1994 conviction, his June 28, 2012 amended petition is untimely under Minn. Stat. § 590.01, subd. 4(a)(1), and “cannot be heard” unless Klaseus “establishes that one of the exceptions” applies under Minn. Stat. § 590.01, subd. 4(b) (2010). *Miller v. State*, 816 N.W.2d 547, 548 (Minn. 2012); *cf. State v. Yang*, 774 N.W.2d 539, 565 (Minn. 2009) (“[P]ostconviction courts treat motions to amend after postconviction relief has been denied as new petitions for postconviction relief.”).

Klaseus argues that his petition was not frivolous and that the interests of justice required the postconviction court to grant him relief. Under Minn. Stat. § 590.01, subd. 4(b)(5), “a court may hear a petition for postconviction relief” when “the petitioner establishes to the satisfaction of the court that the petition is not frivolous and is in the interests of justice.” Klaseus claims that the postconviction court should have granted him relief in the interests of justice because he was “not made aware that he had the right to appeal his conviction.”

Minnesota Statutes section 590.01, subdivision 4(c), “creates the additional requirement that a ‘petition invoking an exception provided in [subdivision 4](b) must be filed within two years of the date the claim arises.’” *Sanchez v. State*, 816 N.W.2d 550, 556 (Minn. 2012) (quoting Minn. Stat. § 590.01, subd. 4(c)). An interests-of-justice claim arises under subdivision 4(b)(5) “when the petitioner knew or should have known that he had a claim.” *Id.* at 560. The knew-or-should-have-known standard is an objective standard, under which a petitioner’s subjective, actual knowledge is irrelevant. *Id.* at 558.

Klaseus argues that he meets the interests-of-justice exception under subdivision 4(b)(5) to the two-year limitations period in subdivision 4(a) because, in October 1994, no one informed him of his right to appeal. He further argues that his interests-of-justice claim did not arise until February 15, 2012, the day on which his appellate counsel “received [his] file and began to review his case.”

When the district court sentenced Klaseus on October 31, 1994, Minnesota Rules of Criminal Procedure 27.03, subdivision 5 (1994), provided:

Subd. 5. Notice of Right to Appeal. After imposition of sentence or granting of probation *the court shall inform* the defendant of the right to appeal the judgment of conviction or sentence or both and the right of a person who is unable to pay the cost of appeal to apply for leave to appeal at state expense by contacting the state public defender.

(Emphasis added.); *accord* Minn. R. Crim. P. 27.03, subd. 5 (2012). Although the record does not reflect that the district court—or anyone else—informed Klaseus of his right to appeal at or before the October 31, 1994 sentencing hearing, we disagree that Klaseus’s interests-of-justice claim did not arise until February 15, 2012.

We conclude that any interests-of-justice claim that Klaseus may have had under subdivision 4(b)(5) as a result of the district court’s failure to inform him of his right to appeal at his sentencing hearing on October 31, 1994, arose on October 31, 1994, because it was on that day that Klaseus, who was then represented by counsel, knew or should have known of the court’s error. *See Sanchez*, 816 N.W.2d at 558 (discussing when subdivision 4(c) claim arises under knew-or-should-have-known standard, citing supreme court jurisprudence standing for the propositions that “ignorance or lack of

knowledge . . . will not toll the statute of limitations” and “ignorance of a cause of action not involving continuing negligence or trespass, or fraud on the part of the defendant, does not toll the accrual of a cause of action” (quotations omitted)).

Because Klaseus filed his June 28, 2012 amended postconviction-relief petition more than 17 years after his interests-of-justice claim arose, we conclude that the postconviction court did not abuse its discretion by denying his June 28, 2012 amended postconviction-relief petition as time barred under section 590.01, subdivision 4(c).

**Affirmed.**