

*This opinion will be unpublished and  
may not be cited except as provided by  
Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A08-0419**

Cezary Wernikiewicz, petitioner,  
Appellant,

vs.

State of Minnesota,  
Respondent.

**Filed February 24, 2009  
Reversed and remanded  
Johnson, Judge**

Carver County District Court  
File No. 10-CR-04-213

Lawrence Hammerling, Chief Appellate Public Defender, Michael W. Kunkel, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

James W. Keeler, Carver County Attorney, Michael D. Wentzell, Assistant County Attorney, Carver County Courthouse, 604 East Fourth Street, Chaska, MN 55318 (for respondent)

Considered and decided by Johnson, Presiding Judge; Schellhas, Judge; and Huspeni, Judge.\*

---

\*Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

## UNPUBLISHED OPINION

**JOHNSON**, Judge

In 2005, Cezary Wernikiewicz pleaded guilty pursuant to a plea agreement. The district court imposed consecutive prison sentences totaling 88 months and a five-year term of conditional release. In 2007, Wernikiewicz filed a pro se petition for postconviction relief, which the district court denied. We conclude that Wernikiewicz was denied his statutory right to representation in postconviction proceedings because the district court administrator did not forward a copy of his pro se postconviction petition to the state public defender's office pursuant to Minn. Stat. § 590.02, subd. 1(4) (2006). Therefore, we reverse and remand.

### FACTS

In July 2004, the state charged Wernikiewicz with six offenses, including second-degree criminal sexual conduct, third-degree criminal sexual conduct, and child endangerment, based on incidents occurring between 2003 and 2004. In June 2005, pursuant to a plea agreement, Wernikiewicz pleaded guilty to three of the counts. In December 2005, the district court imposed consecutive 44-month prison sentences on counts 1 and 2 and a concurrent 90-month prison sentence on count 4, the last of which was stayed. The district court's sentencing order also provided that Wernikiewicz is subject to a five-year term of conditional release following his imprisonment. Wernikiewicz did not pursue a direct appeal from his conviction and sentence.

In December 2007, Wernikiewicz filed a pro se postconviction petition, alleging eight grounds. Among them is Wernikiewicz's claim that the imposition of the five-year

term of conditional release violated the terms of his plea agreement. In January 2008, the district court summarily denied Wernikiewicz's postconviction petition.

Wernikiewicz appeals. His appointed appellate counsel submitted a brief that raises one issue -- that the imposition of the conditional-release term violated his plea agreement. Wernikiewicz also submitted a pro se supplemental brief in which he argued that he was denied his statutory right to representation in postconviction proceedings because the district court administrator did not forward a copy of his pro se postconviction petition to the state public defender's office pursuant to Minn. Stat. § 590.02, subd. 1(4).

### **DECISION**

We will begin by addressing Wernikiewicz's pro se argument. The relevant statutes provide:

A person financially unable to obtain counsel who desires to pursue the remedy provided in section 590.01 may apply for representation by the state public defender. The state public defender shall represent such person under the applicable provisions of sections 611.14 to 611.27, if the person has not already had a direct appeal of the conviction. The state public defender may represent, without charge, all other persons pursuing a postconviction remedy under section 590.01, who are financially unable to obtain counsel.

Minn. Stat. § 590.05 (2008). "In the event the petitioner is without counsel, the court administrator shall forthwith transmit a copy of the petition to the state public defender and shall advise the petitioner of such referral." Minn. Stat. § 590.02, subd. 1(4). Because Wernikiewicz did not pursue a direct appeal following his conviction, the state

public defender is required by section 590.05 to represent him in postconviction proceedings in the district court, assuming he is financially unable to obtain counsel.

If a district court administrator does not adhere to the requirement of section 590.02, subdivision 1(4), a postconviction petitioner who has not had a direct appeal is entitled to reversal and remand so that the petitioner may receive the benefits of the statutory right to representation. *Paone v. State*, 658 N.W.2d 896, 899-900 (Minn. App. 2003). The implication of *Paone* is that the district court administrator's transmittal of the pro se postconviction petition to the state public defender constitutes an application for counsel pursuant to the first sentence of section 590.05.

Wernikiewicz asserts that the district court administrator failed to forward a copy of his pro se postconviction petition to the state public defender's office, as required by section 590.02, subdivision 1(4). The state concedes that the district court administrator failed to do so. Thus, Wernikiewicz is entitled to reversal of the district court's denial of his postconviction petition and to a remand, at which time the court administrator shall forward a copy of his pro se postconviction petition to the state public defender's office, as required by the statute.

The state contends that the district court's decision should be affirmed because Wernikiewicz failed to request assistance from the public defender's office. In *Paone*, however, the postconviction petitioner also did not apply for representation by the state public defender, but this court nonetheless concluded that reversal was required. *Id.* at 898-99. The state also contends that Wernikiewicz's representation by a public defender on appeal fulfills his statutory right to representation. In essence, the state contends that

the assistance of appointed counsel on appeal cures the absence of counsel in the district court proceedings. In *Paone*, however, the petitioner also was represented by a public defender on appeal, but this court did not consider the appellate representation to be a sufficient reason to obviate reversal. *Id.* at 898, 900.

In sum, this case is governed by *Paone*, and we are compelled to conclude that the district court administrator's omission is reversible error. The district court's denial of Wernikiewicz's postconviction petition is reversed, and the matter is remanded to the district court. On remand, the district court administrator shall forward a copy of Wernikiewicz's postconviction petition to the state public defender's office, as required by section 590.02, subdivision 1(4).

In light of our disposition of Wernikiewicz's pro se argument, we express no views at this time on the merits of Wernikiewicz's argument that the district court's imposition of the five-year term of conditional release was erroneous.

**Reversed and remanded.**