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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2111**

Arthur Dale Senty-Haugen, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed July 13, 2010
Affirmed
Stoneburner, Judge**

Ramsey County District Court
File No. 62KX923392C

David W. Merchant, Chief Appellate Public Defender, Andrea Barts, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Susan Gaertner, Ramsey County Attorney, Mark Nathan Lystig, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Considered and decided by Stoneburner, Presiding Judge; Hudson, Judge; and Collins, Judge.*

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

UNPUBLISHED OPINION

STONEBURNER, Judge

Appellant challenges the postconviction court's denial of his request for relief. Because appellant's petition was not timely filed and does not properly invoke any exceptions to the statutory time requirement, we affirm.

FACTS

Appellant Arthur Dale Senty-Haugen was convicted in July 1993 of seven counts of criminal sexual conduct involving minors. *In re Senty-Haugen*, 583 N.W.2d 266, 267 (Minn. 1998). He did not appeal.

In November 1994, several weeks before appellant's scheduled release, Ramsey County petitioned to have appellant indefinitely committed as a sexual psychopathic personality (SPP) or sexually dangerous person (SDP) under Minn. Stat. §§ 253B.02, subds. 18a, 18b, .185 (1994). *Senty-Haugen*, 583 N.W.2d at 267. Appellant did not contest the commitment petition. *Id.* He admitted virtually all of the allegations in the petition, waived his right to a hearing, and stipulated that he met the requirements for commitment. *Id.*

Appellant petitioned pro se for postconviction relief in May 2009, arguing that the two-year statute of limitations to file a petition for postconviction relief did not apply to him because, among other things, newly discovered evidence existed that would exonerate him of guilt, and "defendants are entitled to at least one substantive review." The district court dismissed appellant's petition without an evidentiary hearing, concluding that appellant's petition was not timely filed under Minn. Stat. § 590.01, subd.

4(a) (2008), and that appellant failed to adequately support his claim of newly discovered evidence. This appeal followed.

D E C I S I O N

The findings of a postconviction court are reviewed to “determine whether there is sufficient evidentiary support in the record.” *Dukes v. State*, 621 N.W.2d 246, 251 (Minn. 2001). Great deference is afforded to the district court’s findings of fact, and they will not be reversed unless they are clearly erroneous. *Id.* Issues of law, however, are reviewed de novo. *Leake v. State*, 737 N.W.2d 531, 535 (Minn. 2007). “The decisions of a postconviction court will not be disturbed unless the court abused its discretion.” *Dukes*, 621 N.W.2d at 251.

“Allegations in a postconviction petition must be more than argumentative assertions without factual support, and an evidentiary hearing is unnecessary if the petitioner fails to allege facts that are sufficient to entitle him or her to the relief requested.” *Leake*, 737 N.W.2d at 535 (quotation and citation omitted).

With some exceptions, Minn. Stat. § 590.01, subd. 4(a) (2008), provides that “[n]o petition for postconviction relief may be filed more than two years after 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.” Subdivision 4 was added to section 590.01 in 2005. 2005 Minn. Laws ch. 136, art. 14, § 13, at 1097–98. The amendment was effective August 1, 2005, and provided that “[a]ny person whose conviction became final before August 1, 2005, shall have two years after the effective date of this act to file a petition for postconviction relief.” *Id.* at 1098.

Appellant contends that his claims should be considered because he has not yet been afforded appellate court review of the proceedings leading to his convictions. Appellant cites *Deegan v. State*, 711 N.W.2d 89, 97 (Minn. 2006) to support his assertion that he has the right to one appellate review of his conviction. In *Deegan*, the supreme court stated that Minnesota provides a “broad right of review in a first review by postconviction proceeding[],” *Id.* at 94. But *Deegan* noted that a petitioner who has not brought a direct appeal is entitled to assert nearly the same breadth of claims that could have been brought in a direct appeal “so long as the postconviction claims are in compliance with the procedural requirements of the [statute].” *Id.* Because appellant did not comply with the statute’s requirements, *Deegan* does not support appellant’s claim that he is entitled to review of his petition for postconviction relief on the merits.

Because appellant did not file a direct appeal, he was required to file a petition for postconviction relief by July 31, 2007. *See* Minn. Stat. § 590.01, subd. 4a. Appellant filed his petition approximately two years after the deadline. Therefore, unless one of the exceptions applies, appellant’s petition is untimely. *Stewart v. State*, 764 N.W.2d 32, 34 (Minn. 2009) (concluding postconviction relief petition was untimely and not to be considered on the merits when petitioner filed outside the statutory timeline and “did not assert or establish any of the statute’s exceptions”).

Minn. Stat. § 590.01, subd. 4(b) (2008), provides that, notwithstanding the two-year limitation in subdivision 4(a), the district court may hear a petition for postconviction relief if physical disability or mental disease was the cause of the delay; in light of newly discovered evidence; on account of new constitutional or statutory

interpretations; where the interests of justice require retroactive application of a significant change in substantive or procedural law; or when “the petitioner establishes to the satisfaction of the court that the petition is not frivolous and is in the interests of justice.” “[T]he exceptions include a pleading requirement implicit in the statute.” *Nestell v. State*, 758 N.W.2d 610, 614 (Minn. App. 2008). Minn. Stat. § 590.01, subd. 4(c) (2008), states that “[a]ny petition invoking an exception . . . must be filed within two years of the date the claim arises.” We have previously concluded that “by using the phrase ‘petition invoking,’ the legislature intended to require petitions expressly to identify the applicable exception.” *Nestell*, 758 N.W.2d at 614 (affirming dismissal of a petition for postconviction relief filed a week after the two-year statute of limitations expired as untimely and failing to invoke an exception to the statute of limitation).

Appellant’s case is nearly identical to *Nestell*. Appellant’s petition was subject to the 2005 amendment, requiring appellant to file for postconviction relief no later than July 31, 2007. Appellant’s petition was untimely. And because his invocation of the newly discovered evidence exception was not supported, appellant failed to meet both the timeliness and pleading requirements for postconviction relief under Minn. Stat. § 590.01, subd. 4.

Appellant asserts three arguments in his pro se supplemental brief: that the district court abused its discretion by imposing an upward sentencing departure based on appellant’s plea agreement; that appellant’s plea bargain was breached; and that appellant received ineffective assistance of counsel. Appellant’s pro se arguments fail for the same reason the rest of his petition for postconviction relief fails: his petition was untimely and

he failed to meet the pleading requirements of Minn. Stat. § 590.01, subd. 4. We conclude that the district court did not abuse its discretion by summarily dismissing appellant's petition.

Affirmed.