STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1391

David Richard Carlson, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed March 31, 2014
Affirmed
Stauber, Judge

St. Louis County District Court
File No. 69DUCR052261

David Richard Carlson, Moose Lake, Minnesota (pro se appellant)

Mark Rubin, St. Louis County Attorney, Gary W. Bjorklund, Assistant County Attorney, Duluth, Minnesota (for respondent)

Considered and decided by Schellhas, Presiding Judge; Stauber, Judge; and Klaphake, Judge.*

U N P U B L I S H E D O P I N I O N

STAUBER, Judge

In this pro se postconviction appeal, appellant alleges several procedural errors at trial. Because appellant's claims are untimely, we affirm.

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

FACTS

In March 2006, a jury convicted appellant David Richard Carlson of one count of first-degree criminal sexual conduct, two counts of third-degree criminal sexual conduct, and one count of solicitation of a child to engage in sexual conduct.[1] Appellant subsequently raised two postconviction challenges, both of which were reviewed by this court. We held that the claims in those petitions were time-barred under Minn. Stat. § 590.01, subd. 4 (2012) and *State v. Knaffla*, 309 Minn. 246, 252, 243 N.W.2d 737, 741 (1976). *See Carlson v. State*, No. A09-1558 (Minn. App. Jan. 25, 2010) (order op.), *review denied* (Minn. Apr. 20, 2010); *Carlson v. State*, No. A12-0394, 2012 WL 5476140, at *3-4 (Minn. App. Nov. 13, 2012), *review denied* (Minn. Jan. 15, 2013).

In May 2013, appellant filed his third and most recent petition for postconviction relief, based on alleged ineffective assistance of trial counsel, errors in the jury instructions, procedural errors at trial, and double jeopardy. The district court denied the petition without an evidentiary hearing, ruling that the petition was filed after the two-year deadline mandated in Minn. Stat. § 590.01, subd. 4. This appeal followed.

D E C I S I O N

"A petitioner seeking postconviction relief has the burden of establishing, by a fair preponderance of the evidence, facts [that] warrant a reopening of the case." *State v. Rainer*, 502 N.W.2d 784, 787 (Minn. 1993). Denial of a petition without a hearing is appropriate if "the petition and the files and records of the proceeding conclusively show

[1] A thorough recitation of the facts underlying appellant's conviction can be found in *State v. Carlson*, No. A06-0961, 2007 WL 1053411, at *1-2 (Minn. App. Apr. 10, 2007), *review denied* (Minn. June 27, 2007).

that the petitioner is entitled to no relief." Minn. Stat. § 590.04, subd. 1 (2012). We review a district court's denial of a postconviction petition for an abuse of discretion. *Lee v. State*, 717 N.W.2d 896, 897 (Minn. 2006).

Ordinarily, a postconviction petition must be filed within two years of the disposition of a direct appeal. Minn. Stat. § 590.01, subd. 4. A conviction becomes final when the time for petitioning the United States Supreme Court for review expires. *Moua v. State*, 778 N.W.2d 286, 288 (Minn. 2010). Appellant's time to petition for review expired on July 29, 2009. *Carlson*, 2012 WL 5476140, at *3. Because the present petition was filed after that deadline, it must meet one of the exceptions found in Minn. Stat. § 590.01, subd. 4(b). The district court found that none of the claims raised in appellant's petition met these exceptions.

Appellant argues that he is "assert[ing] a new interpretation of federal . . . law by . . . the United States Supreme Court" that is "retroactively applicable to the [his] case." *See* Minn. Stat. § 590.01, subd. 4(b)(3). Although changes in law are generally not retroactively applicable, changes to "watershed rule[s] of criminal procedure" are retroactive. *Danforth v. State*, 761 N.W.2d 493, 496-97 (Minn. 2009) (adopting *Teague v. Lane*, 489 U.S. 288, 311, 109 S. Ct. 1060, 1076 (1989)). Appellant argues that *Milke v. Ryan*, 711 F.3d 998 (9th Cir. 2013) and *Martinez v. Ryan*, 132 S. Ct. 1309 (2012) mark watershed changes in criminal procedure that trigger this exception. But *Milke* arises out of the Ninth Circuit Court of Appeals and thus does not meet the statutory requirement. And *Martinez* merely applies the well-established standard that a claim of ineffective assistance of counsel must be "substantial" in a procedural context that is not relevant

here. *Martinez*, 132 S. Ct. 1309, 1318-19. In sum, appellant does not cite any retroactively applicable law that warrants an exception to the two-year filing deadline.

Appellant also appears to raise the interests-of-justice exception under Minn. Stat. § 590.01, subd. 4(b)(5). But that 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." *Sanchez v. State*, 816 N.W.2d 550, 557 (Minn. 2012). Because appellant's petition only asserts injustices that allegedly occurred before or at trial, it is untimely. *See id.* Appellant raises no other statutory exception that would excuse the untimeliness of his petition. Because appellant's argument is wholly without merit, the district court did not abuse its discretion by finding that no statutory exception to the filing deadline applied. And because "the petition and the files and records of the proceeding conclusively show[ed] that the petitioner [was] entitled to no relief," Minn. Stat. § 590.04, subd. 1, the district court did not abuse its discretion by summarily denying appellant's petition.

Affirmed.