

This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2010).

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1826**

Christopher Austin Sharp, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed August 27, 2012
Affirmed
Kalitowski, Judge**

Wadena County District Court
File No. 80-CR-07-1517

David W. Merchant, Chief Appellate Public Defender, Jodie L. Carlson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Kyra L. Ladd, Wadena County Attorney, Erin C. Stephens, Assistant County Attorney, Wadena, Minnesota (for respondent)

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

UNPUBLISHED OPINION

KALITOWSKI, Judge

Appellant Christopher Austin Sharp challenges the district court's denial of his postconviction petition to withdraw his plea of guilty to third-degree criminal sexual

conduct, arguing that his petition satisfies the exception to the two-year time bar because it is in the interests of justice and was filed within two years from the date his claim arose. We affirm.

D E C I S I O N

Sharp argues that the postconviction court abused its discretion by denying his petition for postconviction relief. “When reviewing a denial of relief by a postconviction court, we review questions of law de novo.” *Colbert v. State*, 811 N.W.2d 103, 104 (Minn. 2012). “Our review of factual findings is limited to determining whether there is sufficient evidence in the record to support the findings of the postconviction court.” *Rickert v. State*, 795 N.W.2d 236, 239 (Minn. 2011). “We will reverse a decision of a postconviction court only if that court abused its discretion.” *Leake v. State*, 737 N.W.2d 531, 535 (Minn. 2007).

Generally, a person must seek postconviction relief within two years from the date of the entry of judgment of conviction or sentence, if no direct appeal is taken, or an appellate court’s disposition of a direct appeal. Minn. Stat. § 590.01, subd. 4(a) (2010). Sharp concedes that his petition for postconviction relief is untimely under subdivision 4(a), but asserts that his petition satisfies the interests-of-justice exception to the time bar. *See id.*, subd. 4(b)(5) (2010) (stating exception).

A petition invoking an exception under subdivision 4(b) “must be filed within two years of the date the claim arises.” *Id.*, subd. 4(c) (2010). Thus, when subdivision 4(b)’s exceptions are invoked, two issues arise: (1) whether the petitioner’s filing of the postconviction petition was timely under subdivision 4(c); and (2) whether the petitioner

established an exception in subdivision 4(b). *Roby v. State*, 787 N.W.2d 186, 191 (Minn. 2010). A petitioner's failure to satisfy either statutory requirement is determinative. *See Colbert*, 811 N.W.2d at 105 n.2 (stating that because petition is untimely under subdivision 4(c), the court need not address whether petitioner established an exception under subdivision 4(b)).

Pursuant to a plea agreement, Sharp pleaded guilty to third-degree criminal sexual conduct on April 22, 2008. The district court accepted the plea but stayed adjudication of Sharp's conviction. *See State v. Moody*, 806 N.W.2d 874, 876 (Minn. App. 2011) (“[F]elony stays of adjudication are treated as sentences for appeal purposes.”). Sharp did not file a direct appeal from this sentence. After Sharp's fourth probation violation, the court revoked his stay of adjudication and imposed a 48-month prison sentence, but stayed execution of the sentence. In July 2010, the court found Sharp violated conditions of probation a fifth time and executed his 48-month prison sentence. On February 7, 2011, Sharp filed his petition for postconviction relief. He claimed that his plea was invalid because it was not accurate and lacked an adequate factual basis, and, therefore, his petition was in the interests of justice.

An interests-of-justice “claim under Minn. Stat. § 590.01, subd. 4(b)(5), arises when the petitioner knew or should have known that he had a claim.” *Sanchez v. State*, ___, N.W.2d ___, ___, 2012 WL 2913192, at *8 (Minn. July 18, 2012). Because Sharp's claim is based entirely on testimony he provided at his plea hearing, Sharp knew or should have known of his claim on April 22, 2008. Thus, because Sharp's claim arose no later than April 22, 2008, and he filed his petition on February 7, 2011, Sharp's petition

invoking the interests-of-justice exception is untimely under subdivision 4(c). Accordingly, the postconviction court did not abuse its discretion in denying Sharp's postconviction petition to withdraw his guilty plea.

Moreover, Sharp's petition does not satisfy the interests-of-justice exception in subdivision 4(b)(5). For purposes of this exception, the interests of justice must "relate to the *reason* the petition was filed after the [two]-year time limit in subdivision 4(a), not the *substantive claims* in the petition." *Id.* at *5. Thus, "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." *Id.* Sharp states that he missed the primary deadline because he had no incentive to challenge the validity of his plea before the district court executed his 48-month prison sentence. Because Sharp does not allege that an injustice caused him to miss the primary deadline in subdivision 4(a), his petition does not satisfy the interests-of-justice exception.

Finally, Sharp argues that the postconviction court's order denying his petition "ignores the fact that [he] has never had a substantive review of his case." But Sharp concedes that "there is no federal or state constitutional right to one review." We agree. Neither the United States Constitution nor the Minnesota Constitution provides a constitutional right to one review. *Larson v. State*, 801 N.W.2d 222, 226 (Minn. App. 2011), *review granted* (Minn. Oct. 18, 2011).

Affirmed.