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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1258**

Eric Wayne Henning, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed March 10, 2014
Affirmed
Schellhas, Judge**

Benton County District Court
File No. 05-CR-07-927

Eric W. Henning, Moose Lake, Minnesota (pro se appellant)

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

Philip K. Miller, Benton County Attorney, Karl Schmidt, Assistant County Attorney, Foley, Minnesota (for respondent)

Considered and decided by Halbrooks, Presiding Judge; Stoneburner, Judge; and Schellhas, Judge.

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant challenges the district court's summary denial of his petition for postconviction relief. We affirm.

FACTS

Appellant Eric Henning pleaded guilty to second-degree criminal sexual conduct under Minn. Stat. § 609.343, subd. 1(a) (2006). He signed a plea petition, acknowledging that his attorney had told him and he understood that the period of conditional release applicable to his offense was ten years. In August 2007, the district court committed Henning to the Minnesota Commissioner of Corrections for 101 months, imposed a ten-year conditional-release term, and required Henning to register as a sex offender under Minn. Stat. § 243.166 (2006). Henning did not appeal from the judgment of his conviction.

In April 2013, Henning petitioned the district court for postconviction relief, seeking the following: (1) permission to withdraw his guilty plea; (2) vacation of his ten-year conditional-release condition or, alternatively, modification of his sentence from ten to five years; and (3) vacation of the lifetime registration requirement. The district court summarily denied Henning's postconviction-relief petition.

This appeal follows.

DECISION

Henning argues that the district court abused its discretion by summarily denying his petition to withdraw his guilty plea and correct his sentence.

A person convicted of a crime who claims that his or her conviction was obtained in violation of the person's constitutional or statutory rights may file a petition for postconviction relief under Minn. Stat. § 590.01, subd. 1(1) [(2012)]. The postconviction court must hold an evidentiary hearing unless the petition and the files and records of the proceeding conclusively show that the petitioner is entitled to

no relief. Minn. Stat. § 590.04, subd. 1 (2012). A postconviction court may summarily deny a petition for postconviction relief when the petition is time barred.

Staunton v. State, 842 N.W.2d 3, 6–7, (Minn. 2014) (quotation marks omitted). We review the denial of postconviction relief for an abuse of discretion. *Greer v. State*, 836 N.W.2d 520, 522 (Minn. 2013). “We review a postconviction court’s legal conclusions de novo.” *Staunton*, 842 N.W.2d at 6. “We will not reverse the court’s factual findings unless they are clearly erroneous.” *Id.* We review the denial of a postconviction evidentiary hearing for an abuse of discretion. *Hooper v. State*, 838 N.W.2d 775, 786 (Minn. 2013).

Before the district court, Henning argued that (1) he did not plead guilty intelligently because his attorney did not inform him that pleading guilty could result in his civil commitment or receipt of a ten-year, rather than five-year, conditional-release term; (2) he received ineffective assistance of counsel; and (3) he had no prior conviction that warranted a ten-year, rather than five-year, conditional-release term or lifetime registration as a predatory offender. The district court concluded that the postconviction petition was untimely but nevertheless rejected Henning’s arguments on their merits. The court reasoned that (1) civil commitment is a collateral, not direct, consequence of Henning’s conviction; (2) the ten-year conditional-release term is required by statute and Henning’s signed plea petition provides for a ten-year conditional-release term; and (3) Henning’s three adjudications of delinquency for second-degree criminal sexual conduct qualify as prior offenses that support requiring lifetime predatory-offender registration. We address Henning’s postconviction arguments.

Denial of Plea Withdrawal

We conclude that the district court did not abuse its discretion by denying Henning's request to withdraw his plea.

A motion to withdraw a guilty plea made after sentencing must be raised in a petition for postconviction relief and the timeliness of the motion is treated the same as the manner in which delays in filing petitions for postconviction relief are treated, including the time limitations in Minn. Stat. § 590.01, subd. 4 (2010).

Lussier v. State, 821 N.W.2d 581, 583 (Minn. 2012) (quotation omitted). Minnesota Statutes section 590.01, subdivision 4(a) (2012), 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.” Henning did not petition the district court for postconviction relief until April 2013, almost six years after the judgment of his conviction in August 2007.

Minnesota Statutes section 590.01, subdivision 4(b) (2012), lists five exceptions to the subdivision 4(a) time limit, including subdivision 4(b)(5), which excepts petitions when “the petitioner establishes to the satisfaction of the court that the petition is not frivolous and is in the interests of justice.” Henning argues that he satisfied the interests-of-justice exception, but the bases of his arguments are identical to the substance of his postconviction petition. Henning’s argument fails because “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.” *Sanchez v. State*, 816 N.W.2d 550, 557 (Minn. 2012).

When the only injustice claimed is identical to the substance of the petition, and the substance of the petition is based on something that happened before or at the time a conviction became final, the injustice simply cannot have caused the petitioner to miss the 2-year time limit in subdivision 4(a), and therefore is not the type of injustice contemplated by the interests-of-justice exception in subdivision 4(b)(5).

Id.

Denial of Sentence Correction

Despite the time limit in section 590.01, subdivision 4(a), rule 27.03, subdivision 9, of the Minnesota Rules of Criminal Procedure provides that “[t]he court may *at any time* correct a sentence not authorized by law.” (Emphasis added.) The two-year limit in the postconviction statute “does not apply to motions properly filed under” rule 27.03, subdivision 9. *Vazquez v. State*, 822 N.W.2d 313, 318 (Minn. App. 2012); *see also State v. Amundson*, 828 N.W.2d 747, 751 (Minn. App. 2013) (concluding that district court erred by “concluding that [defendant]’s rule 27.03 motion was a postconviction petition subject to the two-year time limit set out in Minn. Stat. § 590.01,” reasoning in part that “a defendant cannot waive or forfeit the right to challenge an unauthorized sentence merely because it was part of a plea agreement”). *But cf. Townsend v. State*, 834 N.W.2d 736, 739 (Minn. 2013) (declining to address “whether the statutory time bar under section 590.01, subdivision 4(a)(2) . . . appl[ies] to a motion to correct a sentence under rule 27.03, subdivision 9”).

Although the district court abused its discretion by concluding that Henning's requests for sentence correction as to his conditional-release period and sex-offender-registration requirement were time barred, we affirm the court's denial of relief because Henning's arguments fail on their merits.

Conditional-Release Period

Henning requested reduction of his ten-year conditional-release term to five years, relying on an inapplicable 2004 version of Minn. Stat. § 609.109, subd. 7(a), which, in pertinent part, provided for a ten-year conditional-release period for a sex offender “[i]f the person was convicted [of a sex offense] . . . after a previous sex offense *conviction* as defined in subdivision 5.” (Emphasis added.) In 2005, the legislature repealed Minn. Stat. § 609.109, subd. 7. 2005 Minn. Laws. ch. 136, art. 2, § 23, at 933. When Henning committed his sex offense in March 2007, the governing statute required a ten-year conditional release term. *See* Minn. Stat. § 609.3455, subd. 6 (2006) (stating that “for a violation of section . . . 609.343 . . . , the court shall provide that, after the offender has completed the sentence imposed, the commissioner shall place the offender on conditional release for ten years”).

Sex-Offender Registration Requirement

Henning petitioned for vacation of his lifetime registration requirement, based on his mistaken understanding that the requirement must be predicated on a prior *conviction* under Minnesota Statutes section 609.3455, subdivision 7(b) (2006), which required “*conditional release* for the remainder of the offender's life” when “the offender ha[d] a previous or prior sex offense *conviction*.” (Emphasis added.) Henning argues that,

because the statute does not refer to adjudications, the lifetime registration requirement cannot be based on a prior juvenile adjudication of delinquency. But, at the time of Henning's offense, Minnesota Statutes section 243.166, subdivisions 1b(a)(1)(iii) and 6(d)(1), required a person to register as a predatory offender for life if that person was convicted of violating section 609.343 and "ha[d] a prior conviction *or adjudication* for an offense for which registration was or would have been required under subdivision 1b." (Emphasis added.) Henning's criminal history satisfied the requirements of the statute. The juvenile court adjudicated him delinquent in March 1996 for three sex offenses in violation of section 609.343. At that time, the law required registration for persons previously "adjudicated delinquent" of section 609.343. Minn. Stat. § 243.166, subd. 1(a)(1)(iii) (Supp. 1995).

We conclude that Henning is not entitled to the sentence corrections he requested in his postconviction petition.

Affirmed.