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

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A09-2047**

Alexander Jerome Miller, petitioner,  
Appellant,

vs.

State of Minnesota,  
Respondent.

**Filed July 20, 2010  
Affirmed  
Willis, Judge\***

Ramsey County District Court  
File No. 62-K0-04-4364

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

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

Susan Gaertner, Ramsey County Attorney, Mitchell L. Rothman, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Considered and decided by Shumaker, Presiding Judge; Bjorkman, Judge; and  
Willis, Judge.

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

## UNPUBLISHED OPINION

WILLIS, Judge

Appellant challenges the denial of his petitions for postconviction relief seeking to withdraw his 2005 *Alford* plea to one count of second-degree murder. Because the petitions were untimely, we affirm.

### FACTS

On March 11, 2005, appellant Alexander Jerome Miller entered an *Alford* plea to a charge of second-degree murder, in violation of Minn. Stat. § 609.19, subd. 1(1) (2004). As part of the factual basis for the plea, Miller acknowledged that he caused the death of C.L. Miller moved to withdraw his plea, arguing that it was involuntary, and the district court denied the motion on April 6. On April 11, Miller was sentenced to 406 months' imprisonment, the presumptive sentence under the Minnesota Sentencing Guidelines. *See* Minn. Sent. Guidelines IV (2004) (sentencing guidelines grid). Miller appealed his conviction to this court. He later moved for voluntary dismissal of his appeal, and we filed an order dismissing the appeal on November 9, 2005.

On May 11, 2009, Miller filed a pro se petition for postconviction relief. The State Public Defender's Office filed a supplemental petition on Miller's behalf on August 11, alleging that Miller's *Alford* plea should be withdrawn as it "was not supported by an[] adequate factual basis where [Miller] was never asked whether he intended to cause [C.L.'s] death and the record is devoid of sufficient facts to support a conclusion that [Miller]'s conduct falls within the charge to which he pleaded guilty." The state moved to dismiss the petitions, alleging that they were untimely and that the record contained an

ample factual basis for Miller's plea. The district court denied Miller's requested relief and dismissed the petitions, finding that they were untimely and without merit. This appeal follows.

## D E C I S I O N

We review a district court's decision to deny postconviction relief for an abuse of discretion. *State v. Rhodes*, 675 N.W.2d 323, 326 (Minn. 2004). The scope of our review on appeal is limited to determining whether there is sufficient evidence to sustain the findings of the postconviction court. *State v. Ecker*, 524 N.W.2d 712, 716 (Minn. 1994). When considering a district court's denial of postconviction relief, we review issues of law de novo and findings of fact for sufficiency of the evidence. *Leake v. State*, 737 N.W.2d 531, 535 (Minn. 2007).

No petition for postconviction relief may be filed more than two years after the later of an appellate court's disposition of a petitioner's direct appeal or, when no direct appeal is filed, the entry of judgment of conviction or sentence. Minn. Stat. § 590.01, subd. 4(a) (2008). The current statute became effective August 1, 2005, and provides: "Any person whose conviction became final before August 1, 2005, shall have two years after [August 1, 2005] to file a petition for postconviction relief." 2005 Minn. Laws ch. 136, art. 14, § 13, at 1098. The judgment of Miller's conviction was entered on April 11, 2005, and he was sentenced on that date. But Miller's conviction became final on November 9, 2005, when we dismissed his direct appeal. *See State v. Petschl*, 692 N.W.2d 463, 470 (Minn. App. 2004) (stating that when a direct appeal is filed but the appeal is later voluntarily dismissed, the conviction becomes final when the appeal is

dismissed), *review denied* (Minn. Jan. 20, 2005). The statute therefore required him to file any petition for postconviction relief by November 9, 2007.

Notwithstanding the statutory time limitation, a court may hear a petition for postconviction relief if any of certain statutory exceptions applies. Minn. Stat. § 590.01, subd. 4(b) (2008). Because Miller’s petitions were not filed until May 2009 and August 2009, they were filed after the two-year deadline and were untimely unless one of the exceptions applies.

When a petition filed after the expiration of the two-year time limit does not expressly invoke one of the exceptions described in subdivision 4(b), the petition is untimely. *Nestell v. State*, 758 N.W.2d 610, 614 (Minn. App. 2008). Miller’s pro se petition does not expressly identify any exception and is therefore untimely. The supplemental petition contends that the petition is not frivolous and is in the interests of justice, invoking the exception that appears in Minn. Stat. § 590.01, subd. 4(b)(5).

The stated basis for relief in the supplemental petition is that Miller’s *Alford* plea is invalid as a matter of law and enforcing the plea would result in a manifest injustice. But a petition that invokes one of the statutory exceptions must be filed “within two years of the date the claim arises.” Minn. Stat. § 590.01, subd. 4(c) (2008). While the statute does not specifically define the phrase “date the claim arises,” any claim based on Miller’s guilty plea would arise *no later* than April 6, 2005, the date that the district court denied Miller’s motion to withdraw his plea. Because the supplemental petition was not filed until August 2009—more than four years after the claim arose—the district court did not err by concluding that the petition was untimely.

Miller points out that Minnesota courts have held that a criminal defendant has the right to one review of his or her conviction. The supreme court has stated that there is “a commitment to convicted defendants’ rights to at least one substantive review.” *Butala v. State*, 664 N.W.2d 333, 338 (Minn. 2003). *Butala* addressed the merits of a postconviction petition despite the petitioner’s 22-month delay in obtaining appellate review. *Id.* at 338-40. The supreme court relied on its earlier decisions in *Rairdon v. State*, 557 N.W.2d 318, 322 (Minn. 1996) (nine-year delay did not preclude review on the merits); *Hoagland v. State*, 518 N.W.2d 531, 536 (Minn. 1994) (eight-year delay alone did not preclude relief because the burden is on the state to establish undue prejudice by delay); and *Riggers v. State*, 284 Minn. 543, 543-44, 169 N.W.2d 58, 59 (1969) (33-year delay did not preclude relief). *Butala*, 664 N.W.2d at 338. The supreme court therefore held that there was “no substantive basis for denying review of appellant’s petition on the merits because of the delay.” *Id.*

But *Butala* and the cases that it relied on all predate the two-year time limit enacted by the legislature in 2005. 2005 Minn. Laws ch. 136, art. 14, § 13, at 1097-98. And before the 2005 amendment, “[t]imeliness [was] not required by the postconviction statute, although it [was] a factor to be considered when determining whether relief should be granted.” *Sykes v. State*, 578 N.W.2d 807, 814 (Minn. App. 1998), *review denied* (Minn. July 16, 1998). Under the current statute, timeliness is required. Minn. Stat. § 590.01, subd. 4(c) (“Any petition invoking an exception provided in paragraph (b) must be filed within two years of the date the claim arises.”); *see also* Minn. Stat. § 645.44, subd. 15a (2008) (“‘Must’ is mandatory.”).

Miller is correct that the supreme court stated in *Deegan v. State* that Minnesota provides a “broad right of review in a first review by postconviction proceeding.” 711 N.W.2d 89, 94 (Minn. 2006). But *Deegan* prefaced its discussion by noting that a petitioner who has not brought a direct appeal “is entitled to raise 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 Miller’s petitions do not comply with the statute’s procedural requirements, *Deegan* does not require review of the petitions on the merits.

Because the petitions were untimely, the district court did not abuse its discretion by dismissing them.

**Affirmed.**