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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0578**

Robert James Michener, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed January 22, 2013
Affirmed
Kalitowski, Judge**

Hennepin County District Court
File No. 27-CR-04-064812

Robert James Michener, Sandstone, Minnesota (pro se appellant)

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

Susan L. Segal, Minneapolis City Attorney, Zenaida Chico, Assistant City Attorney,
Minneapolis, Minnesota (for respondent)

Considered and decided by Stoneburner, Presiding Judge; Kalitowski, Judge; and
Larkin, Judge.

UNPUBLISHED OPINION

KALITOWSKI, Judge

Pro se appellant Robert James Michener challenges the district court's denial of his petition for postconviction relief seeking to withdraw his 2005 guilty plea to misdemeanor fifth-degree assault. We affirm.

DECISION

When reviewing a postconviction court's decision to grant or deny relief, we review issues of law de novo and issues of fact for sufficiency of the evidence. *Leake v. State*, 737 N.W.2d 531, 535 (Minn. 2007). Whether a statute has been properly construed is a question of law subject to de novo review. *State v. Murphy*, 545 N.W.2d 909, 914 (Minn. 1996).

Generally, a person must file a petition for postconviction relief within two years 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.” Minn. Stat. § 590.01, subd. 4(a) (2010).¹ Appellant's petition for postconviction relief was untimely under subdivision 4(a) because it was filed nearly six years after he pleaded guilty to and was sentenced for fifth-degree assault, and appellant did not file a direct appeal.

But an untimely petition under subdivision 4(a) may be considered if it meets one of five exceptions. *See* Minn. Stat. § 590.01, subd. 4(b) (2012) (listing the five exceptions). The exception at issue here is if “the petitioner establishes to the satisfaction of the court that the petition is not frivolous and is in the interests of justice.” *Id.*, subd. 4(b)(5). A petitioner must invoke the interests-of-justice exception within two years of when the claim arises. *Id.*, subd. 4(c) (2012); *Rickert v. State*, 795 N.W.2d 236, 242 (Minn. 2011).

¹ The district court applied the statutes in effect at the time appellant petitioned for postconviction relief. The applicable statutes have not changed. For ease of reference, we refer to the current version of the statutes in this opinion.

An interests-of-justice claim arises “when the petitioner knew or should have known that he had a claim.” *Sanchez v. State*, 816 N.W.2d 550, 560 (Minn. 2012). This is an objective standard; a petitioner’s subjective, actual knowledge is irrelevant. *Id.* at 558. And a claim invoking the interests-of-justice exception must relate to why the petitioner missed the primary deadline of subdivision 4(a). *Id.* at 557.

Appellant argues that his claims satisfy the interests-of-justice exception because (1) the factual basis given at the plea hearing does not establish the element of “intent” and he is therefore innocent; (2) his counsel was ineffective because he failed to raise self-defense or defense-of-another, failed to investigate the prosecutor’s case, failed to inform appellant of the law, and allowed appellant to plead guilty “even though” there was no evidence of intent; and (3) his plea was not accurate or voluntary and was therefore invalid under the Sixth and Fourteenth Amendments. And appellant asserts that his petition meets the two-year statute of limitations for interests-of-justice claims because he did not know about his claims until November or December of 2009, when he received copies of the plea-hearing transcript and the Minnesota Criminal Law Handbook.

But appellant’s claims all relate to events that occurred before or during his plea hearing on September 21, 2005. Therefore, appellant knew or should have known about his claims at that time; his subjective, actual knowledge is irrelevant. Because appellant filed his petition for postconviction relief in July of 2011—more than two years after his plea hearing—appellant’s claims are time-barred under subdivision 4(c).

Moreover, appellant's claims do not explain the reason for his untimely filing but rather are substantive claims based on events that occurred before or at the time of his plea hearing. Therefore, appellant's claims cannot satisfy the interests-of-justice exception to the two-year time bar.

Finally, because we conclude that appellant's claims are time-barred, we need not consider the claims on their merits. But if we were to consider appellant's substantive claims, we would conclude that the claims fail because they lack factual support and are contradicted by the record.

Affirmed.