

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0481**

Emem Ufot Udoh, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed September 12, 2022
Affirmed
Smith, John, Judge ***

Hennepin County District Court
File No. 27-CR-13-8979

Emem Ufot Udoh, Faribault, Minnesota (pro se appellant)

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Jonathan P. Schmidt, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Johnson, Presiding Judge; Bryan, Judge; and Smith, John, Judge.

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

NONPRECEDENTIAL OPINION

SMITH, JOHN, Judge

We affirm because the issue raised by appellant was not cognizable under Minnesota Statutes chapter 590, and as such, the district court did not abuse its discretion in denying appellant's third petition for postconviction relief.

FACTS

Appellant Emem Ufot Udoh was convicted and sentenced to prison in 2014 for first- and second-degree criminal sexual conduct for sexually abusing his two stepdaughters. Since that time, Udoh has challenged his convictions in a direct appeal and two separate petitions for postconviction relief. In the direct appeal, this court reversed one conviction for second-degree criminal sexual conduct based on a violation of Minn. Stat. § 609.04, subd. 1 (2012), but affirmed the remaining two convictions and sentences. *State v. Udoh*, No. A14-2181, 2016 WL 687328, at *4 (Minn. App. Feb. 22, 2016), *rev. denied* (Minn. Apr. 27, 2016).

Udoh thereafter filed two petitions for postconviction relief in 2018. The district court denied the first petition on its merits and dismissed the second petition as untimely and procedurally barred. Udoh appealed from the denial of his first petition for postconviction relief, but the appeal was dismissed after his repeated failures to file a timely brief. *State v. Udoh*, No. A19-1129 (Minn. App. Mar. 23, 2020) (order op.).

Udoh filed a third petition for postconviction relief in district court in January 2022, arguing that the Minnesota Department of Corrections violated his constitutional right of access to the courts by limiting his ability to adequately access the correctional facility's

law-library resources due to the COVID-19 pandemic. These restrictions, he argued, were responsible for his inability to file a timely brief in appeal A19-1129. He therefore requested that the district court vacate the two orders resolving the claims raised in his first postconviction petition and reissue those orders to provide him with a renewed opportunity to appeal and obtain this court's review of his claims. Also contained in this petition was a request for the release of his passport, which had previously been seized from him.

The district court issued an order granting in part and denying in part Udoh's third postconviction petition. The district court concluded that appellant's claim regarding a violation of his right of access to the courts was outside the scope of those permitted to be raised in a petition for postconviction relief and that, in any event, Udoh had failed to demonstrate that the correctional facility had violated his right of access to the courts. The district court did, however, conclude that Udoh was entitled to the release of his passport.

DECISION

This court reviews a district court's order denying postconviction relief for an abuse of discretion. *Riley v. State*, 819 N.W.2d 162, 167 (Minn. 2012). "The district court will not be reversed unless it has exercised its discretion in an arbitrary or capricious manner, based its ruling on an erroneous view of the law, or made clearly erroneous factual findings." *Hannon v. State*, 957 N.W.2d 425, 432 (Minn. 2021) (quotation omitted). Whether the postconviction remedy is available to a given defendant presents a question of law we review de novo. *See Johnston v. State*, 955 N.W.2d 908, 910-12 (Minn. 2021) (determining that postconviction relief is not available to a defendant who receives, and successfully completes, a stay of adjudication).

In his brief to this court, Udoh renews his claim that his constitutional right of access to the courts was infringed upon by the Department of Corrections, which unjustly prevented him from filing a timely brief in A19-1129. Udoh requests, as alternative forms of relief, that this court either (1) reinstate appeal A19-1129 and permit him to file a brief on the merits, (2) conclude that the Department of Corrections violated his constitutional right of access to the courts, or (3) remand for an evidentiary hearing on the question of the violation of his right of access to the courts. In response, the state argues that the district court did not err in denying Udoh’s third petition for postconviction relief because his claims are not cognizable under the plain language of the postconviction statute. We agree.

Udoh sought relief from the district court pursuant to Minnesota Statutes chapter 590, which permits a criminal defendant to commence a proceeding in district court to assert two types of claims—either that:

- (1) the conviction obtained or the sentence or other disposition made violated the person’s rights under the Constitution or laws of the United States or of the state; or
- (2) scientific evidence not available at trial, obtained pursuant to a motion granted under subdivision 1a, establishes the petitioner’s actual innocence[.]

Minn. Stat. § 590.01, subd. 1 (2020). Udoh’s claim in his postconviction petition falls into neither of these prescribed categories. His assignment of error was entirely unrelated to either his conviction or his sentence, and it did not concern newly available scientific evidence. He argued instead that the Department of Corrections—a state agency that is not a party to the underlying criminal prosecution—violated his right of access to the courts, which in turn deprived him of his ability to file a timely brief in a prior appeal. Because

this claim is not of the sort permitted to be raised in a petition for postconviction relief, the district court did not abuse its discretion in denying Udoh's request for relief in this regard. And because we conclude that Udoh's claim of error was not properly raised in a petition for postconviction relief, we decline to reach the merits of that argument.

Affirmed.