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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1633**

Linroy Nathaniel Jones, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed August 12, 2008
Reversed and remanded
Johnson, Judge**

Hennepin County District Court
File No. 27-CV-01-102773

David L. Wilson, Wilson Law Group, 2700 East Lake Street, Suite 3200, Minneapolis, MN 55406 (for appellant)

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Mike Freeman, Hennepin County Attorney, Thomas A. Weist, Assistant County Attorney, C-2000 Government Center, Minneapolis, MN 55487 (for respondent)

Considered and decided by Halbrooks, Presiding Judge; Willis, Judge; and Johnson, Judge.

UNPUBLISHED OPINION

JOHNSON, Judge

The question in this case is whether a person may bring a postconviction action to challenge district court proceedings on a felony charge that resulted in a stay of

adjudication for one year and then dismissal of the charge. The district court denied the postconviction petition on the ground that, because the charge was dismissed without adjudication of guilt, there was no conviction on which a postconviction action could be based. In light of intervening caselaw, we conclude that the stay of Jones's adjudication of guilt may be the subject of a postconviction action. Therefore, we reverse and remand.

FACTS

Linroy Nathaniel Jones is a citizen of Jamaica. In December 2001, he was a legal resident of the United States. On December 14, 2001, he was charged in Hennepin County District Court with fifth-degree possession of a controlled substance in violation of Minn. Stat. § 152.025, subds. 2(1), 3(a) (2000), which is a felony.

According to Jones's postconviction petition, his attorney advised him that he could plead guilty to the charges and obtain a stay of adjudication and that, if he satisfied the conditions of the stay, the charge would be dismissed. Jones alleges that his attorney also advised him that, in the event the charge was dismissed, he would have no conviction on his record, and his immigration status would be secure. Jones further alleges that as a result of that advice, he pleaded guilty to fifth-degree possession on March 14, 2002.

On the same day as the guilty plea, the district court ordered Jones to serve three days in the county jail, with credit for three days served, and fined Jones \$6,000 but stayed adjudication and entry of judgment for one year, pursuant to Minn. Stat. § 152.18, subd. 1 (2000). The district court's order provided that if Jones were to abide by the conditions of the stay and not be charged with any new offense during that one-year

period, the December 2001 charge would be dismissed. On March 14, 2003, after Jones had satisfied the conditions of the stay, the charge was dismissed.

In February 2007, Jones was detained by U.S. immigration officers at the U.S.-Canada border while attempting to return to the United States. He was informed that he was subject to removal from the United States because of his 2002 guilty plea, which the immigration agency deems a conviction.

In May 2007, Jones filed a petition for postconviction relief in the Hennepin County District Court in which he sought to withdraw his guilty plea. In July 2007, the district court denied the petition, reasoning that because Jones's charge was dismissed after the one-year stay of adjudication, there was no conviction for which he could seek postconviction relief. Accordingly, the district court did not consider the merits of Jones's request to withdraw his guilty plea. Jones appeals.

D E C I S I O N

Jones argues the district court erred in concluding that because the court's records do not reflect any conviction, he is not entitled to postconviction relief. This court reviews the district court's application of law de novo. *Williams v. State*, 692 N.W.2d 893, 896 (Minn. 2005).

In denying Jones's postconviction petition, the district court properly relied on three cases that stand for the proposition that a stay of adjudication is not a final judgment and does not constitute a conviction and, accordingly, cannot be the basis of a direct appeal or a postconviction action. *See State v. Verschelde*, 595 N.W.2d 192, 195-97 (Minn. 1999) (holding that defendant may not pursue direct appeal from stay of

adjudication); *Smith v. State*, 615 N.W.2d 849, 851-52 (Minn. App. 2000) (holding that person who has been granted stay of adjudication may not pursue postconviction relief), *review denied* (Minn. Sept. 26, 2000); *see also State v. Thoma*, 569 N.W.2d 205, 208 (Minn. App. 1997) (holding that state may pursue direct appeal from stay of adjudication).

A recent decision of this court, however, compels the conclusion that a stay of adjudication may be the subject of a postconviction action. In *State v. Allinder*, 746 N.W.2d 923 (Minn. App. 2008), which was decided after the briefing in this case was completed, this court re-examined the question whether a defendant may pursue a direct appeal from a stay of adjudication in a felony case. The *Allinder* court relied on an unpublished order in *State v. Manns*, No. A06-478 (Minn. May 24, 2006) (order), in which the supreme court reviewed this court's dismissal of the state's appeal from a stay of adjudication in a felony case. 746 N.W.2d at 924. In a two-page order, the supreme court reversed this court, stating, in part, "Appeals from stays of adjudication in felony cases are to be treated as appeals from sentencings, from which an appeal may be taken as provided in Minn. R. Crim. P. 28.02, subd. 2, and 28.04, subd. 1" *Manns*, No. A06-478, slip op. at 1-2, *quoted in Allinder*, 746 N.W.2d at 924. As *Allinder* notes, *Manns* is not a published decision, but this court is bound to follow supreme court precedent regardless of whether it is published or unpublished. *Id.* at 925; *see also Brainerd Daily Dispatch v. Dehen*, 693 N.W.2d 435, 439-40 (Minn. App. 2005), *review denied* (Minn. June 14, 2005). In any event, we are bound by our decision in *Allinder*. *See Woodhall v. State*, 738 N.W.2d 357, 363 (Minn. 2007) ("The doctrine of stare decisis

directs that we adhere to former decisions in order that there might be stability in the law.” (quotation omitted)).

The procedural posture of this case is different from *Allinder* in two respects, but neither difference requires a different result. First, this is a postconviction action, not a direct appeal. But in *Smith*, a postconviction case, this court applied caselaw from the direct appeal context because “[t]here is no basis for treating a stay of adjudication differently for purposes of postconviction relief.” 615 N.W.2d at 851. We perceive no reason why that logic should not hold, even though the core holding of *Smith* was overruled by *Allinder*. Second, Jones’s adjudication is not presently stayed. Rather, the charge against him was dismissed after he satisfied the conditions of probation. But that is not a meaningful difference because the 2002 adjudication may have a present effect on Jones’s immigration status. See *Morrissey v. State*, 286 Minn. 14, 16, 174 N.W.2d 131, 133 (1970) (holding that postconviction petitioner may challenge conviction despite discharge of sentence because of collateral consequences, including “stigma”).

In sum, we conclude that *Allinder* applies to this case and that it permits Jones to proceed with his postconviction action. Therefore, we reverse and remand to the district court for further consideration of Jones’s postconviction petition. We express no opinion regarding the merits of Jones’s petition.

Reversed and remanded.