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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-396**

Eric Woods Halvorson, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed December 21, 2010
Affirmed
Johnson, Chief Judge**

Pope County District Court
File No. 62-K9-92-000085

Robert M. Christensen, Minneapolis, Minnesota (for appellant)

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

Belvin L. Doebbert, Pope County Attorney, Chad M. Larson, Assistant County Attorney,
Glenwood, Minnesota (for respondent)

Considered and decided by Johnson, Chief Judge; Minge, Judge; and Ross, Judge.

U N P U B L I S H E D O P I N I O N

JOHNSON, Chief Judge

Eric Woods Halvorson petitioned for postconviction relief on the ground that he
has newly discovered evidence that warrants a new trial. The district court denied the

petition without an evidentiary hearing. We conclude that Halvorson's newly discovered evidence is merely impeachment evidence and, therefore, affirm.

FACTS

Halvorson's conviction arose from a sexual assault of an acquaintance in March 1992. He and N.C. went to two bars, where they drank beer and played pool. They left the second bar in Halvorson's pickup truck after N.C. became sick. Halvorson drove to a barn next to his house in Glenwood Township. He led N.C. to the milking pit of a barn, tied her hands, lifted up her clothes, and touched her breasts. Halvorson tried to touch N.C.'s vaginal area, but she used her legs to prevent him from doing so. While N.C.'s hands were tied, Halvorson inserted a syringe needle through the nipple of her right breast. Halvorson told N.C. that he would release her if she performed fellatio. N.C. agreed, and Halvorson untied her but then released her. When Halvorson drove N.C. home, he initially refused to let her out of the pickup truck until she promised to forgive him. *See State v. Halvorson*, 506 N.W.2d 331, 333-34 (Minn. App. 1993).

Later that month, the state charged Halvorson with two counts of second-degree criminal sexual conduct and two counts of kidnapping. At trial in July 1992, Halvorson testified that he inadvertently inserted the syringe into N.C.'s nipple. A Pope County jury found Halvorson guilty of all offenses charged. The district court imposed two consecutive sentences of 240 months each. This court affirmed Halvorson's conviction but reversed and remanded for resentencing. *Id.* at 340-41. On remand, the district court reduced one of the sentences from 240 months to 88 months. This court modified the

second sentence further, reducing it to 42 months, and affirmed. *State v. Halvorson*, No. C8-94-1004, 1994 WL 481171 *1-2 (Minn. App. Sept. 6, 1994).

Halvorson has unsuccessfully sought postconviction relief on two prior occasions. *See Halvorson v. State*, No. C5-96-1966, 1997 WL 193923 (Minn. App. Apr. 22, 1997), *review denied* (Minn. Aug. 5, 1997); *State v. Halvorson*, No. A05-1832 (Minn. App. July 12, 2006), *review denied* (Minn. Sept. 19, 2006). Halvorson presently is civilly committed as a sexually dangerous person. *See In re Civil Commitment of Halvorson*, No. A08-2258, 2009 WL 2928442 (Minn. App. Sept. 15, 2009), *review denied* (Minn. Nov. 17, 2009).

This appeal relates to Halvorson's third petition for postconviction relief, which he filed in December 2009. Halvorson sought a new trial on the basis of newly discovered evidence. The district court denied the petition without an evidentiary hearing. Halvorson appeals.

DECISION

Halvorson argues that the district court erred by denying his petition for postconviction relief without an evidentiary hearing. "On review of a denial of postconviction relief, we inquire as to whether sufficient evidence supported the postconviction court's findings, and will reverse only for an abuse of discretion." *Brown v. State*, 746 N.W.2d 640, 641-42 (Minn. 2008). A postconviction court must hold an evidentiary hearing "[u]nless 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 (2008); *see also Gustafson v. State*, 754 N.W.2d 343, 348 (Minn. 2008). To obtain an

evidentiary hearing, Halvorson must allege facts that, if proved, would entitle him to the relief requested and must make allegations that are “more than argumentative assertions without factual support.” *Sanchez-Diaz v. State*, 758 N.W.2d 843, 846 (Minn. 2008). “The petitioner bears the burden of establishing by a fair preponderance of the evidence facts that warrant reopening the case.” *McKenzie v. State*, 754 N.W.2d 366, 368-69 (Minn. 2008).

In the district court, the state responded to the merits of the petition, and the district court denied the petition on the merits. Accordingly, we will not consider whether Halvorson’s appeal is barred by the applicable statute of limitations, *see Moua v. State*, 778 N.W.2d 286, 288 (Minn. 2010) (noting two-year limitations period for convictions that became final before August 1, 2005), or procedurally barred by his prior postconviction actions, *see State v. Knaffla*, 309 Minn. 246, 252, 243 N.W.2d 737, 741 (1976).

Halvorson contends that he is entitled to a new trial because of newly discovered evidence of three types. First, Halvorson alleges that N.C. testified at his 2008 civil commitment hearing that her hands were tied behind her back during the sexual assault. Halvorson alleges that this testimony conflicts with N.C.’s testimony at his 1992 criminal trial that her hands were tied above her head, not behind her back. Second, Halvorson alleges that N.C.’s employer at the time of the 1992 incident would testify that he overheard N.C. say that she has pierced her nipple, which Halvorson contends would “call[] into question” N.C.’s trial testimony. Halvorson also alleges that N.C.’s former employer would testify that he knew N.C.’s “character well enough to have a strong

conviction that N.C. would have been a willing participant” in the sexual conduct for which Halvorson was convicted. Halvorson did not submit an affidavit of the former employer. Third, Halvorson alleges that N.C.’s former husband would testify that N.C. has a “lengthy history of falsely accusing others of crimes,” including sexual-assault crimes. Halvorson also alleges that N.C.’s former husband would testify that N.C. wrote a story about the 1992 assault, the details of which contradict her trial testimony. Halvorson did not submit an affidavit of the former husband or a copy of the story to the district court.

To be entitled to a new trial on the basis of newly discovered evidence, a postconviction petitioner must show

(1) that the evidence was not known to the defendant or his/her counsel at the time of the trial; (2) that the evidence could not have been discovered through due diligence before trial; (3) that the evidence is not cumulative, impeaching, or doubtful; and (4) that the evidence would probably produce an acquittal or a more favorable result.

Evans v. State, 788 N.W.2d 38, 49 (Minn. 2010) (quoting *Rainer v. State*, 566 N.W.2d 692, 695 (Minn. 1997)). The district court denied Halvorson’s petition on the ground that his allegations of newly discovered evidence fail to satisfy the third requirement of the newly-discovered-evidence test because the evidence is impeachment evidence. It is well settled that a postconviction petitioner is not entitled to a new trial based on newly discovered evidence that is “merely impeaching.” *Pippitt v. State*, 737 N.W.2d 221, 228 (Minn. 2007). Newly discovered evidence is impeaching if it is offered to impeach a witness’s credibility or otherwise cast doubt on the truthfulness of a witness’s testimony.

See State v. Hurd, 763 N.W.2d 17, 32-33 (Minn. 2009); *Quick v. State*, 757 N.W.2d 278, 281 (Minn. 2008).

All three items of alleged newly discovered evidence are merely impeachment evidence. First, Halvorson would use N.C.'s testimony from the commitment hearing to impeach her testimony at a new criminal trial concerning where her hands were tied. Second, Halvorson would offer the testimony of N.C.'s former employer to impeach her testimony that she did not consent to Halvorson's sexual conduct, apparently by suggesting that she welcomed the insertion of a syringe needle through the nipple of her right breast. And third, Halvorson would offer the testimony of N.C.'s former husband to impeach N.C. by attacking her credibility. At oral argument, Halvorson's counsel essentially admitted that he would use the alleged newly discovered evidence to impeach N.C. at a new trial, if the evidence were deemed admissible.

In sum, the nature of the newly discovered evidence described in Halvorson's petition makes it plain that the evidence is merely impeachment evidence. Thus, the district court did not err by denying Halvorson's postconviction petition without holding an evidentiary hearing.

Affirmed.