STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0227

Edward Joseph Loscheider, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed September 10, 2012
Affirmed
Johnson, Chief Judge

Hennepin County District Court
File Nos. 27-CR-04-041072, 27-CR-05-002322

Edward Joseph Loscheider, Faribault, Minnesota (pro se appellant)

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

Michael O. Freeman, Hennepin County Attorney, Lee W. Barry, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Bjorkman, Presiding Judge; Johnson, Chief Judge; and Rodenberg, Judge.

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

JOHNSON, Chief Judge

In 2005, Edward Joseph Loscheider pleaded guilty to attempted first-degree murder and other offenses. In 2011, he filed his third postconviction petition, claiming

that he is entitled to withdraw his guilty plea. The district court denied the petition without an evidentiary hearing on the ground that it is untimely and procedurally barred. We affirm.

FACTS

In 2004 and 2005, Loscheider was charged with several crimes, including the attempted first-degree murder of his wife and two counts of felony harassment and stalking. In January 2005, he pleaded guilty to the above-stated offenses. The plea agreement included a provision that Loscheider be required to undergo a mental-health evaluation. The district court accepted his guilty pleas, sentenced him to 180 months of imprisonment, and ordered him to undergo a mental-health evaluation. Loscheider filed a direct appeal in April 2005 but voluntarily dismissed it in June 2005.

In 2007, Loscheider petitioned for postconviction relief, arguing in part that he should be permitted to withdraw his guilty pleas because he never received a mental-health evaluation. The district court denied the petition, and we affirmed. *Loscheider v. State*, No. A08-0421, 2009 WL 67201 (Minn. App. Jan. 13, 2009) (*Loscheider I*), *review denied* (Minn. Mar. 31, 2009).

In 2010, Loscheider filed a second postconviction petition, arguing again that he should be permitted to withdraw his guilty pleas because he never received a mental-health evaluation. The district court summarily denied the petition as untimely and procedurally barred, and we affirmed. *Loscheider v. State*, No. A10-1763, 2011 WL 1938268 (Minn. App. May 23, 2011) (*Loscheider II*).

In 2011, Loscheider filed a third postconviction petition, arguing once again that he should be permitted to withdraw his guilty pleas because he never received a mental-health evaluation. The district court summarily denied the petition as untimely and procedurally barred. Loscheider appeals.

D E C I S I O N

Loscheider argues that the district court erred by denying his third postconviction petition. A district court may deny a petition for postconviction relief without an evidentiary hearing if 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 (2010); *see also Gustafson v. State*, 754 N.W.2d 343, 348 (Minn. 2008). As a general rule, this court applies an abuse-of-discretion standard of review to a postconviction court's denial of relief. *State v. Miller*, 754 N.W.2d 686, 707 (Minn. 2008).

I. Untimeliness

With limited exceptions, a postconviction petitioner must file a petition in district court within two years after a judgment of conviction is entered or an appellate court decides the petitioner's direct appeal, whichever is later. *See* Minn. Stat. § 590.01, subd. 4 (2010); *Chang v. State*, 778 N.W.2d 388, 390 (Minn. App. 2010), *review denied* (Minn. Apr. 28, 2010). Because Loscheider's convictions were final before August 1, 2005, the two-year period expired on July 31, 2007. *See* 2005 Minn. Laws ch. 136, art. 14, § 13, at 1098; *Chang*, 778 N.W.2d at 390. Loscheider filed his third postconviction

petition in 2011. Accordingly, he must rely on one of the limited exceptions to the two-year limitations period.

Loscheider contends that three exceptions apply. First, he invokes the interests-of-justice exception. Minn. Stat. § 590.01, subd. 4(b)(5). But he has not identified any exceptional circumstances that would warrant consideration of his petition in the interests of justice. *See Gassler v. State*, 787 N.W.2d 575, 586 (Minn. 2010) (noting that interests-of-justice exception should be used only in "exceptional situations"). Second, he invokes the exception for a new interpretation of state or federal constitutional or statutory law that is retroactively applicable. *See* Minn. Stat. § 590.01, subd. 4(b)(3). But he has not identified any such law. Third, he invokes the exception for newly discovered evidence. *See id.*, subd. 4(b)(2). That exception requires a petitioner to allege

> the existence of newly discovered evidence . . . that could not have been ascertained by the exercise of due diligence by the petitioner or petitioner's attorney within the two-year time period for filing a postconviction petition, and the evidence is not cumulative to evidence presented at trial, is not for impeachment purposes, and establishes by a clear and convincing standard that the petitioner is innocent of the offense or offenses for which the petitioner was convicted.

Id. Loscheider's purported newly discovered evidence (that he never received a mental-health evaluation) cannot establish, by clear and convincing evidence, that he is innocent of the crimes of which he was convicted. Accordingly, Loscheider cannot satisfy an exception to the two-year statute of limitations.

Thus, the district court did not err by concluding that his third postconviction petition is untimely.

II. Procedural Bar

After an offender has had a direct appeal, "all matters raised therein, and all claims known but not raised, will not be considered upon a subsequent petition for postconviction relief." *State v. Knaffla*, 309 Minn. 246, 252, 243 N.W.2d 737, 741 (1976); *see also* Minn. Stat. § 590.01, subd. 1 (2010). This rule also applies to second and successive postconviction petitions: "matters raised or known but not raised in an earlier petition for postconviction relief will generally not be considered in subsequent petitions for postconviction relief." *Powers v. State*, 731 N.W.2d 499, 501 (Minn. 2007); *see also* Minn. Stat. § 590.04, subd. 3 (2010).

"There are two exceptions to the *Knaffla* rule: (1) if a novel legal issue is presented, or (2) if the interests of justice require review." *Powers*, 731 N.W.2d at 502. The second exception includes claims based on newly discovered evidence, which "are not subject to the *Knaffla* bar if the evidence was not available at the time of the petitioner's direct appeal." *Gustafson*, 754 N.W.2d at 349 (quotation and alterations omitted); *see also Laine v. State*, 786 N.W.2d 635, 638 (Minn. 2010). To prevail on a postconviction claim based on newly discovered evidence, a petitioner must satisfy four requirements:

> In order for postconviction relief to be granted on the basis of newly discovered evidence, a petitioner must establish that (1) the evidence was unknown to him and his counsel at the time of trial; (2) the failure to discover that evidence before trial was not due to a lack of diligence; (3) the evidence is material (i.e., not impeaching, cumulative, or doubtful); and (4) the evidence would probably produce a more favorable result on retrial.

Whittaker v. State, 753 N.W.2d 668, 671 (Minn. 2008).

In his third postconviction petition, Loscheider sought relief on the grounds that (1) he did not receive a mental-health evaluation, (2) the district court erroneously admitted his mental-health calendar-of-events into evidence, (3) the district court judge was biased, (4) the prosecutor engaged in misconduct, (5) his guilty pleas are invalid, and (6) he received ineffective assistance of counsel. These claims either were raised, or could have been raised, in prior postconviction proceedings. Thus, all of the claims in Loscheider's third postconviction petition are barred, unless he can satisfy an exception to the procedural bar. *See Powers*, 731 N.W.2d at 502.

Loscheider contends that his third postconviction petition should be considered because of newly discovered evidence. *See Gustafson*, 754 N.W.2d at 349. Specifically, he contends that two letters he received in September 2010 and July 2011 show that a mental-health evaluation never occurred. These letters do not overcome the procedural bar because they would not produce a more favorable result. *See Whittaker*, 753 N.W.2d at 671. This court already has held that Loscheider would not be entitled to relief even if he were to establish that a mental-health evaluation never occurred. *Loscheider I*, 2009 WL 67201, at *1; *see also Loscheider II*, 2011 WL 1938268, at *2. Accordingly, Loscheider cannot satisfy an exception to the *Knaffla* bar.

Thus, the district court did not err by concluding that his third postconviction petition is procedurally barred.

Affirmed.