STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0041

John Stephen Woodward, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed December 9, 2013
Affirmed
Hudson, Judge

Dakota County District Court
File No. 19-K6-06-002202

John Stephen Woodward, Stillwater, Minnesota (pro se appellant)

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

John Choi, Ramsey County Attorney, Kaarin Long, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Considered and decided by Larkin, Presiding Judge; Hudson, Judge; and Chutich, Judge.

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

HUDSON, Judge

In this pro se postconviction appeal, appellant argues that the postconviction court abused its discretion when it found that appellant's petition is time-barred and failed to

grant him an evidentiary hearing based on newly discovered evidence. Because appellant's postconviction petition is time-barred, we affirm.

FACTS

On November 14, 2007, appellant was convicted of aiding and abetting second-degree controlled-substance crime, conspiracy to commit first-degree controlled-substance crime, and fifth-degree controlled-substance crime. The controlled substances in the case were tested by the St. Paul crime lab. Neither the testing procedure nor the identification of the substances as methamphetamine was challenged at trial. Appellant directly appealed his convictions to this court, which affirmed, and then sought review at the Minnesota Supreme Court and the United States Supreme Court, both of which declined to review the case. Appellant filed his first postconviction petition for relief on October 19, 2011, requesting a new trial based on claims of ineffective assistance of counsel, prosecutorial misconduct, and constitutional violations. The petition was denied; appeal was made to this court, but was dismissed as untimely, and the Minnesota Supreme Court declined to review the case.

Appellant filed the present postconviction petition on October 12, 2012. It alleged that an ongoing hearing in the summer of 2012 in Dakota County regarding the St. Paul crime lab brought to light that the lab is unaccredited and has inconsistent standards for testing controlled substances. Appellant requested that the matter be "returned to the district court for further proceedings" because the Dakota County hearing constituted newly discovered evidence and relief was "in the interest of justice." The district court denied the petition on November 6, 2012. This appeal follows.

D E C I S I O N

Denial of a petition for postconviction relief is reviewed for an abuse of discretion. *Davis v. State*, 784 N.W.2d 387, 390 (Minn. 2010). The "postconviction court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record." *Riley v. State*, 819 N.W.2d 162, 167 (Minn. 2012) (quotation omitted). Great deference is given to a postconviction court's findings of fact, and findings will not be reversed unless they are clearly erroneous. *Tscheu v. State*, 829 N.W.2d 400, 403 (Minn. 2013). Generally, a petition for postconviction relief cannot be filed more than two years after the later 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) (2012). Appellant concedes that his October 12, 2012 petition is time-barred by the two-year statute of limitations, but he argues that the newly–discovered–evidence exception applies, because knowledge of the St. Paul crime laboratory's "unreliable test methods and test procedure" was not available to him until five years after his trial.[1]

A petition filed pursuant to the newly-discovered-evidence exception "must be filed within two years of the date the claim arises." Minn. Stat. § 590.01, subd. 4(c)

[1] In his petition to the district court, appellant also claimed that the interests-of-justice exception applies but does not brief that exception on appeal; thus it is waived. *State v. Butcher*, 563 N.W.2d 776, 780 (Minn. App. 1997), *review denied* (Minn. Aug. 5, 1997).

(2012). A claim arises when the petitioner objectively "knew or should have known" the claim existed. *Sanchez v. State*, 816 N.W.2d 550, 558–59 (2012).[2]

In his postconviction petition, appellant, through counsel, argued that the "lack of any standards in the testing [procedure at the St. Paul crime lab] render any and all results of these tests unreliable and inadmissible in court," and that this constituted new evidence that was not known and could not have been discovered at the time of trial. The district court found that appellant provided no evidence to support his assertion that he did not know and could not have known of his claim at the time of trial. That finding is not clearly erroneous. In essence, appellant challenges the identification of the controlled substances in his case as methamphetamines. But appellant never claimed at trial or on appeal that the substances in his case were wrongly identified, nor does he argue that now. If appellant had such a claim, he would have objectively known of it at the time of trial, and he provides no explanation for why the controlled-substance testing was not or could not have been challenged then. The district court did not abuse its discretion by denying appellant's petition because appellant "knew or should have known" of his claim

[2] Pursuant to Minn. Stat. § 590.01, subd. 4(b)(2) (2012), a petitioner must establish four elements to qualify for relief under the newly-discovered-evidence exception: "(1) the evidence was not known to the petitioner or counsel at the time of trial; (2) the failure to learn of the evidence before trial was not due to a lack of diligence; (3) the evidence is material, not merely impeaching, cumulative, or doubtful; and (4) the evidence would probably produce either an acquittal or a more favorable result." *Tscheu*, 829 N.W.2d at 403 (quoting *Roby v. State*, 808 N.W.2d 20, 26 n.5 (Minn. 2011)).

at the time of trial in 2007. Accordingly, the petition is time-barred because it was not filed within two years of the date the claim arose. *Sanchez*, 816 N.W.2d at 558.

Affirmed.