STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0606

Victor Lee Fraley, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed December 9, 2013
Affirmed
Toussaint, Judge[*]

Dakota County District Court
File No. 19-K8-04-003427

David W. Merchant, Chief Appellate Public Defender, Sean Michael McGuire, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

James C. Backstrom, Dakota County Attorney, Amy A. Schaffer, Assistant County Attorney, Hastings, Minnesota (for respondent)

Considered and decided by Stoneburner, Presiding Judge; Hooten, Judge; and Toussaint, Judge.

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

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

TOUSSAINT, Judge

In this appeal from denial of his postconviction petition, appellant argues that the district court applied the wrong pleading standard when considering his petition. Appellant also argues in his pro se supplemental brief that the district court erred by concluding that his petition is time-barred and that he is not entitled to relief in the interests of justice. Because appellant's petition is time-barred, we affirm.

D E C I S I O N

Denial of a petition for postconviction relief is reviewed for an abuse of discretion, with de novo review for issues of law. *Leake v. State*, 737 N.W.2d 531, 535 (Minn. 2007). 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 they will not be reversed unless 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). For petitioners whose convictions became final before August 1, 2005, the deadline was August 1, 2007. *See* 2005 Minn. Laws ch. 136, art. 14, § 13, at 1098. Here, appellant was convicted of, and sentenced for, theft and first-degree DWI on November 15, 2004. He did not file a direct appeal. Accordingly, appellant's

present petition, filed August 22, 2012, is time-barred because it was filed several years after the deadline of August 1, 2007.

The legislature has provided certain exceptions to the two-year limit. The district court considered the merits of appellant's petition pursuant to the interests-of-justice exception, which allows relief if "the petitioner establishes to the satisfaction of the court that the petition is not frivolous and is in the interests of justice," and concluded that appellant's petition did not qualify for the exception. Minn. Stat. § 590.01, subd. 4(b)(5) (2012). But, Minn. Stat. § 590.01, subd. 4(c) requires that any petition invoking the interests-of-justice exception be "filed within two years of the date the claim arises." Minn. Stat. § 590.01, subd. 4(c) (2012); *Sanchez v. State*, 816 N.W.2d 550, 557-58 (Minn. 2012). In *Sanchez*, the supreme court held that a claim under the interests-of-justice exception arises when a defendant objectively "knew or should have known" the claim existed. *Sanchez*, 816 N.W.2d at 560. In 2009, appellant filed his first postconviction petition, which was withdrawn before it was considered by the district court. That petition made essentially the same arguments as the 2012 petition that is presently before this court. Thus, appellant knew of his claims more than two years before the present petition was filed.

Accordingly, appellant's petition is time-barred pursuant to Minn. Stat. § 590.01, subd. 4(a), and he is not entitled to relief pursuant to the interests-of-justice exception because his present petition was filed more than two years after he "knew or should have known" the claims in the petition existed. *Sanchez*, 816 N.W.2d at 560. Because appellant's petition is time-barred, we do not reach his argument that the district court

applied the wrong pleading standard or his pro se arguments related to the merits of the district court's order.

Affirmed.