**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A23-1942**

John Louis Corrigan, Jr., petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed July 22, 2024**
**Affirmed**
**Segal, Chief Judge**

Scott County District Court[1]
File No. 70-CR-16-14594

John L. Corrigan, Jr., Belfair, Washington (pro se appellant)

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Ronald Hocevar, Scott County Attorney, Todd P. Zettler, Assistant County Attorney, Shakopee, Minnesota (for respondent)

Considered and decided by Segal, Chief Judge; Wheelock, Judge; and Ede, Judge.

**NONPRECEDENTIAL OPINION**

**SEGAL**, Chief Judge

In this appeal from an order denying his fourth petition for postconviction relief, appellant argues that (1) the district court erred in denying his petition as time-barred

[1] We note that the title of this case in district court is *State v. Corrigan*.

because a new interpretation of law by the United States Supreme Court applies retroactively to his case, and (2) the chief judge of the district court abused her discretion in denying his motion to disqualify the presiding judge for cause. We affirm.

**FACTS**

In August 2016, after exchanging angry glances with another driver while traveling on Highway 169, appellant John Louis Corrigan, Jr. "got behind and closely followed [the driver] off the highway through her failed attempts to evade him using multiple turns, lane changes, and a warning that she was going to call the police." *State v. Corrigan*, No. A17-1145, 2018 WL 3214271, at *1 (Minn. App. July 2, 2018), *rev. denied* (Minn. Oct. 16, 2018). Respondent State of Minnesota charged Corrigan with stalking, in violation of Minn. Stat. § 609.749, subd. 2(2) (2016). A jury found Corrigan guilty.

Corrigan appealed the conviction, arguing that (1) the district court erred in its instructions to the jury, (2) the district court judge improperly failed to recuse himself, (3) the stalking charge lacked probable cause, and (4) the evidence was insufficient to support the conviction. *Id.* at *2. We affirmed. *Id.*

Corrigan subsequently sought postconviction relief on three separate occasions. We affirmed each of the district court's orders denying postconviction relief. *See Corrigan v. State*, No. A19-0019, 2019 WL 4010308, at *2-5 (Minn. App. Aug. 26, 2019) (holding postconviction court did not abuse its discretion in concluding false-testimony claim lacked substantive merit and other claims were barred under *State v. Knaffla*, 243 N.W.2d 737 (Minn. 1976)); *Corrigan v. State*, No. A20-1323, 2021 WL 2408443, at *2-3 (Minn. App. June 14, 2021) (holding Corrigan's claim that stalking statute was unconstitutionally

overbroad was *Knaffla*-barred because it was known at the time of direct appeal and did not satisfy the novel-legal-issue exception); *Corrigan v. State*, No. A22-0004, 2022 WL 2659357, at *2-3 (Minn. App. July 11, 2022) (holding district court did not err by summarily denying postconviction relief as time-barred and that Corrigan failed to identify any new interpretation of law by the United States Supreme Court or a Minnesota appellate court that is relevant to his claim to satisfy the exception to *Knaffla*), *rev. denied* (Minn. Sept. 28, 2022).

In his fourth petition, which is the subject of this appeal, Corrigan argued that the holding of the United States Supreme Court in *Counterman v. Colorado*, 600 U.S. 66 (2023), constitutes a new interpretation of federal constitutional law that must be applied retroactively and entitles him to the vacation of his stalking conviction. Corrigan also moved to disqualify the judge who was the same judge who presided over his prior postconviction proceedings and trial. The chief judge of the judicial district denied the disqualification motion. In an October 19, 2023 order, the district court denied Corrigan's fourth petition for postconviction relief. This appeal follows.

## DECISION

### I.

Corrigan argues that his conviction for stalking must be reversed because Minnesota's stalking statute requires only a negligence mens rea instead of the recklessness mens rea required by *Counterman*. In *Counterman*, the Supreme Court considered the mental state required to be convicted of a crime involving "true threats" of violence—threats that are not protected by the First Amendment. 600 U.S. at 74-75. The Court

concluded that, to avoid chilling too much protected speech, the state must prove that the defendant subjectively understood the threatening character of the statements under a recklessness mens rea standard, i.e., "morally culpable conduct, involving a deliberate decision to endanger another," or a conscious acceptance of the risk of endangering another. *Id.* at 74-80. The Court vacated Counterman's conviction because he was prosecuted under an objective rather than subjective standard that violated the First Amendment. *Id.* at 82-83.

The district court denied Corrigan's fourth petition for postconviction relief on the grounds that (1) it was time-barred, (2) *Counterman* did not apply to Corrigan's final conviction, and (3) even if *Counterman* did apply, Minnesota's stalking statute satisfies the recklessness standard. We conclude that the district court did not abuse its discretion in summarily denying postconviction relief, but for different reasons.

Appellate courts "review the denial of a petition for postconviction relief, including the petitioner's request for an evidentiary hearing, for an abuse of discretion." *Campbell v. State*, 916 N.W.2d 502, 506 (Minn. 2018). "A 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). A district court need not grant an evidentiary hearing if the files and records of the proceedings conclusively establish that the petitioner is not entitled to relief. Minn. Stat. § 590.04, subd. 1 (2022). "Accordingly, a postconviction court may summarily deny a claim that is untimely under the postconviction statute of limitations, Minn. Stat. § 590.01,

subd. 4(a), or procedurally barred under *Knaffla*." *Colbert v. State*, 870 N.W.2d 616, 622 (Minn. 2015).

"No petition for postconviction relief may 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) (2022). Corrigan's direct appeal was decided by this court on July 2, 2018, and the supreme court denied further review on October 16, 2018. *Corrigan*, 2018 WL 3214271, at *1. Because Corrigan did not file a petition for certiorari with the United States Supreme Court, his conviction became "final" for purposes of the two-year time-bar on January 14, 2019, ninety days after the Minnesota Supreme Court denied review. *See Berkovitz v. State*, 826 N.W.2d 203, 207 (Minn. 2013) (stating when an appellant does not file petition for certiorari following supreme court's decision on direct appeal, conviction becomes final 90 days thereafter). Corrigan's fourth petition for postconviction relief was filed on July 20, 2023, two-and-a-half years after the statute of limitations had run.

There are five exceptions to the two-year statute of limitations. Minn. Stat. § 590.01, subd. 4(b) (2022). And the petitioner bears the burden of establishing that an exception applies. *Brocks v. State*, 883 N.W.2d 602, 604 (Minn. 2016). Corrigan relies on the exception in subdivision 4(b)(3) to support his argument that *Counterman* applies retroactively to his case. That exception provides that a court may hear an otherwise untimely petition if "the petitioner asserts a new interpretation of federal or state constitutional or statutory law by either the United States Supreme Court or a Minnesota appellate court and the petitioner establishes that this interpretation is retroactively

applicable to the petitioner's case."[2] Minn. Stat. § 590.01, subd. 4(b)(3). Whether a rule of law "applies retroactively to convictions that were final when the rule was announced is a legal question that [appellate courts] review de novo." *Johnson v. State*, 916 N.W.2d 674, 681 (Minn. 2018).

To determine whether a rule applies retroactively, we apply the standard set forth by the United States Supreme Court in *Teague v. Lane*, 489 U.S. 288 (1989). *See Danforth v. State*, 761 N.W.2d 493, 500 (Minn. 2009) (adopting the *Teague* standard in Minnesota). Under *Teague*, the first question is whether the rule is new. *State v. Meger*, 901 N.W.2d 418, 422 (Minn. 2017). "Old rules of federal constitutional criminal procedure apply both on direct and collateral review, but a new rule is generally applicable only to cases that are still on direct review." *Id.* (quotation omitted).

"A Supreme Court holding constitutes a new rule within the meaning of *Teague* if it breaks new ground, imposes a new obligation on the States or the Federal Government, or was not *dictated* by precedent existing at the time the defendant's conviction became final." *Campos v. State*, 816 N.W.2d 480, 489 (Minn. 2012) (quotation omitted). A case does not announce a new rule if "it is merely an application of the principle that governed

[2] "Any petition invoking an exception provided in paragraph (b) must be filed within two years of the date the claim arises." Minn. Stat. § 590.01, subd. 4(c) (2022). The Supreme Court decided *Counterman* on June 27, 2023. Because Corrigan filed his fourth postconviction petition less than a month after the Supreme Court decided *Counterman*, he satisfied this requirement. *See Aili v. State*, 963 N.W.2d 442, 449 (Minn. 2021) (stating postconviction petitioner knows or should know he has a claim on the date of release of a court decision that provides the basis for the petitioner's claim for retroactive application of a new rule).

a prior decision to a different set of facts." *Chaidez v. United States*, 568 U.S. 342, 347-48 (2013) (quotation omitted).

Neither the district court nor the state applied the *Teague* standard to analyze whether *Counterman* announced a new rule. Based on our consideration of the *Teague* standard, we conclude that the rule announced in *Counterman*, requiring a subjective mental state of recklessness for crimes involving true threats, is a new rule because it imposes a subjective mens rea requirement that was not dictated by precedent.

Having concluded that *Counterman* announced a new rule, we must determine whether the new rule applies to Corrigan's final conviction. New rules apply only to cases that are not yet final when the rule is announced and generally do not apply retroactively to final convictions. *Johnson*, 916 N.W.2d at 681. There are two exceptions: a new rule may be applied retroactively if it (1) is substantive, or (2) is a new "watershed" rule of criminal procedure. *Id.* A rule is substantive when "it 'alters the range of conduct or the class of persons that the law punishes.'" *Id.* at 681-82 (quoting *Schriro v. Summerlin*, 542 U.S. 348, 353 (2004)). "In other words, a decision that narrows the scope of a criminal statute," or "places particular conduct or persons covered by the statute beyond the State's power to punish is substantive for purposes of the retroactivity analysis." *Id.* at 682 (quotation omitted). "A procedural rule, on the other hand, regulates only the manner of determining the defendant's culpability." *Id.* (quotation omitted). Substantive rules "apply retroactively because they necessarily carry a significant risk that a defendant stands convicted of an act that the law does not make criminal or faces a punishment that the law cannot impose upon him." *Schiro*, 542 U.S. at 352 (quotations omitted).

The rule announced in *Counterman* changes how states and the federal government can prosecute crimes involving true threats by requiring proof of the actor's subjective mens rea. Accordingly, we conclude that the rule announced in *Counterman* is a substantive rule that applies retroactively to Corrigan's final conviction for stalking.[3]

We next consider whether the rule announced in *Counterman* renders Corrigan's stalking conviction unconstitutional. In 2016, at the time of Corrigan's offense, "stalking" was defined as "engag[ing] in conduct which the actor knows or has reason to know would cause the victim under the circumstances to feel frightened, threatened, oppressed, persecuted, or intimidated, and causes this reaction on the part of the victim regardless of the relationship between the actor and victim." Minn. Stat. § 609.749, subd. 1 (2016).[4]

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[3] We are not persuaded by the state's response that the district court properly rejected Corrigan's claim because "*Counterman* does not say anything about the Minnesota stalking statute that Corrigan was convicted of violating," and *Counterman* does not apply retroactively to Corrigan's final conviction because no court has yet applied *Counterman* retroactively. Although no court has yet applied *Counterman* retroactively, we are aware of at least two jurisdictions that have concluded that *Counterman* announced a new constitutional rule and applied it to cases pending on direct review. *See State v. Labbe*, ___ A.3d___, ___, No. And-22-317, 2023 WL 9473676, at *12-13 (Me. Jan. 31, 2024) (holding *Counterman* announced a new rule that applied to Labbe's direct appeal, that *Counterman* involved an as-applied challenge, and because the "course of conduct" for which Labbe was convicted "involved a series of electronic communications" and was based on the repeated and unwelcome contact and not on the content of the communications, the state was not required to prove subjective mens rea of recklessness); *State v. Beal*, No. 39022-5-III, 2023 WL 6160381, at *5 (Wash. Ct. App. Sept. 21, 2023) (reversing harassment conviction, which was pending on appeal and not yet final, and remanding for new trial under *Counterman* standard).

[4] Effective August 1, 2020, the legislature repealed the definition of stalking in subdivision 1 and the provision in subdivision 1a that did not require the state to prove specific intent. 2020 Minn. Laws ch. 96, § 6, at 437. The current law includes a mens rea requirement. Minn. Stat. § 609.749, subd. 2(b)(3), (c)(2) (2022). The statute now provides that it is gross-misdemeanor harassment for a person to "follow[], monitor[], or pursue[]

Under the 2016 law, it was a gross misdemeanor for a person to stalk another by following, monitoring, or pursuing another in person or through technological means. *Id.*, subd. 2(2) (2016). The actor did not have to specifically intend to cause the victim to feel frightened, threatened, oppressed, persecuted, or intimidated. *Id.*, subd. 1a (2016).

In *In re Welfare of A.J.B.*, the supreme court held that the mens rea requirement in Minn. Stat. § 609.749, subd. 1, that "the defendant must know or have reason to know that the communication would cause the victim under the circumstances to feel frightened, threatened, oppressed, persecuted, or intimidated," is a "negligence mens rea." 929 N.W.2d 840, 850, 864 (Minn. 2019) (quotation omitted) (reversing stalking-by-mail conviction as facially overbroad in violation of First Amendment). Corrigan was, therefore, convicted of stalking under a negligence standard. But the decision in *Counterman* is narrow and applies only to prosecutions involving speech that conveys a true threat, i.e., "serious expressions conveying that a speaker means to commit an act of unlawful violence." 600 U.S. at 74 (quotation omitted). When the defendant's stalking conviction is based not on words or expressive speech but on conduct, the mens rea requirement announced in *Counterman* does not apply. *See id.* at 83-86 (Sotomayor, J., concurring) (explaining that the content of communications is sometimes irrelevant when stalking is based on conduct).

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another," if the person has the "intent to kill, injure, harass, or intimidate another person" and "causes or would reasonably be expected to cause substantial emotional distress to the other person." *Id.*

Corrigan's conviction here was based on his conduct in following, monitoring, or pursuing the other driver and not on the content of his expressions or speech. Thus, the holding in *Counterman* does not apply to Corrigan's case. We therefore conclude that the district court did not abuse its discretion by summarily denying postconviction relief.

**II.**

The second issue asserted by Corrigan involves his challenge to the denial of his motion to disqualify the judge who presided over his fourth petition for postconviction relief and also presided over his trial and his three prior postconviction petitions. We conclude that the chief judge did not clearly abuse her discretion in denying Corrigan's motion because Corrigan's claims of bias are in essence no more than an expression of his dissatisfaction with the presiding judge's prior adverse rulings at trial and postconviction proceedings.

The chief judge denied Corrigan's motion, concluding that Corrigan "has failed to present any facts that would establish bias under the law" because (1) the "jury instruction was a verbatim quote from the standard jury instruction guides for the offense definition," (2) the judge's efforts to manage "a trial involving a pro se litigant [are] not evidence of bias," and (3) the court of appeals' affirmance of the judge's orders denying postconviction relief "negates" Corrigan's theory that the denials were motivated by bias. Corrigan argues that the chief judge used the wrong standard by evaluating his motion to disqualify the presiding judge under an actual bias standard rather than considering whether a reasonable person would question the judge's impartiality. We are not persuaded.

A party may "request to disqualify a judge for cause" if the judge's participation in the case would violate the Code of Judicial Conduct. Minn. R. Crim. P. 26.03, subd. 14(3). "A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned," including where the judge has "personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding." Minn. Code Jud. Conduct Rule 2.11(A)(1). "Impartiality" is defined as the "absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues that may come before a judge." *State v. Pratt*, 813 N.W.2d 868, 876 (Minn. 2012) (quoting Terminology, Code of Judicial Conduct).

"A judge is disqualified for a lack of impartiality under Rule 2.11(A) if a reasonable examiner, from the perspective of an objective layperson with full knowledge of the facts and circumstances, would question the judge's impartiality." *Troxel v. State*, 875 N.W.2d 302, 314 (Minn. 2016) (quotations omitted). But "[t]he mere fact that a party declares a judge partial does not in itself generate a reasonable question as to the judge's impartiality." *State v. Burrell (In re State)*, 743 N.W.2d 596, 601-02 (Minn. 2008). The question of whether a judge is disqualified from presiding over a case is a question of law, which this court reviews de novo. *State v. Jacobs (In re Jacobs)*, 802 N.W.2d 748, 750 (Minn. 2011). We review the denial of a motion to disqualify for an abuse of discretion. *Hooper v. State*, 680 N.W.2d 89, 93 (Minn. 2004); *see also Rossberg v. State*, 874 N.W.2d 786, 789 (Minn. 2016) (stating appellate courts review the denial of a motion to disqualify a postconviction judge for an abuse of discretion).

Corrigan's examples of bias include an instance of the presiding judge demonstrating frustration or anger with Corrigan as a self-represented litigant and the judge's prior adverse rulings, such as the prior denials of postconviction relief. But expressions of irritation or disapproval against counsel do not establish the existence of partiality against the defendant, *Hooper*, 680 N.W.2d at 93-94, and adverse rulings alone are insufficient to demonstrate a judge's bias, *State v. Kramer*, 441 N.W.2d 502, 505 (Minn. App. 1989), *rev. denied* (Minn. Aug. 9, 1989). Corrigan does not explain or show how these instances suggest that the judge's impartiality should reasonably be questioned. Rather, it is only Corrigan's subjective belief that the presiding judge is biased, and a subjective belief alone does not warrant disqualification. The chief judge did not abuse her discretion by denying Corrigan's motion to disqualify the presiding judge from considering and ruling on his fourth postconviction proceeding.

**Affirmed.**