

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0498**

Christopher James Hayes, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed October 21, 2024
Affirmed
Johnson, Judge**

Hennepin County District Court
File No. 27-CR-10-45970

Christopher James Hayes, Rush City, Minnesota (*pro se* appellant)

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

Mary F. Moriarty, Hennepin County Attorney, Robert I. Yount, Assistant County Attorney,
Minneapolis, Minnesota (for respondent)

Considered and decided by Bentley, Presiding Judge; Segal, Chief Judge; and
Johnson, Judge.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

In 2013, Christopher James Hayes was convicted of second-degree intentional murder. In 2022, he filed his second petition for postconviction relief. The postconviction court denied the petition on the grounds that it is untimely and that it is barred by the

Knaffla doctrine. We conclude that the postconviction court did not err by determining that Hayes's petition is untimely and not within the newly-discovered-evidence exception to the two-year statute of limitations. Therefore, we affirm.

FACTS

Hayes's conviction is based on a shooting death that occurred on September 17, 2010, in Minneapolis. Hayes was a passenger in a car driven by a relative, Michael James Funches Jr. Hayes and Funches picked up Christopher DeRonde, intending to purchase marijuana from him. DeRonde sat in the back seat. Funches testified at trial that DeRonde handed a bag of marijuana to Hayes, that Hayes was dissatisfied with its quality, that Hayes pulled out a handgun, and that Hayes shot DeRonde as DeRonde exited the car. DeRonde collapsed on a nearby sidewalk as Funches and Hayes drove away. DeRonde died of his injuries before police officers arrived at the scene. *See State v. Hayes*, 826 N.W.2d 799, 802 (Minn. 2013).

In October 2010, the state charged Hayes with second-degree intentional murder, in violation of Minn. Stat. § 609.19, subd. 1(1) (2010). In November 2010, a grand jury returned an indictment charging Hayes with first-degree premeditated murder, in violation of Minn. Stat. § 609.185(a)(1) (2010), and first-degree felony murder while committing a drive-by shooting, in violation of Minn. Stat. § 609.185(a)(3).

The case was tried to a jury on 12 days in April 2011. Funches testified for the state to the facts recited above, including the fact that Hayes pulled out a gun and shot DeRonde. In addition, a bystander testified that she saw Hayes point a gun at DeRonde seconds before she heard the gun discharge. The jury found Hayes guilty of first-degree felony murder

while committing a drive-by shooting and second-degree intentional murder but not guilty of first-degree premeditated murder.

On direct appeal, the supreme court reversed the conviction of first-degree felony murder while committing a drive-by shooting but otherwise affirmed. *Hayes*, 826 N.W.2d at 808. The district court resentenced Hayes to 463 months of imprisonment on the conviction of second-degree intentional murder.

In October 2016, Hayes filed his first petition for postconviction relief. He asserted a claim of newly discovered evidence. He submitted two affidavits executed by persons who were imprisoned with Funches. Both affiants stated that Funches had said that he (not Hayes) shot and killed DeRonde. In response, the state argued that Hayes's petition was barred by the statute of limitations and by the *Knaffla* doctrine. *See State v. Knaffla*, 243 N.W.2d 737 (Minn. 1976). The postconviction court denied the petition without an evidentiary hearing on both grounds asserted by the state. Hayes did not appeal from the denial of postconviction relief.

In November 2022, Hayes filed his second petition for postconviction relief. He again asserted a claim of newly discovered evidence. But this time, Hayes submitted an affidavit executed by Funches, who stated that DeRonde (not Hayes) brought a gun into the vehicle, that DeRonde pulled out the gun after Hayes and Funches demanded that DeRonde return their money, that Hayes and DeRonde "were fighting back and forth with the gun" while DeRonde "was trying to get out of the back seat," and that "the gun discharged and a bullet struck" DeRonde. In response, the state again argued that Hayes's petition is barred by the statute of limitations and by the *Knaffla* doctrine.

The postconviction court conducted an evidentiary hearing in July 2023. Funches testified that his trial testimony was not truthful and that his 2022 affidavit is an accurate description of the September 10, 2010 incident.

In December 2023, the postconviction court filed a 16-page order in which it denied Hayes's petition, for two reasons. First, the postconviction court concluded that Hayes's petition is untimely because it was filed after the expiration of the statute of limitations and because Hayes did not satisfy any exception to the statute of limitations. Second, the postconviction court concluded that Hayes's claim is barred by the *Knaffla* doctrine. The postconviction court also found that "Funches' testimony at the evidentiary hearing was not credible given the additional evidence at trial," including evidence about the trajectory of the bullet and the testimony of the eyewitness who saw Hayes point a gun at DeRonde seconds before it was discharged. Hayes appeals.

DECISION

Hayes argues that the postconviction court erred by denying his postconviction petition. He makes two arguments, which correspond to the postconviction court's two reasons for denying his petition.

Hayes first argues that the postconviction court erred by concluding that his petition is untimely and not within the newly-discovered-evidence exception to the statute of limitations. In general, a person seeking postconviction relief must file a postconviction petition within a two-year limitations period. Minn. Stat. § 590.01, subd. 4(a) (2022). The two-year period begins upon the latter 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.” *Id.* In this case, Hayes plainly did not comply with the two-year statute of limitations because he filed his second postconviction petition almost ten years after he was resentenced on his conviction of first-degree intentional murder. *See Moua v. State*, 778 N.W.2d 286, 288 (Minn. 2010).

If a postconviction petition is filed after the two-year limitations period has expired, the postconviction court may consider the petition if any one of five statutory exceptions applies. Minn. Stat. § 590.01, subd. 4(b). Under the exception at issue in this appeal, a postconviction court may consider an otherwise untimely petition if the petitioner asserts a claim of newly discovered evidence and satisfies certain statutory requirements. *Id.*, subd. 4(b)(2). To qualify for this exception, the petitioner bears the burden of showing that the alleged newly discovered evidence:

(1) is newly discovered; (2) could not have been ascertained by the exercise of due diligence by the petitioner or the petitioner’s attorney within the 2-year time-bar for filing a petition; (3) is not cumulative to evidence presented at trial; (4) is not for impeachment purposes; and (5) establishes by the clear and convincing standard that petitioner is innocent of the offenses for which [s]he was convicted.

Onyelobi v. State, 966 N.W.2d 235, 238 (Minn. 2021) (quoting *Riley v. State*, 819 N.W.2d 162, 168 (Minn. 2012)) (alteration in original).

For purposes of the newly-discovered-evidence exception in section 590.01, subdivision 4(b)(2), the new evidence offered by the petitioner is not “newly discovered” if “the petitioner was admittedly present at the time of the events the witness purports to describe.” *Id.* In *Onyelobi*, the petitioner submitted an affidavit of a person who stated that the petitioner “was with me when I went to the scene of the crime and when I shot the

victim.” *Id.* at 239 (alteration omitted). The supreme court reasoned that the petitioner “knew or should have known at trial” the information provided by the affiant because the petitioner was present with the affiant at the time of the events described in the affidavit. *Id.* Consequently, the petitioner’s new evidence was “not ‘newly discovered’ evidence.” *Id.* For that reason, the supreme court concluded that the petitioner could not satisfy the first requirement of the newly-discovered-evidence exception to the statute of limitations. *Id.*; *see also El-Shabazz v. State*, 984 N.W.2d 569, 575 (Minn. 2023) (concluding that new evidence does not satisfy first requirement of newly-discovered-evidence exception because petitioner “was present during the relevant events described in the affidavit”).

In this case, the new evidence is inadequate for the same reasons as in *Onyelobi*. Funches’s affidavit begins by stating, “I was driving the vehicle and Christopher Hayes was in the front passenger seat” According to Funches’s affidavit, both he and Hayes remained in the car throughout the events described in the affidavit. As in *Onyelobi*, Hayes “was admittedly present at the time of the events [Funches] purports to describe.” *See* 966 N.W.2d at 238. If we assume Funches’s affidavit to be true, Hayes either knew or should have known, at the time of trial, of the supposedly new evidence contained in the affidavit. Consequently, the new evidence is not “newly discovered evidence” and, thus, does not satisfy the first requirement of the newly-discovered-evidence exception to the statute of limitations. *See id.*

Hayes makes only a single, narrow argument for reversal. He argues that the postconviction court erred by applying the *Rainer* test instead of the *Larrison* test. Hayes refers to caselaw that might apply to a claim based on newly discovered evidence, if the

claim were timely and considered on the merits. *See Rainer v. State*, 566 N.W.2d 692, 695 (Minn. 1997); *State v. Caldwell*, 322 N.W.2d 574, 584-88 (Minn. 1982) (citing *Larrison v. United States*, 24 F.2d 82 (7th Cir. 1928)). But Hayes's postconviction petition was not timely filed, so the postconviction court was required to determine whether Hayes could satisfy the statutory newly-discovered-evidence exception to the statute of limitations before considering the merits of the petition. *See Onyelobi*, 966 N.W.2d at 237-39. We have concluded that Hayes cannot satisfy that exception because he was present throughout the duration of the events described in Funches's affidavit. *See id.* For that reason, it is unnecessary to consider whether *Rainer* or *Larrison* would apply to Hayes's postconviction claim.

Thus, the postconviction court did not err by denying Hayes's second postconviction petition on the grounds that it is untimely and that Hayes has not satisfied the newly-discovered-evidence exception to the statute of limitations. In light of that conclusion, we need not consider Hayes's second argument, that the postconviction court erred by concluding that his postconviction claim also is barred by the *Knaffla* doctrine. *See id.* at 239 n.5 (declining to consider appellant's argument concerning *Knaffla* after concluding that petition is untimely and not within newly-discovered-evidence exception).

Affirmed.