

STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1923



Dean Richard Peterson, petitioner,

Appellant,

vs.

State of Minnesota,

Respondent.

ORDER OPINION

Redwood County District Court
File No. 64-K0-98-000158

Considered and decided by Cochran, Presiding Judge; Reyes, Judge; and Schmidt, Judge.

BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND BECAUSE:

1. Appellant Dean Richard Peterson argues that the postconviction court committed structural error by summarily dismissing his postconviction petition without appointing counsel or obtaining a valid waiver of his right to counsel.

2. In 1998, the district court convicted appellant of third-degree assault following his guilty plea. Appellant did not file a direct appeal of his conviction.

3. In September 2024, appellant filed a pro se petition for postconviction relief in which he requested legal counsel. Pursuant to Minnesota Statutes section 590.02, subdivision 1(4) (2024), a court administrator forwarded appellant's petition to the Office of the Minnesota Appellate Public Defender (OMAPD). Because appellant did not initially submit eligibility forms, the OMAPD informed the postconviction court on September 25

that it was not representing appellant in the postconviction proceeding. Appellant subsequently submitted the eligibility forms, and the OMAPD determined that he was eligible for its services. On October 2, the OMAPD requested that the postconviction court not rule on the petition while it assigned an attorney to represent appellant.

4. However, before the OMAPD could assign an attorney, the postconviction court filed an order on October 7 summarily denying appellant's petition as time-barred.

5. When the facts are undisputed, as they are here, appellate courts review a postconviction court's decision de novo to determine whether the postconviction court violated a defendant's right to counsel. *State v. Slette*, 585 N.W.2d 407, 409 (Minn. App. 1998).

6. The United States and Minnesota constitutions grant criminal defendants the right to the assistance of counsel. *State v. Paige*, 765 N.W.2d 134, 138 (Minn. App. 2009). This right extends to one review of a criminal conviction, whether by direct appeal or a first review by a postconviction proceeding. *Deegan v. State*, 711 N.W.2d 89, 98 (Minn. 2006).

7. Upon application, the OMAPD is required to represent an indigent petitioner in a first postconviction proceeding following a conviction if the petitioner has not previously directly appealed that conviction. Minn. Stat. § 590.05 (2024).

8. In a first postconviction proceeding regarding a conviction for which the petitioner has not filed a direct appeal, a district court must recognize the petitioner's right to counsel or obtain a valid waiver of this right before allowing the petitioner to proceed unrepresented. *See Bonga v. State*, 765 N.W.2d 639, 643 (Minn. 2009).

9. Denial of the right to counsel is structural error, *id.*, meaning that it “does not require a showing of prejudice to obtain reversal,” *State v. Camacho*, 561 N.W.2d 160, 171 (Minn. 1997).

10. Because appellant did not previously file a direct appeal or postconviction petition, the right to counsel attaches to this postconviction proceeding. And, because the postconviction court decided appellant’s petition without allowing him to proceed with counsel or obtaining a valid waiver of his right to counsel, it violated appellant’s right to counsel.

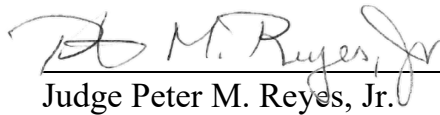
IT IS HEREBY ORDERED:

1. The district court’s order is reversed and remanded to allow appellant to file a postconviction petition with the assistance of counsel.

2. Pursuant to Minn. R. Civ. App. P. 136.01, subd. 1(c), this order opinion is nonprecedential, except as law of the case, res judicata, or collateral estoppel.

Dated: June 25, 2025

BY THE COURT



Judge Peter M. Reyes, Jr.