

APPENDIX A



**CLERK OF THE NEBRASKA SUPREME COURT
AND NEBRASKA COURT OF APPEALS**
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March 9, 2022

Matthew J Kidder #84791
TSCI c/o LRC Building 1
2725 N Hwy 50 PO Box 900
Tecumseh, NE 68450-0900

IN CASE OF: S-21-000991, State v. Matthew J Kidder
TRIAL COURT/ID: Douglas County District Court CR15-2381

The following filing: Motion Appellee for Summary Affirmance
Filed on 02/16/22
Filed by appellee State of Nebraska

Has been reviewed by the court and the following order entered:

Motion of Appellee for summary affirmance sustained; judgment affirmed. See Neb. Ct. R. App. P. § 2-107(B) (2).

Respectfully,

Clerk of the Supreme Court
and Court of Appeals

APPENDIX B

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

STATE OF NEBRASKA,

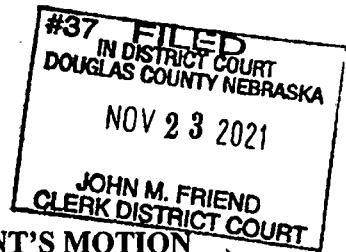
) CR 15-2381

Plaintiff,

) vs.

) MATTHEW J. KIDDER,

) Defendant.



) ORDER ON DEFENDANT'S MOTION
FOR POSTCONVICTION RELIEF

This matter comes before the Court on Defendant's Motion for Postconviction Relief, Motion to Proceed in forma Pauperis, and Motion for Counsel, filed November 4, 2021.

Neb. Rev. Stat. § 29-3001 provides that a one-year period of limitation applies to the filing of a verified motion for postconviction relief; this period runs from "the later of: (a) The date the judgment of conviction became final by the conclusion of a direct appeal or the expiration of the time for filing a direct appeal; (b) The date on which the factual predicate of the constitutional claim or claims alleged could have been discovered through the exercise of due diligence; (c) The date on which an impediment created by state action, in violation of the Constitution of the United States or the Constitution of Nebraska or any law of this state, is removed, if the prisoner was prevented from filing a verified motion by such state action; (d) The date on which a constitutional claim asserted was initially recognized by the Supreme Court of the United States or the Nebraska Supreme Court, if the newly recognized right has been made applicable retroactively to cases on postconviction collateral review; or (e) August 27, 2011. See *State v. Amaya*, 298 Neb. 70, 74-76, 902 N.W.2d 675, 679-80 (2017). The 1-year statute of limitations in § 29-3001(4) applies to all verified motions for postconviction relief, including successive motions. *Id.* A defendant is



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entitled to bring a second proceeding for postconviction relief only if the grounds relied upon did not exist at the time the first motion was filed. *Id.*

The plain language of § 29-3001 both authorizes and requires a district court to conduct a preliminary review of a postconviction motion. *State v. Amaya, supra.* If, as part of its preliminary review, the trial court finds the postconviction motion affirmatively shows—either on its face or in combination with the files and records before the court—that it is time barred under § 29-3001(4), the court is permitted, but not obliged, to sua sponte consider and rule upon the timeliness of the motion. *Id.* The proper time for a court to consider frivolousness is when deciding whether to grant or deny leave to proceed in forma pauperis, see Neb. Rev. Stat. § 25-2301.02 (Reissue 2016), or when exercising discretion on whether to grant or deny appointment of postconviction counsel, see *State v. Robertson*, 294 Neb. 29, 881 N.W.2d 864 (2016). *State v. Rice*, 295 Neb. 241, 250, 888 N.W.2d 159, 167 (2016).

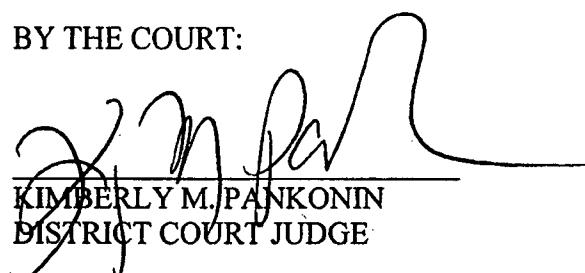
Kidder was sentenced on November 1, 2016. Following a direct appeal, the Nebraska Supreme Court’s mandate was entered March 30, 2018. Kidder filed his first Motion for Postconviction Relief on May 7, 2018. After that motion was denied, Kidder filed a document entitled “Amended Motion for Postconviction Relief” on July 11, 2018. The one year limitations period for Kidder to file a Motion for Postconviction Relief began to run March 30, 2018, when the Nebraska Supreme Court’s mandate was entered following direct appeal. See Neb. Rev. Stat. § 29-3001. Accordingly, Kidder’s November 4, 2021, Motion for Postconviction Relief is untimely. Further, nothing in the Motion for Postconviction Relief suggests that the grounds relied upon did not exist at the time the first motion was filed; in fact, most of the allegations of the 2021 postconviction motion are substantively identical to those claimed in the 2018 motions for postconviction relief. Kidder’s motion is both untimely and an impermissible successive motion.

The Court also determines that because Kidder's motion was over two years untimely and raised the same claims previously denied, the motion was frivolous. For these reasons, Kidder's Motion for Postconviction Relief, Motion to Proceed in Forma Pauperis, and Motion for Counsel filed November 4, 2021, are denied.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Kidder's Motion for Postconviction Relief, Motion to Proceed in Forma Pauperis, and Motion for Counsel filed November 4, 2021, are denied.

DATED this 23 day of November, 2021.

BY THE COURT:



KIMBERLY M. PANKONIN
DISTRICT COURT JUDGE