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App. 1

*This opinion is nonprecedential except as provided by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
A22-0481**

Emem Ufot Udo, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed September 12, 2022
Affirmed
Smith, John, Judge***

Hennepin County District Court
File No. 27-CR-13-8979

Emem Ufot Udo, Faribault, Minnesota (pro se appellant)
Keith Ellison, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney,
Jonathan P. Schmidt, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Johnson, Presiding Judge;
Bryan, Judge; and Smith, John, Judge.

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

NONPRECEDENTIAL OPINION

SMITH, JOHN, Judge

We affirm because the issue raised by appellant was not cognizable under Minnesota Statutes chapter 590, and as such, the district court did not abuse its discretion in denying appellant's third petition for postconviction relief.

FACTS

Appellant Emem Ufot Udoeh was convicted and sentenced to prison in 2014 for first- and second-degree criminal sexual conduct for sexually abusing his two stepdaughters. Since that time, Udoeh has challenged his convictions in a direct appeal and two separate petitions for postconviction relief. In the direct appeal, this court reversed one conviction for second-degree criminal sexual conduct based on a violation of Minn. Stat. § 609.04, subd. 1 (2012), but affirmed the remaining two convictions and sentences. *State v. Udoeh*, No. A14-2181, 2016 WL 687328, at *4 (Minn. App. Feb. 22, 2016), *rev. denied* (Minn. Apr. 27, 2016).

Udoeh thereafter filed two petitions for postconviction relief in 2018. The district court denied the first petition on its merits and dismissed the second petition as untimely and procedurally barred. Udoeh appealed from the denial of his first petition for postconviction relief, but the appeal was dismissed after his repeated failures to file a timely brief. *State v.*

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Udoh, No. A19-1129 (Minn. App. Mar. 23, 2020) (order op.).

Udoh filed a third petition for postconviction relief in district court in January 2022, arguing that the Minnesota Department of Corrections violated his constitutional right of access to the courts by limiting his ability to adequately access the correctional facility's law-library resources due to the COVID-19 pandemic. These restrictions, he argued, were responsible for his inability to file a timely brief in appeal A19-1129. He therefore requested that the district court vacate the two orders resolving the claims raised in his first postconviction petition and reissue those orders to provide him with a renewed opportunity to appeal and obtain this court's review of his claims. Also contained in this petition was a request for the release of his passport, which had previously been seized from him.

The district court issued an order granting in part and denying in part Udoh's third postconviction petition. The district court concluded that appellant's claim regarding a violation of his right of access to the courts was outside the scope of those permitted to be raised in a petition for postconviction relief and that, in any event, Udoh had failed to demonstrate that the correctional facility had violated his right of access to the courts. The district court did, however, conclude that Udoh was entitled to the release of his passport.

DECISION

This court reviews a district court's order denying postconviction relief for an abuse of discretion. *Riley v. State*, 819 N.W.2d 162, 167 (Minn. 2012). "The district court will not be reversed unless it has exercised its discretion in an arbitrary or capricious manner, based its ruling on an erroneous view of the law, or made clearly erroneous factual findings." *Hannon v. State*, 957 N.W.2d 425, 432 (Minn. 2021) (quotation omitted). Whether the postconviction remedy is available to a given defendant presents a question of law we review de novo. See *Johnston v. State*, 955 N.W.2d 908, 910-12 (Minn. 2021) (determining that postconviction relief is not available to a defendant who receives, and successfully completes, a stay of adjudication).

In his brief to this court, Udoх renews his claim that his constitutional right of access to the courts was infringed upon by the Department of Corrections, which unjustly prevented him from filing a timely brief in A19-1129. Udoх requests, as alternative forms of relief, that this court either (1) reinstate appeal A19-1129 and permit him to file a brief on the merits, (2) conclude that the Department of Corrections violated his constitutional right of access to the courts, or (3) remand for an evidentiary hearing on the question of the violation of his right of access to the courts. In response, the state argues that the district court did not err in denying Udoх's third petition for postconviction relief because his claims are not cognizable under the plain language of the postconviction statute. We agree.

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Udoh sought relief from the district court pursuant to Minnesota Statutes chapter 590, which permits a criminal defendant to commence a proceeding in district court to assert two types of claims—either that:

- (1) the conviction obtained or the sentence or other disposition made violated the person's rights under the Constitution or laws of the United States or of the state; or
- (2) scientific evidence not available at trial, obtained pursuant to a motion granted under subdivision 1a, establishes the petitioner's actual innocence[.]

Minn. Stat. § 590.01, subd. 1 (2020). Udoh's claim in his postconviction petition falls into neither of these prescribed categories. His assignment of error was entirely unrelated to either his conviction or his sentence, and it did not concern newly available scientific evidence. He argued instead that the Department of Corrections—a state agency that is not a party to the underlying criminal prosecution—violated his right of access to the courts, which in turn deprived him of his ability to file a timely brief in a prior appeal. Because this claim is not of the sort permitted to be raised in a petition for postconviction relief, the district court did not abuse its discretion in denying Udoh's request for relief in this regard. And because we conclude that Udoh's claim of error was not properly raised in a petition for postconviction relief, we decline to reach the merits of that argument.

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Affirmed.

State of Minnesota,
Respondent,
v.
Case Type: Criminal
Judge Tamara Garcia
Court File No. 27-CR-13-8979

**Emem Ufot Udoh,
Petitioner.** **ORDER DENYING IN
PART AND GRANTING
IN PART PETITION**

**ORDER DENYING IN
PART AND GRANTING
IN PART PETITION
FOR POST-CONVICTION
RELIEF**

(Filed Mar. 16, 2022)

The above-entitled matter came before the Honorable Tamara Garcia pursuant to Petitioner's Petition for Post-Conviction Relief filed January 3, 2022. In his Petition, Petitioner seeks the following relief:

1. That the Court vacate its prior orders on Petitioner's post-conviction petitions and reissue them so he can pursue new appeals of those orders;
2. That the Court find that the State of Minnesota has violated Petitioner's constitutional right of access to the Court of Appeals and Supreme Court;
3. That the Court order the release of his passport;
4. That the Court grant any other relief it deems appropriate; and
5. That the Court grant an evidentiary hearing.

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The Court denied two prior petitions for post-conviction relief in February 2019 and March 2020. After initiating an appeal of the denial of the first post-conviction petition in February 2019, Petitioner missed a filing deadline set by the Court of Appeals. The Court of Appeals then dismissed Petitioner's appeal of that order. Since then, Petitioner has filed numerous motions and writs of mandamus seeking to vacate that dismissal by the Court of Appeals. All those attempts have been unsuccessful.

Such a request is outside the scope of a proper petition for post-conviction relief. *See Minn. Stat. § 590.01, subd. 1* (stating that post-conviction relief is available for someone alleging that either a conviction or sentence was obtained in violation of their constitutional or statutory rights, or if new evidence establishes their actual innocence). Even if Petitioner's unusual request were properly before it, the Court would nevertheless deny it. The Court of Appeals appropriately set a briefing schedule for Petitioner's appeal; Petitioner failed to comply with it. This Court will not circumvent the proper functioning of the judicial process to give Petitioner an end run around missed deadlines.

Similarly, the Court finds no basis to conclude that Petitioner's access to the courts has been limited in any way by the State of Minnesota. The State neither set the briefing schedule nor did anything to prevent Petitioner from complying with that briefing schedule. As noted by the numerous filings mentioned in the State's response, Petitioner has had ample access to both the

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state and federal courts. Petitioner is not entitled to an evidentiary hearing to address this.

Finally, the Court ordered that Petitioner surrender his passport as a condition of his conditional release in 2013. It can now be released to him. Court administration will be ordered to release Petitioner's passport to him in person. Petitioner may file a request to have a third party retrieve his passport on his behalf.

IT IS HEREBY ORDERED

1. Petitioner's request for the Court to vacate its prior orders on his post-conviction petitions is DENIED.
2. Petitioner's request for a finding that the State of Minnesota has violated his right to access the courts is DENIED.
3. Petitioner's request for the release of his passport is GRANTED. Court administration is directed to release Petitioner's passport to him in person at the Hennepin County Government Center. Petitioner may file a request to have a third party retrieve his passport on his behalf.
4. Petitioner's request for any additional relief is DENIED.

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5. Petitioner's request for an evidentiary hearing is DENIED.

BY THE COURT:

Dated: 3-16-22 /s/ Tamara Garcia

Tamara Garcia
Judge of District Court
Fourth Judicial District

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STATE OF MINNESOTA

IN SUPREME COURT

A22-0481

Emem Ufot Udoth,
Petitioner,
vs.
State of Minnesota,
Respondent.

ORDER

(Filed Nov. 23, 2022)

Based upon all the files, records, and proceedings
herein,

IT IS HEREBY ORDERED that the petition of
Emem Ufot Udoth for further review be, and the same
is, denied.

Dated: November 23, 2022 BY THE COURT:

/s/ Lorie S. Gildea
Lorie S. Gildea
Chief Justice
