

**STATE OF MINNESOTA**  
**IN COURT OF APPEALS**  
**A24-1492**



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James Earl Bailey, petitioner,

Appellant,

vs.

State of Minnesota,

Respondent.

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**ORDER OPINION**

Olmsted County District Court  
File No. 55-K2-02-144

Considered and decided by Wheelock, Presiding Judge; Worke, Judge; and Connolly, Judge.

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

1. On June 27, 2002, appellant James Earl Bailey pleaded guilty to a pattern of harassing conduct in violation of Minn. Stat. § 609.749, subd. 5(a) (2000), and terroristic threats in violation of Minn. Stat. § 609.713, subd. 1 (2000). On July 25, 2002, the Olmsted County District Court committed Bailey to the commissioner of corrections for 48 months for his harassment offense and 12 months and one day for his terroristic-threats offense, to be served consecutively. Bailey did not appeal his convictions or sentence, and they became final on October 23, 2002. Minn. R. Crim. P. 28.02, subd. 2(2) (describing 90-day appeal period for felony convictions).

2. About 22 years later, in June 2024, Bailey filed a petition for postconviction relief, asking the district court to vacate his convictions. In his self-represented petition,

Bailey argued that the Olmsted County District Court did not have jurisdiction over him for the proceedings in his criminal matter because the alleged offenses to which he pleaded guilty occurred in Ramsey and Hennepin Counties. The record does not indicate that the district court forwarded Bailey's self-represented petition to the Office of the Minnesota Appellate Public Defender (OMAPD) or that the district court notified Bailey of his right to counsel after he filed his petition with the district court. And the parties agree that the district court did not forward Bailey's self-represented petition or notify him of his right to counsel. Less than one month later, the district court summarily dismissed Bailey's petition on the grounds that it was untimely—without addressing the merits of Bailey's claim or making any factual findings regarding Bailey's waiver of counsel or status as a self-represented petitioner. With assistance from attorneys at the OMAPD, Bailey then appealed the district court's dismissal of his petition.

3. Bailey challenges the district court's dismissal of his self-represented petition for postconviction relief, arguing that he was entitled to appointment of a public defender to represent him in postconviction proceedings because this was his first review of that conviction and that the district court's failure to transmit his petition to the OMAPD was a structural error requiring this court to reverse and remand. The state concedes that Minnesota law required the district court to transmit Bailey's petition to the OMAPD and there is no record that the district court did so, but the state argues that, because Bailey's petition is meritless and untimely, reversal is unwarranted. We agree with Bailey. The district court committed structural error, and we reverse the district court's order and remand the matter for the reasons listed below.

4. Appellate courts review a district court's denial of a petition for postconviction relief for an abuse of discretion. *Brown v. State*, 895 N.W.2d 612, 617 (Minn. 2017). A district court abuses its discretion when it bases its ruling on an erroneous view of the law. *Pearson v. State*, 891 N.W.2d 590, 596 (Minn. 2017). Appellate courts review a district court's legal conclusions de novo. *Gulbertson v. State*, 843 N.W.2d 240, 244 (Minn. 2014).

5. Bailey filed his self-represented petition pursuant to Minn. Stat. § 590.01, subd. 1 (2022). A petitioner seeking postconviction relief is entitled to representation by a public defender if the petitioner has not already pursued a direct appeal or previously filed a petition for postconviction relief from the conviction at issue. Minn. Stat. § 590.05 (2022). Bailey never directly appealed his 2002 felony convictions and had not filed a petition for postconviction relief from them until 2024. Therefore, Bailey had a right to representation by a public defender for his postconviction petition.

6. For self-represented petitioners seeking postconviction relief, like Bailey, “the court administrator shall forthwith transmit a copy of the petition to the state public defender and shall advise the petitioner of such referral.” Minn. Stat. § 590.02, subd. 1(4) (2022). Indeed, the state concedes that Bailey was self-represented when he sought postconviction review of his 2002 convictions. The state further concedes that the record does not show that the district court transmitted Bailey's petition for postconviction relief to the OMAPD or that it notified Bailey of any such referral or of his right to have postconviction counsel appointed.

7. Bailey argues that the district court's failure to transmit his self-represented petition to the OMAPD deprived him of his right to counsel, which was a structural error requiring reversal. The United States and Minnesota Constitutions require that, in all criminal prosecutions, the accused shall have the assistance of counsel. U.S. Const. amend. VI; Minn. Const. art. I, § 6. This right extends to a petitioner who has not had a direct appeal and is pursuing a first postconviction proceeding. *Deegan v. State*, 711 N.W.2d 89, 98 (Minn. 2006). A court administrator's failure to transmit a copy of the petition to the OMAPD and failure to advise the petitioner of such referral constitutes the denial of the petitioner's right to counsel. *Paone v. State*, 658 N.W.2d 896, 899-900 (Minn. App. 2003). The denial of the right to counsel is a structural error. *Bonga v. State*, 765 N.W.2d 639, 643 (Minn. 2009) (concluding that district court committed structural error by denying counsel to self-represented postconviction petitioner); *State v. Dorsey*, 701 N.W.2d 238, 252 (Minn. 2005) (citing *Arizona v. Fulminante*, 499 U.S. 279, 309 (1991) (holding that denial of right to counsel is structural error)). Structural errors are errors that "deprive defendants of basic protections without which a criminal [proceeding] cannot reliably serve its function as a vehicle for determination of guilt or innocence . . . and no criminal punishment may be regarded as fundamentally fair." *State v. Finch*, 865 N.W.2d 696, 703 (Minn. 2015) (quoting *Neder v. United States*, 527 U.S. 1, 8-9 (1999)) (other quotation omitted).

8. *Bonga* and *Paone* also require the result we reach here. In 2001, self-represented Bonga filed a motion to vacate, set aside, or correct his sentence pursuant to Minn. R. Crim. P. 27.03, subd. 9, and requested counsel. *Bonga*, 765 N.W.2d at 642-43.

The district court did not appoint counsel for Bonga, and it denied his motion to correct his sentence without a hearing, treating his motion as a postconviction petition. *Id.* Six years later, with the assistance of counsel, Bonga filed a petition for postconviction relief, and the district court dismissed the petition without a hearing, characterizing the petition as a successive postconviction petition. *Id.* at 642. The supreme court concluded that the district court committed structural error by denying Bonga’s request for counsel in relation to his 2001 motion that it treated as a postconviction petition because the denial of postconviction counsel was a structural error, and the supreme court remanded the matter. *Id.* at 643.

9. The state argues that the instant case is distinguishable from *Bonga* because Bonga applied for postconviction counsel while Bailey did not. The state suggests that Bailey’s failure to apply for counsel may constitute a waiver of counsel. But waiver of appointed counsel “shall in all instances be made in writing,” except when a defendant refuses to sign the written waiver, in which case “the court shall make a record evidencing such refusal of counsel.” Minn. Stat. § 611.19 (2024). And the state does not identify in the record any waiver of counsel, written or otherwise. Moreover, the state does not further develop this argument or cite authority that could establish that Bonga’s failure to apply for representation amounts to a “knowing, intelligent, and voluntary waiver of his right to counsel.” *State v. Jones*, 772 N.W.2d 496, 505 (Minn. 2009). Inadequately briefed issues are forfeited on appeal. *State v. German*, 929 N.W.2d 466, 477 (Minn. App. 2019). *Bonga* is controlling precedent in this case.

10. In *Paone*, Paone directly appealed his convictions and the appeal was dismissed two months later by stipulation of the parties prior to submitting briefs. 658 N.W.2d at 898. Paone then filed a self-represented petition for postconviction relief, and the district court failed to transmit Paone’s petition to the OMAPD. *Id.* at 899. The district court dismissed the petition for failing to meet the petitioner’s burden to allege facts that, if proved by a preponderance of evidence, would entitle the petitioner to relief. *Id.* Paone appealed, making two arguments. First, he argued that he had a right to the appointment of counsel for his postconviction proceedings because the dismissal of his direct appeal did not exhaust his right to counsel. *Id.* at 898. Second, he argued that he was denied that right to counsel when the district court failed to transmit his self-represented petition to the OMAPD as Minnesota law requires. *Id.* The supreme court agreed with Paone on both issues and remanded the case to the district court without reaching the merits of Paone’s postconviction petition so that Paone was “properly represented by counsel” and “better able to present his postconviction claims to the court.” *Id.* at 900.

11. The state attempts to distinguish the instant case from *Paone* by claiming that Bailey’s postconviction petition was so meritless and untimely that, unlike Paone, Bailey could not possibly benefit from representation by counsel. The state’s argument fundamentally misapprehends the rationale in *Paone*. After concluding that the district court’s failure to transmit Paone’s self-represented petition to the OMAPD constituted structural error, the supreme court expressly declined to address the merits of Paone’s arguments precisely because the structural error made the arguments unfit for evaluation.

*Id.* at 899-900. Following the reasoning in *Bonga* and *Paone*, we conclude that the district court here structurally erred by dismissing Bailey’s petition without first forwarding it to the OMAPD, and we are unconvinced by the state’s suggestions to the contrary.<sup>1</sup>

12. By failing to transmit Bailey’s self-represented petition to the OMAPD, the district court denied Bailey his right to counsel, which is structural error requiring remand.

13. We have not considered, and do not express an opinion about, the merits of Bailey’s arguments, if any, or the timeliness of his petition.

**IT IS HEREBY ORDERED:**

1. The district court’s order denying postconviction relief is reversed, and this matter is remanded for further proceedings consistent with this opinion.

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 10, 2025

**BY THE COURT**



Judge Sarah I. Wheelock

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<sup>1</sup> Because the district court committed structural error, and because structural error requires remand, we need not address the state’s other arguments.