

**IN THE SUPREME COURT  
STATE OF NORTH DAKOTA**

<p><b>ABDULRAHMAN IBRAHIM ALI,</b>           PETITIONER AND APPELLANT   <i>v.</i>   <b>STATE OF NORTH DAKOTA,</b>           RESPONDENT AND APPELLEE</p>	<p><b>SUPREME COURT No. 20210335</b>           DIST. CT. No. 09-2021-CV-02341</p>
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APPEAL FROM ORDER GRANTING STATE’S MOTION  
FOR SUMMARY DISPOSITION  
ENTERED NOVEMBER 17, 2021

\* \* \*

CASS COUNTY DISTRICT COURT  
EAST CENTRAL JUDICIAL DISTRICT  
THE HONORABLE JOHN C. IRBY, PRESIDING

**APPELLEE’S BRIEF**

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## STATEMENT OF THE ISSUES

[¶ 1] Whether the district court properly granted summary disposition of Ali's second application for post-conviction relief.

## STATEMENT OF THE CASE

[¶ 2] Abdulrahman Ali filed a second application for post-conviction relief. The State moved for summary disposition, asserting the application was barred by res judicata, misuse of process, and the statute of limitations. The district court granted the State's motion and dismissed Ali's application. He appeals from the order granting summary disposition.

## STATEMENT OF FACTS

[¶ 3] In 2016, the State charged Abdulrahman Ali with gross sexual imposition, kidnapping, aggravated assault, and two counts of terrorizing. Ali waived his right to jury trial and stipulated to the facts underlying the charges at a June 2017 bench trial. The sole issue for the district court in the June 2017 trial is whether Ali was criminally responsible due to mental illness. The district court found Ali was criminally responsible and found him guilty on all counts. This Court affirmed the criminal judgment. *State v. Ali*, 2018 ND 87, 909 N.W.2d 112.

[¶ 4] In 2018, Ali filed his first application for post-conviction relief. In it, he alleged his trial counsel was ineffective for overlooking mental health issues. The district court held an evidentiary hearing and denied Ali's petition. This Court affirmed the order denying post-conviction relief. *Ali v. State*, 2019 ND 121, ¶ 3, 926 N.W.2d 706.

[¶ 5] In July 2021, Ali filed a second application for post-conviction relief. Appellant's Appendix ("App.") at 5–7. In Ali's second post-conviction relief application, he again alleged ineffective assistance of trial counsel. App. at 6. Additionally, Ali alleged he was incompetent and a plea of guilty was unlawfully induced or not made voluntarily. App. at 6.

[¶ 6] The State filed an answer, asserting Ali's application was untimely and barred by res judicata and misuse of process. (R11:2:¶¶1–3). With its answer, the State filed a motion for summary disposition asserting the application should be dismissed on the grounds of misuse of process, res judicata, and timeliness. (R12:1–6).

[¶ 7] On August 25, 2021, Ali moved to continue the deadline to respond to the State's motion for summary disposition. (R16:1). The district court allowed an additional sixty days to respond. (R20:1). Ali did not respond.

[¶ 8] In November 2021, the district court granted the State's motion for summary disposition. App. at 14–19. The district court held Ali's

application was barred by res judicata, misuse of process, and the statute of limitations. Ali now appeals. App. at 20.

### STANDARD OF REVIEW

[¶ 9] “Post-conviction relief proceedings are civil in nature and governed by the North Dakota Rules of Civil Procedure.” *Friesz v. State*, 2022 ND 22, ¶ 7, \_\_ N.W.2d \_\_ (internal citation omitted). Subsection 29-32.1-09(3), N.D.C.C., authorizes a district court to summarily dismiss an application for post-conviction relief on the motion of either party if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. “If the State moves for summary dismissal, putting a petitioner to his proof, a minimal burden shifts to the petitioner to support his application with admissible evidence, by affidavit or other comparable means, to raise a genuine issue of material fact.” *Friesz*, at ¶ 7 (internal citations omitted). “The party opposing the motion for summary disposition is entitled to all reasonable inferences at the preliminary stages of a post-conviction proceeding and is entitled to an evidentiary hearing if a reasonable inference raises a genuine issue of material fact.” *Id.* (internal citations omitted). This Court reviews an appeal from a summary denial of post-conviction relief as it reviews an appeal from summary judgment. *Id.* (internal citation omitted).

## LAW AND ARGUMENT

### **I. The district court properly granted the State’s motion for summary disposition.**

[¶ 10] The district court granted the State’s motion for summary disposition on three grounds—that Ali’s application was barred by res judicata, misuse of process, and the statute of limitations. Ali seems to focus his argument on appeal solely on whether the district court erred in finding the statute of limitations barred his application because he alleges a mental disease precluded timely assertion of his application. *See generally* Appellant’s Brief at ¶¶ 17, 23–26. As explained below, the district court was correct to dismiss the application on any of the three grounds independently, and this Court should affirm the summary dismissal of Ali’s application.

#### **A. Ali’s application for post-conviction relief is barred by res judicata.**

[¶ 11] Under N.D.C.C. § 29-32.1-12(1), a court may deny post-conviction relief if the claim is barred by res judicata. Section 29-32.1-12(1), N.D.C.C., reads:

1. An application for postconviction relief may be denied on the ground that the same claim or claims were fully and finally determined in a previous proceeding.

[¶ 12] This Court has also held that res judicata prevents relitigation of claims that were raised or could have been raised in prior actions

between the same parties. *Craig v. State*, 2021 ND 204, ¶¶ 9–10, 966 N.W.2d 569.

[¶ 13] Ali alleged ineffective assistance of counsel in his prior application for post-conviction relief. *Ali v. State*, 2019 ND 121, ¶ 2, 926 N.W.2d 706. That claim was denied by the district court and the denial was affirmed by this Court. *Id.* His current application for post-conviction relief again alleges ineffective assistance of counsel. App. at 6. Ali’s claim of ineffective assistance of counsel has been fully and finally determined in the previous post-conviction relief proceeding.

[¶ 14] Ali also alleges two other grounds for relief: “incompetence of individual accused of the crime(s)” and “conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding it’s nature[.]” The district court held the issue of an involuntary guilty plea was a variation on Ali’s argument on direct appeal about stipulated facts at trial. App. at 16. Because that issue had been previously determined by this Court, the district court concluded it was barred by res judicata. *Id.* This Court should affirm the district court’s findings that grounds one and three were barred by res judicata.



**B. Ali’s application for post-conviction relief is barred by misuse of process.**

[¶ 15] Subsection 29-32.1-12(2), N.D.C.C., allows a district court to deny post-conviction relief on the ground of misuse of process. Process is misused when the applicant “[p]resents a claim for relief which the applicant inexcusably failed to raise either in a proceeding leading to judgment of conviction and sentence or in a previous postconviction proceeding” or “[f]iles multiple applications containing a claim so lacking in factual support or legal basis as to be frivolous[.]” *Id.*

[¶ 16] This is Ali’s second application for post-conviction relief. He previously raised the issue of ineffective assistance of counsel in his first application for post-conviction relief. His other grounds for relief—that he was incompetent, and a guilty plea was involuntary—were not raised in the previous application for post-conviction relief. In either case, this Court has been clear that “[p]ost-conviction proceedings are not intended to allow defendants multiple opportunities to raise the same or similar issues, and defendants who inexcusably fail to raise all of their claims in a single post-conviction proceeding misuse the post-conviction process by initiating a subsequent application raising issues that could have been raised in the earlier proceeding.” *Froistad v. State*, 2021 ND 92, ¶ 7, 959 N.W.2d 863 (internal citation omitted).

[¶ 17] Ali has provided no explanation why the claims not previously raised could not have been raised in his first application for post-conviction relief. As such, the claims are barred by misuse of process, and this Court should affirm the district court's dismissal of Ali's application.

**C. Ali's application for post-conviction relief is barred by the statute of limitations.**

[¶ 18] Except under certain limited circumstances, an application for post-conviction relief must be filed within two years of the date the conviction becomes final. N.D.C.C. § 29-32.1-01(2). A conviction becomes final when:

- a. The time for appeal of the conviction to the North Dakota supreme court expires;
- b. If an appeal was taken to the North Dakota supreme court, the time for petitioning the United States supreme court for review expires; or
- c. If review was sought in the United States supreme court, the date the supreme court issues a final order in the case.

*Id.*

[¶ 19] Ali appealed his criminal conviction to this Court, which affirmed the conviction and issued a mandate May 3, 2018. *State v. Ali*, 2018 ND 87, 909 N.W.2d 112. The United States Supreme Court requires a petition for certiorari to be filed within 90 days of entry of judgment by a state court of last resort. Sup.Ct.R. 13. Ninety days after May 3, 2018,

was August 1, 2018. On August 1, 2018, the conviction became final because time to petition the United States Supreme Court for review expired. Likewise, the statute of limitations for filing an application for post-conviction relief expired on August 1, 2020.

[¶ 20] Ali filed the application in this case on July 20, 2021, which is after August 1, 2020. App. at 5–7. Because the application was filed more than two years after the conviction became final, it is barred under N.D.C.C. § 29-32.1-01(2).

[¶ 21] Ali argues the exception to the statute of limitations at N.D.C.C. § 29-32.1-01(3)(a)(2) applies. He did not raise the exception to the statute of limitations in the district court and raises it for the first time here on appeal. “This Court has consistently held that ‘a question not raised or considered in the trial court cannot be raised for the first time on appeal.’” *State v. Mayland*, 2022 ND 9, ¶ 11, \_\_ N.W.2d \_\_ (internal citations omitted).

[¶ 22] Subdivision 29-32.1-01(3)(a)(2), N.D.C.C., provides an exception to the two-year statute of limitations if “[t]he petitioner establishes that the petitioner suffered from a physical disability or mental disease that precluded timely assertion of the application for relief[.]” While Ali alleged as grounds for relief that he suffered from psychological conditions affecting his ability to understand the proceedings, he did not

raise his psychological condition as having precluded a timely application for post-conviction relief. What's more, Ali did file a prior application for post-conviction relief within the two-year statute of limitations that was denied and the denial affirmed on appeal. The district court in this matter properly held that the second application was outside of the two-year statute of limitations and Ali failed to show he meets an exception. This Court should affirm the district court's summary dismissal because Ali's application was untimely.

### CONCLUSION

[¶ 23] Because Ali's application was barred by the statute of limitations, res judicata, and misuse of process, the State respectfully requests this Court **AFFIRM** the summary disposition of Ali's application for post-conviction relief.

Respectfully submitted this 27<sup>th</sup> day of January 2022.

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**CERTIFICATE OF COMPLAINT**

[¶ 1] Pursuant to N.D.R.App.P. 32(e), the principal brief complies with the page limitation and consists of 12 pages.

Respectfully submitted this 27<sup>th</sup> day of January 2022.

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**CERTIFICATE OF SERVICE**

[¶ 1] A true and correct copy of the foregoing document was sent by e-mail on January 27, 2022, to:

Benjamin C. Pulkrabek ([pulkrabek@lawyer.com](mailto:pulkrabek@lawyer.com)).

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