



## July 2018 Supreme Court and Appellate Court Decisions

### Supreme Court

**[A17-0518](#) *Thomas James Fox, Appellant, vs. State of Minnesota, Respondent*  
*Washington County.***

**Judge Justice Anne K. McKeig**

The district court did not err in denying petitioner's claim for postconviction relief without an evidentiary hearing because the record conclusively shows that he is not entitled to relief.

**Affirmed. Justice Anne K. McKeig. Took no part, Justice Paul C. Thissen.**

**[A16-2001](#) *State of Minnesota, Respondent, vs. Scott Ross Hunn, Appellants, Supreme Court*  
*Judge Lillehaug***

On a request to consent to urine testing, a driver's limited constitutional right to counsel recognized in *Friedman v. Commissioner of Public Safety*, 473 N. W. 2d 828 (minn. 1991), is not triggered unless the statutory implied-consent advisory is read.

**Affirmed. Judge Lillehaug**

**[A17-0683](#) *State of Minnesota, Respondent, vs. Miguel Angel Vasquez, Appellant.*  
*Brown County.***

**Chief Justice Lorie S. Gildea.**

1. Because appellant did not assert at trial that his medical privilege barred admission of medical evidence the State offered, appellant did not preserve for appeal his contention that the privilege barred the admission of this evidence.

2. Because any error in the admission of medical evidence did not affect appellant's substantial rights, appellant is not entitled to a new trial based on the admission of this evidence.

**Affirmed. Chief Justice Lorie S. Gildea. Took no part, Justice Paul C. Thissen.**

[A17-0010](#)      *State of Minnesota, Respondent, vs. Gonzalo Galvan, Appellant.*  
*Hennepin County.*

**Justice G. Barry Anderson**

1. The evidence was sufficient to convict appellant of two counts of first-degree premeditated murder.
2. Because the district court instructed the jury on second-degree intentional murder and first-degree premeditated murder and the jury found appellant guilty of first-degree premeditated murder, the defendant was not prejudiced by the district court declining to instruct the jury on first-degree heat-of-passion manslaughter.

**Affirmed. Justice G. Barry Anderson. Took no part, Justice Paul C. Thissen.**

[A17-1754](#)      *Michael Wayne, Appellant, vs. State of Minnesota, Respondent.*  
*Waseca County.*

**Justice Margaret H. Chutich**

1. The district court did not abuse its discretion by summarily denying appellant's petition for postconviction relief based upon DNA evidence without an evidentiary hearing because no exception to the statutory 2-year time bar applied.
2. Appellant's remaining claims in his petition for postconviction relief are barred because they were raised and denied in previous petitions.

**Affirmed. Justice Margaret H. Chutich. Took no part, Justice Paul C. Thissen.**

[A17-0658](#)      *Kenneth Eugene Andersen, Appellant, vs. State of Minnesota, Respondent.*  
*Becker County.*

**Judge Justice David L. Lillehaug.**

1. A prophylactic reversal of the postconviction court's denial of claims that were based on two affidavits is required because the court assessed the affiants' credibility without first holding an evidentiary hearing.
2. The post-conviction court did not abuse its discretion by summarily denying appellant's remaining claims because, even when considered to be true and viewed in a light most favorable to appellant, the facts alleged in support of those claims do not satisfy the newly-discovered-evidence or interests-of-justice exceptions to the post-conviction statute's 2-year statute of limitations.

**Affirmed in part, reversed in part, and remanded. Justice David L. Lillehaug. Took no part, Justice Paul C. Thissen.**

## Court of Appeals

[A17-1083](#) *Megan Ashley Olson, et al., Respondents vs. One 1999 Lexus MN License Plate No. 851LDV VIN: JT6HF10U6X0079461, Appellant.*

Scott County District Court, Hon. Christian S. Wilton.

Hon. Christian S. Wilton.

Minn. Stat. § 169A.63, subd. 9(d) (2016), is unconstitutional as applied to respondents, the driver and the registered owner of a vehicle that was seized after driver's driving while impaired (DWI) arrest, because their right to procedural due process was violated when they were denied prompt, post-deprivation judicial review for over 18 months pending the resolution of the driver's related criminal action.

**Affirmed. Judge Michael L. Kirk.**

[A18-0193](#) *State of Minnesota, Respondent, vs. Donald Andrew Oreskovich, Sr., Appellant.*

Washington County District Court

Judge John R. McBride.

Under the 2012 revisions of the Minnesota Sentencing Guidelines, one custody-status point is added to a sex offender's criminal-history score for a prior sex offense when the offender is no longer on probation but is still within the original term of probation for a sex offense other than Failure to Register as a Predatory Offender.

**Reversed and Remanded. Judge John R. Rodenberg.**

[A17-1915](#) *State of Minnesota, Respondent, vs. Joel Evan Greenough, Appellant.*

Crow Wing County District Court,

Chief Judge Edward J. Cleary.

A district court may not vacate a stay of adjudication, impose a presumptively stayed sentence, and execute that sentence, without additional findings satisfying *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531 (2004).

**Reversed and remanded. Chief Judge Edward J. Cleary.**

[A18-0193](#) *State of Minnesota, Respondent, vs. Donald Andrew Oreskovich, Sr., Appellant.*

Washington County District Court,

Judge John R. Rodenberg.

Under the 2012 revisions of the Minnesota Sentencing Guidelines, one custody-status point is added to a sex offender's criminal-history score for a prior sex offense when the offender is no longer on probation but is still within the original term of probation for a sex offense other than Failure to Register as a Predatory Offender.

**Reversed and Remanded. Judge John R. Rodenberg.**