

IN THE COURT OF APPEALS OF IOWA

No. 19-1693
Filed September 22, 2021

BOBBY RAY WOODBERRY,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Sarah E. Crane, Judge.

The defendant appeals the summary dismissal of his application for postconviction relief. **AFFIRMED.**

Ronald W. Kepford, Winterset, for appellant.

Thomas J. Miller, Attorney General, and Kyle Hanson, Assistant Attorney General, for appellee.

Considered by Vaitheswaran, P.J., and Greer and Schumacher, JJ.

GREER, Judge.

In 1995, a jury convicted Bobby Woodberry of first-degree murder and assault with intent to commit serious bodily injury. Since that conviction, Woodberry has filed five applications for postconviction relief (PCR)—one in 1997, 2004, 2009, 2013, and, now, in 2019. Requesting dismissal of the filing, the State moved for summary judgment. The district court summarily disposed of the recent filing, ruling it was untimely and no “ground of fact or law that could not have been raised within the applicable time period” was raised by Woodberry. See Iowa Code § 822.3 (2019). Woodberry asserts the *Allison*¹ logic should save his PCR filing this time. Even so, we have not applied the *Allison* reasoning to a fifth PCR filing. See, e.g., *Smitherman v. State*, No. 19-0331, 2020 WL 3571814, at *2 (Iowa Ct. App. July 1, 2020) (“[*Allison*] does not apply to a third or subsequent PCR application.”) Thus, we agree with the district court here.

Accordingly, we affirm without further opinion. See Iowa Ct. R. 21.26(1)(a), (c), (e).

AFFIRMED.

¹ See *State v. Allison*, 914 N.W.2d 866, 891 (Iowa 2018). But the legislature abrogated *Allison* with the passage of Iowa Code section 822.2 (Supp. 2019) (“An allegation of ineffective assistance of counsel in a prior case under this chapter shall not toll or extend the limitation periods in this section nor shall such claim relate back to a prior filing to avoid the application of the limitation periods.”).