

IN THE COURT OF APPEALS OF IOWA

No. 23-0356
Filed March 6, 2024

TERRY TOBIAS COBBINS JR.,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Marion County, Charles C. Sinnard,
Judge.

The applicant appeals the summary dismissal of his second postconviction-
relief application. **AFFIRMED.**

Britt Gagne of Gagne Law Office, Des Moines, for appellant.

Brenna Bird, Attorney General, and Martha E. Trout, Assistant Attorney
General, for appellee State.

Considered by Ahlers, P.J., Chicchelly, J., and Blane, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206
(2024).

BLANE, Senior Judge.

Terry Tobias Cobbins Jr. appeals the summary dismissal of his second application for postconviction relief (PCR). We affirm.

I. Factual and procedural background.

Cobbins was convicted of first-degree murder in 2011. Following his unsuccessful direct appeal, procedendo issued on February 12, 2014. See *State v. Cobbins*, No. 12-0857, 2013 WL 6405461, at *1–3 (Iowa Ct. App. Dec. 5, 2013), *further review denied* (Jan. 31, 2014).

Cobbins then filed his first PCR application on March 20, 2014. The first PCR court denied relief, and he was unsuccessful in his appeal. See *Cobbins v. State*, No. 16-1204, 2017 WL 3279146, at *3 (Iowa Ct. App. Aug. 2, 2017), *further review denied* (Sept. 25, 2017). Procedendo issued September 25, 2017.

On November 25, 2019, Cobbins filed his second application for PCR alleging ineffective-assistance-of-counsel claims. The State moved for summary dismissal asserting the second application was barred by the statute of limitations. The court agreed and dismissed Cobbins's application. Cobbins appeals.

II. Standard of review.

We review PCR rulings for the correction of legal errors, unless they involve constitutional claims; then our review is de novo. *More v. State*, 880 N.W.2d 487, 498 (Iowa 2016). We review summary dispositions of PCR applications for correction of errors at law. *Linn v. State*, 929 N.W.2d 717, 729 (Iowa 2019). In doing so, we apply summary judgment standards. *Moon v. State*, 911 N.W.2d 137, 142 (Iowa 2018). Thus the State, as the moving party, bears the burden of

showing the absence of a genuine issue of material fact. *Id.* We view the record in the light most favorable to Cobbins, as the nonmoving party. *Id.*

III. Analysis.

Before the PCR court, Cobbins conceded that he filed his second PCR application beyond the three-year statute of limitations for those applications. See Iowa Code § 822.3 (2019) (requiring that all PCR applications “must be filed within three years from the date the conviction or decision is final or, in the event of an appeal, from the date the writ of procedendo is issued”).¹ On appeal, he also concedes that the tolling of the statute of limitations during the pendency of the appeal previously permitted under *Allison v. State*, 914 N.W.2d 866 (Iowa 2018), has been superseded by statute and “does not apply” to his case. See Iowa Code § 822.3 (“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.”). Procedendo on his conviction issued February 12, 2014, so his November 25, 2019 PCR application is barred by the statute of limitations.

Cobbins’s only argument on appeal is that the statutory amendment to section 822.3 superseding *Allison* is unconstitutional. Cobbins raised the same argument before the PCR court. On the record, the court said it was “unwilling to I guess entertain any constitutional arguments regarding the statutory provision of the statute of limitations at this time.” The written order did not add anything. Thus,

¹ An exception exists for “a ground of fact or law that could not have been raised within the applicable time period,” but Cobbins raises no such claim on appeal. Iowa Code § 822.3.

the court gave no ruling on the constitutional issue. Cobbins did not seek a ruling either on the record or through a motion to amend, enlarge, or modify. See Iowa R. Civ. P. 1.904. Thus, we have nothing to review. We recognize that the State does not challenge error preservation, but we need not address an issue that was not “both raised and decided by the [PCR] court.” *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002); see also *Top of Iowa Co-op v. Sime Farms, Inc.*, 608 N.W.2d 454, 470 (Iowa 2000) (“In view of the range of interests protected by our error preservation rules, this court will consider on appeal whether error was preserved despite the opposing party’s omission in not raising this issue at trial or on appeal.”). We affirm the dismissal.

AFFIRMED.