

IN THE COURT OF APPEALS OF IOWA

No. 18-0121
Filed January 23, 2019

BOBBY RAY DEVERS,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Pottawattamie County, Mark J. Eveloff, Judge.

Applicant appeals the district court's summary dismissal of his fourth postconviction-relief action. **AFFIRMED.**

Joel Baxter of Wild, Baxter & Sand, P.C., Guthrie Center, for appellant.

Thomas J. Miller, Attorney General, and Louis S. Sloven, Assistant Attorney General, for appellee State.

Considered by Vogel, C.J., and Vaitheswaran and McDonald, JJ.

VOGEL, Chief Judge.

Bobby Ray Devers, appeals the district court's summary dismissal of his fourth postconviction-relief (PCR) action. Because he has failed to generate a genuine issue of material fact to warrant a trial on the merits, we affirm.

We review this summary dismissal of the PCR application for errors at law. *Moon v. State*, 911 N.W.2d 137, 142 (Iowa 2018).

Devers was convicted of sexual abuse with a minor in 2004. We affirmed his conviction on direct appeal. See *State v. Devers*, No. 04-0478, 2005 WL 724081, at *7 (Iowa Ct. App. Mar. 31, 2005). Three subsequent PCR applications have been dismissed.¹ In this fourth PCR application he raised two issues of newly-discovered evidence, which he asserts provide an exception to the three-year statute of limitations under Iowa Code section 822.3 (2017). However, the PCR court, in a detailed discussion of the claims, found neither to be newly discovered. Moreover, the State offered evidence that both claims were belied by the original trial record and exhibits—namely a photographic line-up and testimony as to what the victim was wearing. In addition, Devers admitted at the PCR hearing that he was present at a pre-trial deposition and aware at the time—in 2003—of an apparent inconsistency in descriptions of the victim's clothing.

¹ The dismissal of Devers' first PCR application was affirmed by this court in *Devers v. State*, No. 08-0592, 2009 WL 1676643, at *5 (Iowa Ct. App. June 17, 2009). The second was dismissed as untimely in 2012 and was dismissed by our supreme court as frivolous in 2013 on direct appeal. The third application was filed in January 2014 and summarily dismissed in March 2014. Similar claims asserted in a federal habeas action were denied in 2011. See *Devers v. Fayram*, No. C09-139 EJM, 2011 WL 6328389, at *1 (N.D. Iowa Dec. 16, 2011).

We agree with the PCR court that neither claim Devers now makes would be newly-discovered evidence. Therefore, the PCR court's grant of summary dismissal is affirmed without further opinion. See Iowa Ct. R. 21.26(1)(b), (d), (e).

AFFIRMED.