

**IN THE COURT OF APPEALS OF IOWA**

No. 0-699 / 09-0830  
Filed November 10, 2010

**ANTHONY ALLEN HOECK,**  
Applicant-Appellant,

**vs.**

**STATE OF IOWA,**  
Respondent-Appellee.

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Appeal from the Iowa District Court for Scott County, Bobbi M. Alpers,  
Judge.

A postconviction relief applicant claims the district court erred in  
dismissing his application for postconviction relief. **AFFIRMED.**

Jack E. Dusthimer, Davenport, for appellant.

Thomas J. Miller, Attorney General, Thomas S. Tauber, Assistant Attorney  
General, Michael J. Walton, County Attorney, and Jay Sommers, Assistant  
County Attorney, for appellee State.

Considered by Vaitheswaran, P.J., and Eisenhauer and Danilson, JJ.  
Tabor, J., takes no part.

**VAITHESWARAN, P.J.**

In 1994, Anthony Hoeck was found guilty of first-degree kidnapping, second-degree murder, and several other crimes. This court affirmed his judgment and sentences in 1996. *State v. Hoeck*, 547 N.W.2d 852, 863 (Iowa Ct. App. 1996).

Hoeck filed an application for postconviction relief nine years later. The State moved to dismiss the application on the ground it was barred by a three-year statutory deadline. See Iowa Code § 822.3 (2005). The application languished for several years. During this time, Hoeck twice amended the application and moved for summary judgment, and the State renewed its motion to dismiss. The district court eventually denied Hoeck's motion for summary judgment and granted the State's motion to dismiss. Hoeck appealed.

The primary issue on appeal is whether Hoeck's postconviction relief application is time-barred. Section 822.3 states:

All other 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. However, this limitation does not apply to a ground of fact or law that could not have been raised within the applicable time period.

There is no question Hoeck's application was filed more than three years after procedendo issued in his direct appeal. The only question is whether Hoeck raised "a ground of fact or law that could not have been raised within the applicable time period." Hoeck asserts he did. He argues "[i]t was not until 2005 that [he] learned that [a]uthorities had evidence that would put his entire case into . . . question." This evidence, in his view, was a 2005 remark made by a woman

who was listed as a State witness at the time of trial. She apparently told Hoeck's sister that police attempted to coach her and to suppress her statement.

By acknowledging this woman was listed as a State witness at the time of trial, Hoeck has effectively conceded that the manner in which police elicited her statements could have been raised within the applicable time period. Accordingly, we conclude the witness's 2005 assertion is not a ground of fact that would except Hoeck's postconviction relief application from the three-year time bar. See *Smith v. State*, 542 N.W.2d 853, 854 (Iowa Ct. App. 1995) ("The legal and factual underpinnings of each of Smith's claims were in existence during the three-year period and were available to be addressed in Smith's appellate and postconviction proceedings.").

Hoeck next appears to suggest that trial counsel was ineffective in failing to depose or interview this State witness. Hoeck cannot circumvent the time bar by repackaging his argument as an ineffective-assistance-of-counsel claim. See *Wilkins v. State*, 522 N.W.2d 822, 824 (Iowa 1994) ("Wilkins labels his claim ineffective-assistance-of-postconviction-counsel in the hope that the court will reach the merits of his contention that his trial counsel was ineffective. However, his claims neither involve new evidence nor are they new legal claims.").<sup>1</sup>

We affirm the district court's dismissal of Hoeck's postconviction relief application as untimely.

**AFFIRMED.**

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<sup>1</sup> On appeal, Hoeck does not pursue his trial assertion that the State withheld exculpatory evidence in violation of *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963).