IN THE COURT OF APPEALS OF IOWA

No. 0-879 / 10-0441
Filed February 9, 2011

BERNARD ROSE,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Buchanan County, Jon Fister, Judge.

Bernard Rose appeals from the district court's order denying his motion to reopen his 2006 application for postconviction relief. **AFFIRMED.**

Kathryn J. Mahoney, Waterloo, for appellant.

Thomas J. Miller, Attorney General, John R. Lundquist, Assistant Attorney General, and Allan W. Vanderhart, County Attorney, for appellee.

Considered by Eisenhauer, P.J., and Potterfield and Doyle, JJ. Tabor, J., takes no part.

EISENHAUER, P.J.

Bernard Rose appeals from the district court's order denying his motion to reopen his 2006 application for postconviction relief. We affirm.

Rose's original postconviction application was filed in April 2006. Rose asserted the Iowa Board of Parole had never interviewed him for "parole release eligibility" and he should have "relief under the ex post facto clause." The State moved for summary judgment arguing a postconviction relief proceeding is not the correct procedural mechanism for complaints about the interview process of the parole board. The postconviction court sustained the State's motion for summary judgment and dismissed Rose's application on the grounds postconviction relief "is not the proper procedural mechanism" and "is not available to test the validity of the parole board's administrative rules." We affirmed. *Rose v. State*, No. 07-1349 (Iowa Ct. App. April 22, 2009). Procedendo issued on June 22, 2009.

In November 2009, Rose filed a motion to reopen his 2006 case "based exclusively upon the Supreme Court of Iowa ruling in" *Maghee v. State*, 773 N.W.2d 228, 230 (Iowa 2009) (holding defendant "properly chose a postconviction-relief action to contest" the revocation of his work release). In March 2010, the district court denied Rose's motion and this appeal followed.

Rose argues his case should be reopened because we relied on the *Dougherty* decision in our first appellate ruling and *Maghee* subsequently overturned *Dougherty*. *See Maghee*, 773 N.W. 2d at 242; *Dougherty v. State*, 323 N.W.2d 249, 250 (Iowa 1982). We review for correction of errors at law.

Harrington v. State, 659 N.W.2d 509, 519 (Iowa 2003). We conclude Rose is not entitled to reopening under the law of the case doctrine:

> It is a familiar legal principal that an appellate decision becomes the law of the case and is controlling on both the trial court and on any further appeals in the same case. *Springer v. Weeks & Leo Co*., 475 N.W.2d 630, 632 (Iowa 1991). Like *res judicata*, the law of the case doctrine is founded on a public policy against reopening matters which have been decided. *Wolfe v. Graether*, 389 N.W.2d 643, 651 (Iowa 1986) (citing 46 Am. Jur. 2d *Judgments* § 400, at 568 (1969)). Thus, issues decided by an appellate court generally cannot be reheard, reconsidered, or relitigated in the trial court. 5 C.J.S. *Appeal and Error* § 975, at 476-77 (1993). The appellate court decision is final as to all questions decided and the trial court is obligated to follow that decision. *Id*.

United Fire & Cas. Co. v. Iowa Dist. Ct., 612 N.W.2d 101, 103 (Iowa 2000). Additionally:

> [W]here the court of appeals has determined an issue of law necessary to the decision of a prior appeal, and its determination is not vacated by [the Iowa Supreme Court], the decision of [the court of appeals] *is controlling as to that issue for purposes of further proceedings* in both the district court and subsequent appeals.

Graether, 389 N.W.2d at 651 (emphasis added). Accordingly, we affirm the district court's denial of Rose's motion to reopen.

AFFIRMED.