

**IN THE COURT OF APPEALS OF IOWA**

No. 1-053 / 10-0869  
Filed February 23, 2011

**EVONNE YOUKER,**  
Applicant-Appellant,

**vs.**

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

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Appeal from the Iowa District Court for Benton County, Douglas S. Russell, Judge.

An applicant appeals from the district court's dismissal of her application for postconviction relief. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Patricia Reynolds, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Martha E. Trout, Assistant Attorney General, David C. Thompson, County Attorney, and Lisa Epp, Assistant County Attorney, for appellee State.

Considered by Sackett, C.J., and Potterfield and Mansfield, JJ. Tabor, J., takes no part.

**MANSFIELD, J.**

In 2005, Evonne Youker drove her car into her former boyfriend's garage door and was charged with second-degree criminal mischief (a class D felony) in violation of Iowa Code sections 716.1 and 716.4 (2005). Under a plea agreement, Youker pled guilty to fifth-degree criminal mischief (a simple misdemeanor) in violation of sections 716.1 and 716.6, and received a deferred judgment. She was placed on informal probation for one year and ordered to pay restitution for her court-appointed attorney and the damage done to the garage door. Youker filed an objection to the restitution order, which the district court denied.

Youker then appealed the district court's denial of her objection. Because there was no right of direct appeal, the supreme court treated her filing as an application for discretionary review and denied it. See Iowa R. App. P. 6.304; *State v. Stessman*, 460 N.W.2d 461, 462 (Iowa 1990) (holding there is no right of appeal from a deferred judgment). Youker was discharged from probation and her record expunged on February 19, 2010.

In September 2009, Youker applied for postconviction relief pursuant to Iowa Code chapter 822 (2009), requesting the court vacate the restitution order and set a new restitution hearing. Youker maintained that she had received ineffective assistance of counsel from her prior trial and appellate counsel in connection with the restitution award and the earlier challenges thereto.

The State moved for summary disposition of Youker's application. On April 19, 2010, the district court found that because Youker had received a deferred judgment, the remedies afforded by chapter 822 were not available to

her. Thus, the district court granted the State's motion and dismissed Youker's application. Youker appeals and challenges the dismissal of her postconviction relief application.

We review the dismissal of an application for postconviction relief for errors of law, but review constitutional claims de novo. *Ledezma v. State*, 626 N.W.2d 134, 141 (Iowa 2001).

The Uniform Postconviction Procedure Act is available to anyone "who has been convicted of, or sentenced for, a public offense." Iowa Code § 822.2. A "deferred judgment" is defined as "a sentencing option whereby both the adjudication of guilt and the imposition of a sentence are deferred by the court." Iowa Code § 907.1(1); see *State v. Farmer*, 234 N.W.2d 89, 92 (Iowa 1975) ("The adjudication of guilt and imposition of sentence are the elements of judgment in a criminal case."). The supreme court explained in *Farmer* that a deferred judgment allows a defendant to avoid a criminal conviction "by satisfactorily meeting terms of probation voluntarily undertaken before his guilt has been adjudicated," and once the defendant is discharged from probation, "no conviction occurs in the strict legal sense because no adjudication of guilt is made." 234 N.W.2d at 92. Thus, when a judgment is deferred and not revoked, no conviction or sentence occurs as recognized by the Uniform Postconviction Procedure Act. See Iowa Code § 822.2; *Farmer*, 234 N.W.2d at 92 ("[W]hen judgment is deferred . . . the adjudication of guilt is deferred as well as the sentence."). Therefore, Youker cannot invoke the remedies of chapter 822.

Youker argues that a restitution order is part of a sentence. But the Uniform Postconviction Procedure Act specifically excludes claims based upon

“alleged error relating to restitution.” Iowa Code § 822.2(1)(g). This qualifies the earlier language of section 822.2(1) allowing any person who has been “convicted of, or sentenced for, a public offense” to file an application for postconviction relief. See Iowa Code § 4.7 (special provision prevails over general provision to the extent of any conflict).

In short, because Youker received a deferred judgment on the charge of criminal mischief, postconviction relief proceedings relating to the restitution order are not available to her.

**AFFIRMED.**