IN THE COURT OF APPEALS OF IOWA

No. 1-354 / 10-1250
Filed May 25, 2011

TIMOTHY DELANO FRIEDRICH,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Des Moines County, John G. Linn, Judge.

Timothy Friedrich appeals the dismissal of his application for postconviction relief. **AFFIRMED.**

Frank Santiago of Santiago Law Office, Iowa City, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney General, Patrick C. Jackson, County Attorney, and Amy K. Beavers, Assistant County Attorney, for appellee State.

Considered by Sackett, C.J., and Doyle and Danilson, JJ. Tabor, J., takes no part.

DOYLE, J.

Timothy Friedrich appeals the dismissal of his application for postconviction relief as untimely. Although he admits his application was not timely filed and concedes he has no newly discovered evidence, he contends dismissal of his application as untimely denies his "constitutional unalienable rights." As a remedy to this alleged denial, he suggests that the applicable statute of limitations be tolled. Further, he seeks to "re-open" his first-degree murder conviction so he may engage in a discovery process he hopes will turn up new evidence that would exculpate him. We decline his invitation and affirm dismissal of the application.

On November 19, 1996, a jury found Friedrich guilty of first-degree murder. Judgment of conviction was entered December 9, 1996, and Friedrich was sentenced to life in prison. He appealed, contending he received ineffective assistance of counsel because his trial counsel (1) failed to object to evidence of his refusal to waive extradition and (2) elicited evidence of Friedrich's prior assault convictions. This court affirmed his conviction and sentence and preserved for postconviction relief Friedrich's claims of ineffective assistance of counsel. *State v. Friedrich*, No. 96-2204 (Iowa Ct. App. April 24, 1998). Procedendo issued on June 22, 1998.

On December 23, 2009, some eleven and a half years later, Friedrich filed his application for postconviction relief. He contended his conviction was not supported by the evidence and he received ineffective assistance of counsel when his counsel opened the door at trial to Friedrich's previous convictions.

The State filed a motion for summary disposition asserting Friedrich's application was eight and a half years too late and thus time barred by the three-year statute of limitations set forth in Iowa Code section 822.3 (2009). At the hearing, Friedrich admitted his application was not timely filed, but contended the new evidence exception to the statute of limitations applied. *See* Iowa Code § 822.3 (providing that its statute of limitations "does not apply to a ground of fact or law that could not have been raised within the applicable time period"). However, he conceded he had no new evidence. Instead, he argued "there is a need for a discovery process to take place that would produce the new evidence that is required to renew [his] claim."

The district court found Friedrich failed to file his application within the three-year window to do so. The court further found Friedrich failed to argue or prove any exception that would allow his application to move forward. The court granted the State's motion and dismissed the application.

Friedrich now appeals. He claims dismissal of his application denied him his unalienable constitutional rights to life, liberty, and pursuit of happiness, and he suggests tolling the statute of limitations as a remedy. As he argued before the district court, Friedrich, conceding he has no newly discovered evidence, asserts a need for a discovery process that would produce new evidence that would exculpate him from his murder conviction.

Friedrich asserts he preserved error by filing a timely notice of appeal. "While this is a common statement in briefs, it is erroneous, for the notice of appeal has nothing to do with error preservation." Thomas A. Mayes & Anuradha Vaitheswaran, *Error Preservation in Civil Appeals in Iowa: Perspectives on*

Present Practice, 55 Drake L. Rev. 39, 48 (Fall 2006) (explaining that "[a]s a general rule, the error preservation rules require a party to raise an issue in the trial court and obtain a ruling from the trial court") (internal footnote omitted). However, the serious error preservation issue here is the fact the district court did not address the issues Friedrich now presents to us on appeal. Friedrich made no request in his application, or at the hearing, that the applicable statute of limitations be tolled. His request to open up a discovery process was raised for the first time at the hearing. The district court made no ruling addressing the tolling or discovery issues. "It is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before we will decide them on appeal." *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002). Further, Friedrich made no motion for enlargement of the court's findings. *See* Iowa R. Civ. P. 1.904(2). "When a district court fails to rule on an issue properly raised by a party, the party who raised the issue must file a motion requesting a ruling in order to preserve error for appeal." *Meier*, 641 N.W.2d at 537. Friedrich has thus waived error on these issues.

Regardless of whether or not error was preserved, Friedrich's arguments, although creative, are not sufficiently supported in law to warrant court-made equitable tolling of the applicable statute of limitations or implementation of some sort of discovery process. Friedrich essentially asserts there should be an exception to the statute of limitations for his claims. Had the legislature intended to allow an exception for claims of the nature Friedrich asserts, it could have explicitly stated so. It did not.

Section 822.3[1] expressly provides that "[a]ll . . . 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 or procedendo is issued." "It is clear the legislative intent of section 822.3 was to conserve judicial resources, promote substantive goals of criminal law, foster rehabilitation, and restore a sense of repose in our criminal judicial system." *Cornell v. State*, 529 N.W.2d 606, 610 (Iowa Ct. App. 1994). We are simply not at liberty to read exceptions into section 822.3 not otherwise provided by the legislature. *See Dible v. State*, 557 N.W.2d 881, 885 (Iowa 1996), *abrogated on other grounds by Harrington v. State*, 659 N.W.2d 509, 521 (Iowa 2003); *see also Leach v. Commercial Sav. Bank of Des Moines*, 205 Iowa 1154, 1166-67, 213 N.W. 517, 522 (1927) ("The statutes of limitation . . . are founded in public needs and public policy—are arbitrary enactments by law-making power."); *In re Evan's Will*, 193 Iowa 1240, 1245, 188 N.W. 774, 776 (1922) ("It is a matter of legislative enactment, and a court is not privileged to amend the law. As it is written, it is written.").

In closing, we agree with the observation made by the State in its brief:

> There is certainly no doubt that all convicted defendants would like to find evidence that demonstrates their actual innocence, but expressing the desire for such evidence without any reliable factual allegation that evidence does exist does not entitle one to avoid a statute of limitations bar.

For these reasons, we affirm the district court's dismissal of his application for postconviction relief.

AFFIRMED.

[1] We note that the language of section 822.3 has not substantively changed since 1997.