

IN THE COURT OF APPEALS OF IOWA

No. 2-496 / 11-1040
Filed July 25, 2012

BAIJU BHARAT SHAH,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Woodbury County, John D. Ackerman, Judge.

Baiju Shah appeals from the denial of his application for postconviction relief. **AFFIRMED.**

Angela L. Campbell of Dickey & Campbell Law Firm, P.L.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Martha E. Trout, Assistant Attorney General, Patrick Jennings, County Attorney, and Mark Campbell, Assistant County Attorney, for appellee State.

Considered by Eisenhauer, C.J., and Potterfield and Mullins, JJ. Tabor, J., takes no part.

POTTERFIELD, J.

On appeal from the denial of his application for postconviction relief, Baiju Shah argues he was denied effective assistance of counsel when he entered a guilty plea and received a deferred judgment in 2007. Shah successfully completed his probation and was discharged on August 1, 2008. He claims his counsel failed to adequately advise him of the immigration consequences of his plea to, and his receipt of a deferred judgment for, a charge of forgery.

In the recently decided case of *Daughenbaugh v. State*, 805 N.W.2d 591 (Iowa 2011), our supreme court considered whether a deferred judgment entitled a petitioner to seek postconviction relief pursuant to Iowa Code chapter 822,¹ as Shah has done here. The court wrote:

In Iowa, there are two separate avenues for challenging illegal restraint by government. The first avenue is entitled habeas corpus and is found in Iowa Code chapter 663.^[2] The second avenue is entitled postconviction relief and is found in Iowa Code chapter 822.

In this case, [the petitioner] brought a claim for posttrial relief under Iowa Code chapter 822. In order to be entitled to relief under chapter 822, a petitioner must show that he was “convicted of, or sentenced for, a public offense.” Iowa Code § 822.2(1). In addition, Iowa Code section 822.4 provides that the applicant must allege “the date of the entry of the judgment of conviction or sentence complained of.” *Id.* § 822.4.

Daughenbaugh, 805 N.W.2d at 594. Because *Daughenbaugh* pleaded guilty to criminal charges, received a deferred judgment, and was discharged without

¹ All citations are to the 2011 Iowa Code.

² The *Daughenbaugh* court expressed “no opinion upon whether or under what circumstances a guilty plea followed by a deferred judgment might be subject to collateral attack under Iowa Code chapter 663.” 805 N.W.2d at 599 n.1.

entry of judgment³ after successful completion of probation, see *id.* at 591, the court was required to determine whether a deferred judgment constituted a “conviction” for purposes of chapter 822.

After discussing various definitions of “convictions” in other contexts and jurisdictions, see *id.* at 596–98, the court concluded “a guilty plea pursuant to a deferred judgment is not a conviction under Iowa’s postconviction relief statute.” *Id.* at 598. The court found support for the interpretation in the pleading requirements of Iowa Code section 822.4, which requires that the chapter 822 applicant state “the date of the entry of the judgment . . . complained of.” See *id.* at 599. *Daughenbaugh* thus holds that the postconviction relief statute “uses the term ‘conviction’ in its technical sense . . . to require adjudication and the entry of judgment,” and a deferred judgment does not entitle an applicant to seek postconviction relief. *Id.*

Like *Daughenbaugh*, Shah pleaded guilty to a criminal charge, received a deferred judgment, and was discharged without judgment after successful completion of probation. *Daughenbaugh* therefore governs and, consequently,

³ The supreme court used the phrase “had the charges dismissed,” but we do not believe the distinction is essential to the reasoning of *Daughenbaugh*, and use the phrase in Iowa Code section 907.3(1) “discharged without entry of judgment.”

Shah is not entitled to postconviction relief.⁴ We therefore affirm the dismissal of this action.

AFFIRMED.

⁴ Shah argues *Daughenbaugh* was wrongly decided, but it is not in this court's purview to consider such a claim. See *State v. Eichler*, 83 N.W.2d 576, 578 (1957) (noting it is the prerogative of the supreme court, as the court of last resort in our state, to determine the law); accord *McElroy v. State*, 703 N.W.2d 385, 393 (Iowa 2005).

We agree with Shah that our supreme court has not ruled conclusively that *Padilla v. Kentucky*, 130 S. Ct. 1473 (2010), is not to retroactively apply. See *Perez v. State*, ___ N.W.2d ___, 2012 WL 2052399, at *5–6 (Iowa 2012) (noting split in federal circuits and U.S. Supreme Court's grant of certiorari in *Chaidez v. U.S.*, 132 S. Ct. 2101 (2012), to address whether *Padilla* is to be applied retroactively). But that does not change the fact that he is not entitled to postconviction relief. See *Daughenbaugh*, 805 N.W.2d at 599.