

**IN THE COURT OF APPEALS OF IOWA**

No. 3-1038 / 12-1957  
Filed January 9, 2014

**STEVEN EARL FRASIER,**  
Applicant-Appellant,

**vs.**

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

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Appeal from the Iowa District Court for Woodbury County, Jeffrey L. Poulson, Judge.

The applicant appeals the dismissal of his application for postconviction relief. **AFFIRMED.**

Robert N. Stewart of Rawlings, Ellwanger, Jacobs, Mohrhauser & Nelson, L.L.P., Sioux City, for appellant.

Thomas J. Miller, Attorney General, Kyle P. Hanson, Assistant Attorney General, Patrick Jennings, County Attorney, and Mark Campbell, Assistant County Attorney, for appellee State.

Considered by Vaitheswaran, P.J., and Potterfield, J., and Goodhue, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2013).

**GOODHUE, S.J.**

Steven Earl Frasier has appealed from the district court ruling granting the State's motion for summary judgment and dismissing his application for postconviction relief.

**I. Procedural and Factual Background**

On September 8, 1986, Frasier was charged by trial information with first-degree murder, first-degree burglary, and first-degree robbery. He was convicted of first-degree murder and first-degree burglary after a jury trial. Judgment and sentence were entered on February 17, 1987. Frasier unsuccessfully appealed and procedendo issued on April 7, 1989. In January 1990, the applicant filed his first application for postconviction relief in the state court and later filed a federal habeas corpus action. *See Frasier v. Maschner*, 304 F.3d 815 (8th Cir. 2002). He was unsuccessful in attacking his conviction in either proceeding.

The applicant filed this request for postconviction relief on June 20, 2012. The State filed a motion for summary judgment on June 26, 2012. The State's motion was granted. The district court, after an exhaustive and comprehensive ruling, concluded "the underlying application for postconviction relief is barred by the statute of limitations. Even if Iowa Code section 822.3 does not bar the instant application, the claims within such application fail on the merits." Frasier has appealed, claiming the district court erred in ruling his claims were barred by the statute of limitations and in ruling that the trial information filed was legally sufficient under Iowa law and the United States Constitution.

## **II. Error Preservation**

Frasier's resistance to the motion for summary judgment preserved all errors in the district court ruling.

## **III. Standard of Review**

The standard of review on appeal from the denial of a postconviction relief application including summary judgment dismissals is for errors of law. *Castro v. State*, 795 N.W.2d 789, 792 (Iowa 2011). Postconviction proceedings that raise constitutional issues are reviewed de novo. *Ledezma v. State*, 626 N.W.2d 134,141 (Iowa 2001).

## **IV. Discussion**

There is no dispute of material fact before the court. Only legal issues are present. Disposition by summary judgment is appropriate. See *Manning v. State*, 654 N.W.2d 555, 560 (Iowa 2002) (stating "summary judgment is only proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law").

Except when disciplinary matters are at issue, postconviction "applications must be filed within three years of the date the conviction or decision is final or, in the event of an appeal, from the date the writ of procedendo is issued." Iowa Code § 822.3 (2011). After the unsuccessful appeal, procedendo in the underlying criminal action was issued more than twenty-three years before this action was filed.

Frasier claims that the trial information charging him with murder, burglary, and kidnapping was so defective that it did not charge an offense. The State

contends if there were such a defect, any claim based on the defect has been waived and is barred by the statute of limitations cited above.

The State contends that Frasier waived any defect in the trial information under Iowa Rule of Criminal Procedure 2.11 cited below. Frasier claims the waiver provision has no application because the trial court had no jurisdiction and the parenthesized exception in subpart b of the rule is applicable. The rule provides as follows:

Any defense objection or request which is capable of determination without the trial of the general issue may be raised before trial by motion. The following must be raise prior to trial:

- a. Defenses and objections based on defects of the institution of the prosecution,
- b. Defenses and objections based on defects in the indictment or information (other than it fails to show jurisdiction in the court or can charge an offense which objections should be noticed by the court at any time during the pendency of the proceeding).

Iowa R. Crim P. 2.11(2).

Frasier contends that if the trial information failed to adequately state a criminal charge then it “fails to show jurisdiction” within the meaning of the rule cited, and it can be noticed by the court at any time during the pendency of the proceeding. He further contends this postconviction relief action is a continuation of the proceeding. Lack of subject matter jurisdiction can be raised at any time. *State v. Ryan*, 351 N.W.2d 186, 187 (Iowa 1984).

The State contends that “fails to show jurisdiction” as used in the rule relates to subject matter jurisdiction and that insufficiency of a trial information only relates to the court’s authority, which can be waived by the applicant’s

failure to raise the issue prior to trial. Because Frasier made no objection to the trial information prior to trial, the State argues the objection has been waived.

If a failure to charge an offense in the trial information is a matter of subject matter jurisdiction; it is not subject to waiver, but if it is a matter of the court's authority to proceed, it can be obviated by consent, waiver, or estoppel. *State v. Mandicino*, 509 N.W.2d 481, 483 (Iowa 1993).

"Subject matter jurisdiction refers to the power of the court to hear and determine cases of the general class to which the proceedings in question belong, not merely the particular case then occupying the court's attention." *Schrier v. State*, 573 N.W.2d 242, 244 (Iowa 1997). Iowa district courts have subject matter jurisdiction over criminal cases. See Iowa Const. art. V, § 6.2; Iowa Code § 602.6101. Inadequacy of the trial information is a particularized objection to a specific case and not an objection to the court's right to hear a general class of cases. A plea of guilty to an uncharged offense has been upheld on the basis that the plea is an effective waiver of the court's lack of authority and does not raise the issue of subject matter jurisdiction. See *State v. Hochmuth*, 585 N.W.2d 234, 236 (Iowa 1998). Failure to attack or object to the trial information not only prior to trial, but also in the appeal of the trial proceeding, likewise constitutes a waiver of any right to object to the court's authority to proceed under Iowa Rule of Criminal Procedure 2.11(2). A claim of ineffective assistance of counsel for failure to raise an objection cannot save the applicant's current claim under the statute of limitations. See *Wilkins v. State*, 522 N.W.2d 822, 824 (Iowa 1994) (holding claims of ineffective assistance of

postconviction counsel could not be considered if they did not involve new evidence or new legal claims).

The applicant relies in part on cases which seem to state or imply that when a charging instrument fails to state a valid charge, the court lacks subject matter jurisdiction. In such cases the courts have sua sponte dismissed the charges supporting the failure of a trial information to charge an offense, stating it is akin to a lack of subject matter jurisdiction. See *State v. Trucke*, 410 N.W.2d 242, 243 (Iowa 1987); *State v. Adcock*, 426 N.W.2d 639, 640 (Iowa Ct. App. 1988). *Adcock* was a direct appeal of a trial to a jury in which the defendant had been convicted of a charge which had been incorrectly included in the instructions. 426 N.W.2d at 639-40. Inadequacy of the trial information was not at issue. Furthermore, there is no discussion of waiver as an issue in *Adcock* indicating that an appropriate objection had been made. If there had been no objection to the inclusion of a lesser-included offense, the error would have been waived. See *State v. Taggart*, 430 N.W.2d 423, 425 (Iowa 1988) (“We have repeatedly held that timely objection to jury instructions in criminal prosecutions is necessary in order to preserve any error thereon for appellate review.”).

The Iowa courts have wrestled with the difference between the court’s authority to proceed as opposed to subject matter jurisdiction. Eventually the practice of extending the “at any time” rule to cases where subject matter jurisdiction existed, but the court’s authority to proceed was absent, became a matter of concern to our supreme court. See *Christy v. Rolscreen Co.*, 448 N.W.2d 447, 450 (Iowa 1989). The line was clearly drawn in *State v. Mandicino*, 509 N.W.2d at 483. Our supreme court stated in *In re Marriage of Seyler*, 559

N.W.2d 7, 11 n.3 (Iowa 1993), “In *Mandicino* we overruled prior cases and held that a defect in the court’s authority to hear a case could be obviated by consent, waiver, or estoppel.” Because insufficiency of the trial information relates only to the court’s authority to proceed and not to subject matter jurisdiction, Frasier’s request for postconviction relief based on the insufficiency of the trial information filed some twenty-years after the statute of limitation had expired is barred.

Issues regarding the adequacy of the trial information need not be addressed because the issues are not a question of subject matter jurisdiction and have been barred by the statute of limitations.

**AFFIRMED.**