

**IN THE COURT OF APPEALS OF IOWA**

No. 3-1147 / 13-0094  
Filed January 23, 2014

**MICHAEL WEATHERSPOON,**  
Applicant-Appellant,

**vs.**

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

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Appeal from the Iowa District Court for Cerro Gordo County, Christopher C. Foy, Judge.

An applicant appeals the denial of his second application for postconviction relief. **AFFIRMED.**

Steven J. Drahozal of Drahozal Law Office, P.C., Dubuque, for appellant.

Thomas J. Miller, Attorney General, Heather R. Quick, Assistant Attorney General, and Carlyle D. Dalen, County Attorney, for appellee.

Considered by Vogel, P.J., and Mullins and McDonald, JJ.

**MULLINS, J.**

Michael Weatherspoon was convicted of first-degree murder in 1998 for the stabbing death of Jerry Dean. The details surrounding the killing have been exhaustively recited in Weatherspoon's many appellate cases and will not be repeated here. See *State v. Weatherspoon*, No. 98-2214, 2000 WL 328056, at \*1 (Iowa Ct. App. Mar. 29, 2000) (direct criminal appeal); *Weatherspoon v. State*, No. 03-0498, 2005 WL 723882, at \*1 (Iowa Ct. App. Mar. 31, 2005) (appeal from denial of first postconviction relief application); *Weatherspoon v. Ault*, No. C05-3051-MWE, 2009 WL 1066243, at \*9 (ND Iowa Apr. 21, 2009) (denial of writ of habeas corpus).

Weatherspoon filed the current postconviction relief (PCR) application in November of 2010, more than ten years after procedendo issued following the appeal from his conviction. See Iowa Code § 822.3 (2009) (providing a three-year statute of limitations for PCR applications). Weatherspoon asserts *State v. Heemstra*, 721 N.W.2d 549 (Iowa 2006), along with Iowa Code sections 228.6(4)(b) and 622.10,<sup>1</sup> represents a new ground of law that could not have been raised within the three year period, rendering the three-year statute of limitation inapplicable. See Iowa Code § 822.3.

This claim was rejected by the district court which found:

[T]here is nothing in the record to show that Weatherspoon made any effort to obtain these records as he was preparing for his criminal trial or at any time within three years from the issuance of procedendo in his direct appeal. A procedure for obtaining the medical records of a victim was in place during the pendency of his

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<sup>1</sup> Weatherspoon specifically challenges his ability to obtain the victim's mental health records to support his claim of self-defense.

criminal case. Weatherspoon was aware of the existence of record regarding the mental health of Dean. . . . The failure of Weatherspoon to pursue these records in his criminal case or in his first application for postconviction relief serves as a bar to his pending application under Iowa Code section 822.3 and as a waiver of his claim to the mental health records of Dean under Iowa Code section 822.8.

The district court went on to reject Weatherspoon's claim that *Heemstra* and sections 228.6 and 622.10 excuse his late filing by asserting the changes in *Heemstra* and the applicable code sections were procedural in nature and therefore not retroactive. See *Perez v. State*, 816 N.W.2d 354, 358 (Iowa 2012) (citing *Teague v. Lane*, 489 U.S. 288, 310 (1989) for the proposition that generally new criminal procedure rules do not apply retroactively).<sup>2</sup>

Finally, the district court rejected Weatherspoon's claim on the basis that he cannot show he was prejudiced by his lack of access to the victim's mental health records. The trial record showed Weatherspoon did have access to at least some of the victim's mental health records and called an expert to testify regarding the victim's mental health diagnoses and proclivity to aggression. In rejecting Weatherspoon's claim on appeal from the denial of his first PCR application, our court stated that even if the trial court had permitted the victim's psychiatrist to testify, the result would have not have been different because this evidence was cumulative and "the overwhelming evidence established that Weatherspoon used unreasonable force in defending himself" against the victim. *Weatherspoon*, 2005 WL 723882, at \*2. The district court in this pending PCR

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<sup>2</sup> Weatherspoon asks us to overrule *Perez*. We are not at liberty to do so, nor do we find Weatherspoon's arguments to overrule *Perez* persuasive in this case. See *State v. Eichler*, 83 N.W.2d 576, 578 (Iowa 1957) ("If our previous holdings are to be overruled, we should ordinarily prefer to do it ourselves.").

application concluded the same, finding “even if Weatherspoon had full access to the mental health records of Dean before his criminal trial, it would have had no impact on the deliberations or verdict of the jury.”

We agree with the district court’s thorough and well-reasoned opinion; we therefore affirm the district court’s denial of Weatherspoon’s second PCR application without further opinion, pursuant to Iowa Court Rule 21.26(1)(a) and (d).

**AFFIRMED.**