

IN THE COURT OF APPEALS OF IOWA

No. 3-1153 / 13-0282
Filed January 9, 2014

THOMAS BOSTON JOHNSON,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Michael D. Huppert,
Judge.

A defendant appeals the district court's denial of his postconviction relief
application. **AFFIRMED.**

Ryan R. Gravett of Oliver Law Firm, P.C., Windsor Heights, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney
General, John P. Sarcone, County Attorney, and Daniel Voogt, Assistant County
Attorney, for appellee State.

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

VOGEL, P.J.

Thomas Johnson appeals the district court's denial of his postconviction relief application, claiming the district court erred in granting summary disposition in favor of the State, and further erred in denying his ineffective-assistance claim. Because we conclude the district court correctly found the statute of limitations precluded Johnson's postconviction relief application, we affirm.

Johnson was convicted of possession of a controlled substance with intent to deliver and failure to possess a tax stamp in 2003. He appealed the judgment and sentence, which, according to the district court order, was dismissed as frivolous. He filed a first postconviction relief application in March 2005, which was denied. He filed the second application for postconviction relief in June 2012. The State filed a motion for summary disposition, alleging the statute of limitations had run and Johnson asserted no new ground of fact or law that would allow the court to hear his claims. The district court granted the State's motion. Johnson appeals, arguing the district court erred in granting the motion and further erred in denying his ineffective-assistance-of-counsel claim, asserting his claims are viable as a new ground of law under *Lafley v. Cooper*, 132 S. Ct. 1376 (2012).

We review postconviction proceedings for errors at law. *Manning v. State*, 654 N.W.2d 555, 558–59 (Iowa 2002). Iowa Code section 822.3 (2013) requires postconviction relief applications be filed within three years from the date the conviction is final, unless the application raises a new ground of fact or law previously unavailable to the defendant. If relying on the new law exception, the applicant must not have been able to raise the issue any earlier, and therefore, a

clarification of the law does not qualify for the exception. See *Perez v. State*, 816 N.W.2d 354, 360–61 (Iowa 2012).

Here, the basis for Johnson’s argument is that trial counsel was ineffective for advising him to reject a plea offer and go to trial. This argument was available to Johnson before the *Laffer* decision. Moreover, there is nothing in the record before us to indicate a plea was even offered by the State. Therefore, Johnson’s claim is not based on a new ground of fact or law previously unavailable to him, and his application is time barred. Consequently, we affirm the district court pursuant to Iowa Court Rule 21.26(1)(a), (d), and (e).

AFFIRMED.