

IN THE COURT OF APPEALS OF IOWA

No. 3-352 / 12-1001
Filed May 15, 2013

RICHARD GUIDRY,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Pocahontas County, Gary L. McMinimee, Judge.

Postconviction relief applicant appeals the district court's dismissal of his application on statute-of-limitations grounds. **AFFIRMED.**

Jennifer Bonzer, Fort Dodge, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney General, Ann Beneke, County Attorney, and Charles Gunderson, Assistant County Attorney, for appellee.

Considered by Doyle, P.J., and Danilson and Mullins, JJ.

MULLINS, J.

Richard Guidry appeals the district court's dismissal of his second postconviction relief (PCR) application based on the expiration of the three-year statute of limitations found in Iowa Code section 822.3 (2011). He claims the State waived its statute-of-limitations affirmative defense by failing to file an answer to his PCR application within thirty days and by waiting until a few days before trial before filing its motion for summary disposition. We affirm the district court's dismissal.

Guidry filed his second PCR application on September 12, 2011. In the petition, he claimed that his application was based on material evidence not previously presented and heard that required the vacation of his conviction or sentence, along with other grounds not at issue in this appeal. When asked to provide a specific explanation of the grounds or allegations of fact, Guidry wrote, "Ineffected (sic) counsel." All other questions on the application form were answered, "Will supplement." The State did not file an answer to this petition.

Guidry was appointed counsel, who, on April 19, 2012, filed a motion to amend along with an amended petition detailing the specific allegations of trial counsel's alleged ineffectiveness. The State filed a motion for summary disposition on May 15, 2012, followed by an answer to the application on May 16, 2012. At trial on May 18, 2012, the court granted Guidry's motion to amend the application and dismissed the PCR application as barred by the statute of limitations. The court found the State had not waived its statute-of-limitations affirmative defense because the initial application stated it would be

supplemented as to the specific grounds and the first supplementation was on April 19. The State filed the summary disposition motion and the answer to the amended application within thirty days of the amended petition. Thus, the court found there was no waiver and no unfair prejudice to Guidry.

We agree. The State answered the application within thirty days of the amendment being filed, which was the first time the State had any understanding as to the specific claims being made by Guidry. Guidry's unsupported assertion in the initial PCR application that there was a newly discovered material fact precluded the State from filing the summary disposition motion before the amended application was filed. See Iowa Code § 822.3 ("[T]his limitation does not apply to a ground of fact or law that could not have been raised within the applicable time period."). As soon as the grounds for the affirmative defense were identified, the State appropriately moved for summary disposition, which was properly granted in this case.

Guidry's reliance on *Schrier v. State*, 573 N.W.2d 242, 244 (Iowa 1997), is misplaced. In *Schrier*, the supreme court found that the statute of limitation in section 822.3 did not deprive the court of subject matter jurisdiction, but only removed its authority to hear the case, which could be waived by the parties. 573 N.W.2d at 244. Because the State consented to the court's authority by agreeing *Schrier* should receive a new trial, the State waived its statute-of-limitations argument and the district court continued to have authority to hear the case. *Id.* at 245.

Here, the State did not consent to a new trial. The State's delay in filing an answer was not a waiver but was understandable in light of Guidry's initial application and the timing of his amended application. We find the State did not waive its statute-of-limitations affirmative defense in this case, and the district court properly dismissed Guidry's PCR application on that ground.

AFFIRMED.