

IN THE COURT OF APPEALS OF IOWA

No. 3-431 / 11-1722
Filed July 10, 2013

MATTHEW MCGUIRE,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

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

Matthew McGuire appeals from dismissal of his second application for postconviction relief on grounds it was untimely. **AFFIRMED.**

Zachary S. Hindman of Bikakis, Mayne, Arneson, Hindman & Hisey, Sioux City, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney General, Patrick Jennings, County Attorney, and Jill Esteves, Assistant County Attorney, for appellee.

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

DANILSON, J.

Matthew McGuire appeals from dismissal of his second application for postconviction relief. The district court determined McGuire's application was untimely filed. McGuire argues that appellate counsel in his first postconviction relief proceeding was ineffective in failing to file an application for further review. He acknowledges that the present interpretation of Iowa Code section 822.3 (2011) bars his current application. His contention on appeal is that we should overrule *Dible v. State*, 557 N.W.2d 881, 884 (Iowa 1996) (holding ineffectiveness of first postconviction counsel is not "ground of fact" within exception to three-year statute of limitations for postconviction actions under Iowa Code section 822.3 as there is "no nexus between this alleged ground of fact and the conviction he seeks to set aside"), *abrogated on other grounds by Harrington v. State*, 659 N.W.2d 509 (Iowa 2003), and *Harrington*, 659 N.W.2d at 520-21 ("[A]n applicant relying on section 822.3 must show the alleged ground of fact could not have been raised earlier, the applicant must also show a nexus between the asserted ground of fact and the challenged conviction.").

It is not for this court to overrule Iowa Supreme Court precedent. 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."); *State v. Hastings*, 466 N.W.2d 697, 700 (Iowa Ct. App.1990) ("We are not at liberty to overturn Iowa Supreme Court precedent."). We therefore affirm.¹

AFFIRMED.

¹ If McGuire is claiming an illegal sentence, that claim must first be made in the district court.