

IN THE COURT OF APPEALS OF IOWA

No. 3-465 / 12-0706
Filed August 21, 2013

RANDY DEAN JONES,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Richard G. Blane II,
Judge.

A postconviction relief applicant contends a case decided after his conviction in relation to a willful injury jury instruction renders his conviction invalid. **AFFIRMED.**

Randy D. Jones, Fort Madison, appellant pro se.

Emily Tisinger of Springer & Laughlin Law Offices, P.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Elisabeth S. Reynoldson, Assistant Attorney General, John P. Sarcone, County Attorney, and George Karnas, Assistant County Attorney, for appellee State.

Considered by Vogel, P.J., and Vaitheswaran and Bower, JJ.

VAITHESWARAN, J.

We must decide whether a postconviction relief application is barred by a three-year statute of limitations.

I. Background Proceedings

A jury found Randy Jones guilty of first-degree murder after receiving alternate instructions, one for premeditated murder and one for felony murder with willful injury as the predicate felony. This court affirmed Jones's judgment and sentence, and procedendo issued in 1997.

In the ensuing years, Jones filed two postconviction relief applications. The district court denied the applications, and this court affirmed. *See Jones v. State*, No. 09-0119, 2010 WL 200047 (Iowa Ct. App. Jan. 22, 2010), *abrogated by Nguyen v. State*, 829 N.W.2d 183 (Iowa 2013); *Jones v. State*, No. 02-0854, 2003 WL 22438596 (Iowa Ct. App. Oct. 29, 2003).

Jones filed a third postconviction relief application in 2010. His attorney subsequently amended the application to allege in part that "state and federal due process" required retroactive application of the Iowa Supreme Court's opinion in *State v. Schuler*, 774 N.W.2d 294 (Iowa 2009).

Schuler disavowed the precise language of a jury instruction used in Jones's trial. 774 N.W.2d at 299. The instruction required the State to prove several elements of willful injury, including that "[t]he victim *sustained* a serious injury." *Id.* at 298 (emphasis added). The court pointed out that Iowa Code section 708.4(1), addressing willful injury, uses the word "cause" rather than "sustain." *Id.* It concluded "cause" and "sustain" are "two different words with two different meanings." *Id.* The court held, "The jury instruction for willful injury

causing serious injury is faulty as it allows the jury to convict without finding all of the elements as prescribed by Iowa Code section 708.4(1), namely that the defendant's actions caused the victim's serious injury." *Id.* at 299.

In response to Jones's amended petition, the State filed a motion to dismiss on the ground that the applicable three-year statute of limitations had expired. The State also filed a motion for summary disposition. The district court denied the motion to dismiss, reasoning that the three-year limitation period did "not apply to a ground of fact or law that could not have been raised within the applicable time period" and "*Schuler* was not decided until 2009 and Jones . . . filed the current application within three (3) years of that decision." The court granted the motion for summary disposition, reasoning in part that *Schuler* announced "a substantive change in the law" that did not apply retroactively, and the Iowa Supreme Court had recently rejected a similar claim.¹ This appeal followed.

II. Statute of Limitations—Section 822.3

Iowa Code section 822.3 (2009) states in relevant part that, generally, applications for postconviction relief "must be filed within three years from the date the conviction or decision is final or, in the event of an appeal, from the date the writ of procedendo is issued." The provision sets forth an exception for "a ground of fact or law that could not have been raised within the applicable time period." Iowa Code § 822.3.

¹ The court cited *Goosman v. State*, 764 N.W.2d 539 (Iowa 2009). There, the Iowa Supreme Court held that Goosman did not have a federal due process claim based on the failure to retroactively apply *State v. Heemstra*, 721 N.W.2d 549 (Iowa 2006). *Goosman*, 764 N.W.2d at 545.

Jones's third postconviction relief application was concededly untimely, as it was filed thirteen years after the date procedendo issued. Accordingly, Jones's only means of avoiding the statute of limitations bar was to argue that he fell within the statutory exception. As noted, that issue was raised and decided by the district court in his favor; Jones only lost on his claim that due process required retroactive application of *Schuler*.

On appeal, Jones does not address the exception to the statute of limitations. He asserts that "section 822.3 does not apply at all, because his grounds bypass around any statute of limitations defense." He focuses exclusively on the merits, arguing that "the question is simply whether [a state] can, consistently with the Federal Due Process Clause, convict him for conduct that [its] criminal statute, as properly interpreted, does not prohibit."

Jones's attempt to leapfrog over the statute of limitations issue may reflect an awareness of recent adverse case law. But as much as Jones tries to circumvent that provision, he ultimately runs head-on into it when he asserts that he "was unable to raise the [*Schuler*] claim in prior proceedings." We begin and end our analysis with this assertion.

As noted, the exception to the three-year statute of limitations is for a "ground of fact or law that could not have been raised." *Id.* In this case, the focus is on the "ground of law" articulated in *Schuler* in 2009. The district court concluded that this ground could not have been raised earlier, a conclusion that was not necessarily out of line with extant precedent. See *Wilkins v. State*, 522 N.W.2d 822, 824 (Iowa 1994) (stating the exception encompasses "a ground that the applicant was at least not alerted to in some way"); *State v. Edman*, 444

N.W.2d 103, 106 (Iowa Ct. App. 1989) (“In the case of a ground of law, it would be necessary to allow for a review of a conviction if there has been a change in the law that would [affect] the validity of the conviction. Under those circumstances, it would be essential that the statute of limitations not bar the case.”). After all, *Schuler* rejected language contained in a uniform jury instruction.

Nonetheless, two opinions filed after the district court issued its decision limit the “ground of law” exception. In *Nguyen*, the court emphasized that the exception “envision[s] a category of legal claims that were viewed as fruitless at the time but became meritorious later on.” 829 N.W.2d at 188. The court stated a ground of law that “could not have been raised” as that phrase is used in section 822.3² is “a ground of law that had been clearly and repeatedly rejected by controlling precedent from the court with final decision-making authority.” *Id.* The court suggested that a “clarification of the law” or “an application of preexisting law” would not fall within the “ground of law” exception. *Id.* The court cited *Perez v. State*, 816 N.W.2d 354 (Iowa 2012), for that proposition. *Id.*

In *Perez*, the court was asked to apply *Padilla v. Kentucky*² retroactively. 816 N.W.2d at 358. The court declined to address this issue, choosing instead to focus on whether the defendant raised “a ground of law” that “could not have been raised earlier” within the meaning of section 822.3. *Id.* at 360-61. The court noted the “internal contradiction” in the defendant’s position that *Padilla* could “be both a clarification of the law [for purposes of retroactivity analysis] and a ground he

² In *Padilla v. Kentucky*, 130 S. Ct. 1473, 1486 (2010), the Court held that a noncitizen criminal defendant has a Sixth Amendment right to receive an attorney’s advice about the risk of deportation prior to pleading guilty to a deportable offense.

could not have raised within the three-year time bar.” *Id.* at 361. The court stated, “[I]f *Padilla* does not embody a new rule of constitutional criminal procedure, we believe the matter could have been raised by Perez, as that term is used in section 822.3, within the applicable period.” *Id.* at 360-61.

These opinions emphasize that retroactivity analysis is independent of, and does not drive the analysis of whether the “ground of law” exception to the three-year statute of limitations applies, even though both use identical terminology: “change” versus “clarification” of the law. See *Goosman*, 764 N.W.2d at 545 n.1 (declining to decide whether Goosman’s claim for postconviction relief was time-barred under section 822.3 in light of its conclusion that the federal due process claim was without merit). An opinion that clarifies the law could be applied retroactively but, because it is simply a clarification rather than the announcement of a new rule of law, it could have been anticipated and raised within the three-year limitations period. See *id.* at 544-45.

There is no question that *Schuler* clarified rather than changed the law. Jones conceded this fact. Accordingly, under *Nguyen* and *Perez*, *Schuler* was a ground of law that could have been raised within the applicable time period. It was not raised within three-years of procedendo. For that reason, the statute of limitations barred Jones’s claim. See Iowa Code § 822.3.

We affirm the district court’s dismissal of Jones’s third application for postconviction relief on the alternate statute of limitations ground.

AFFIRMED.