

**IN THE COURT OF APPEALS OF IOWA**

No. 3-505 / 12-1187  
Filed August 21, 2013

**DAVID HANSE,**  
Applicant-Appellant,

**vs.**

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

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Appeal from the Iowa District Court for Humboldt County, Kurt J. Stoebe,  
Judge.

David Hanse appeals the ruling denying his second application for  
postconviction relief. **AFFIRMED.**

Robert E. Peterson, Carroll, for appellant.

Thomas J. Miller, Attorney General, Bridget A. Chambers, Assistant  
Attorney General, and John Beaty, County Attorney, for appellee.

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

**BOWER, J.**

After David Hanse's conviction for three counts of second-degree sexual abuse and multiple counts of child endangerment, he appealed alleging ineffective assistance of trial counsel. *State v. Hanse*, No. 04-0943, 2005 WL 1521601, at \*4 (Iowa Ct. App. June 29, 2005).<sup>1</sup> The acts by Hanse at issue occurred on or before April 2, 2001. *Id.* at \*2. We ruled Hanse could not establish prejudice due to the overwhelming evidence of his guilt<sup>2</sup> and affirmed his convictions. *Id.* at \*4.

In October 2005 Hanse filed a pro se application for postconviction relief. Hanse alleged because defense counsel and the prosecutor were aware of evidence the victim was subsequently abused and because this evidence was not presented at trial, his trial counsel was ineffective. Postconviction counsel's 2006 amended application specifically alleged:

The child endangerment offense . . . required the jury to find a serious injury. The State relied upon posttraumatic stress disorder as the injury. It has been learned the alleged victim [was subsequently] sexually abused in [the placement] home. This evidence needs to be heard . . . since any [PTSD] could be a result of the abuse in the [placement] home. Counsel was ineffective for not discovering this fact or pursuing it. The prosecutor knew of this exculpatory evidence and did not fully disclose it.

In 2008 Hanse's application was denied. The postconviction court found the trial testimony "clearly showed" the victim was "already exhibiting symptoms

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<sup>1</sup> Hanse alleged trial counsel was ineffective in failing to object to the definition of "sex act" and failing to object or seek a mistrial regarding a witness's unsolicited testimony of Hanse's reference to his prior prison time. *Id.*

<sup>2</sup> We stated the victim "provided compelling and graphic details of the frequent sexual abuse suffered at the hands of Hanse and his guests. The details of abuse provided by [the victim] were consistent with the [medical examination]." *Id.* at \*3-4.

of PTSD long before she met” the subsequent abuser in July 2002. The court also found: (1) the subsequent abuser was charged in juvenile court on March 1, 2004, shortly before Hanse’s trial commenced; (2) defense counsel was aware of the allegation of abuse but was not aware a charge had been filed; and (3) the prosecutor was likewise unaware a charge had been filed. The court ruled because the victim was already exhibiting symptoms of PTSD long before meeting the subsequent abuser, Hanse “cannot show ‘but for’ counsel’s failure to alert the jury to [the subsequent] abuse the result would have been different. In this court’s opinion, it clearly would not.”

Hanse appealed. We affirmed and acknowledged his claim “the State failed to disclose allegedly exculpatory material as required by *Brady v. Maryland*, 373 U.S. 83, 87 (1963).” *Hanse v. State*, No. 08-0640, 2009 WL 1219057, at \*2 (Iowa Ct. App. May 6, 2009). We noted Hanse made “an oblique reference to a *Brady* claim in his amended application for postconviction relief”<sup>3</sup> and ruled:

Hanse urged his counsel was ineffective in failing to pursue and present at trial evidence of the subsequent sexual abuse (an issue not raised in this appeal). At best, any *Brady* argument was by implication. The court ruled on the subsequent sexual abuse evidence issue as one of ineffective assistance of counsel . . . . The court made no *Brady* violation finding. Hanse made no application to expand the court’s findings. The State argues Hanse failed to preserve error on this claim. We agree.

. . . Because the district court made no ruling on the *Brady* issue, an issue Hanse now raises on appeal, we have nothing to review.

*Id.*

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<sup>3</sup> Specifically, the 2006 postconviction application alleged: “The prosecutor knew of this exculpatory evidence and did not fully disclose it.” *Id.*

In April 2011 Hanse filed a second application for postconviction relief alleging numerous ineffective-assistance-of-counsel issues regarding his trial, direct appeal, and first postconviction counsel. The State filed a motion to dismiss based on the applicable statute-of-limitations. The court deferred ruling until after hearing. During the hearing, Hanse admitted he had no newly-discovered evidence, only newly-discovered statutes. The court denied relief and ruled: “All of the issues raised now could have been raised in the prior postconviction case.”<sup>4</sup>

Hanse now appeals and argues the court erred dismissing his second application. We affirm. See Iowa Ct. R. 21.26(1)(d).

**AFFIRMED.**

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<sup>4</sup> The postconviction court also ruled:

It is undisputed the prosecution disclosed to Hanse . . . the victim had been sexually abused by another [person] . . . prior to the original trial. The defense made a tactical decision not to introduce testimony of the event . . . . The only evidence Hanse claims was suppressed was that the perpetrator was subsequently charged. Apparently, the charge occurred prior to . . . the original trial.

The court finds no *Brady* violation. The defense possessed the essential facts of the sexual assault by [another person]. The issue is not new and has been raised as an allegation of ineffective assistance of counsel by Hanse in the first postconviction proceeding. In sum, this issue does not qualify for exemption from the statute of limitations because it is not a *Brady* violation.