

IN THE COURT OF APPEALS OF IOWA

No. 3-823 / 12-1184
Filed September 18, 2013

STANLEY REED,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Lee (South) County, Cynthia H. Danielson, Judge.

Stanley Reed appeals from the summary disposition of his second application for postconviction relief. **AFFIRMED.**

Jeffrey M. Lipman of Lipman Law Firm, P.C., Clive, for appellant.

Thomas J. Miller, Attorney General, Jean C. Pettinger, Assistant Attorney General, Chandra Peterson, Student Legal Intern, and Michael P. Short, County Attorney, for appellee.

Considered by Vogel, P.J., Vaitheswaran, J., and Sackett, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2013).

SACKETT, S.J.

Stanley Reed appeals from the summary disposition of his second application for postconviction relief (PCR). He contends the district court erred in determining his claim was time barred. Because the undisputed evidence shows the claim could have been raised within the time limit provided in Iowa Code section 822.3 (2009), we affirm.

Reed was convicted of multiple drug-related felonies in 1999. The supreme court affirmed his convictions and sentence on direct appeal, *State v. Reed*, 618 N.W.2d 327, 337 (Iowa 2000), and procedendo issued on December 1, 2000. Reed then filed a PCR application, which the district court denied. This court affirmed Reed's appeal of the denial. *Reed v. State*, No. 05-1697, 2008 WL 4325521, at *3 (Iowa Ct. App. Sept. 17, 2008).

On September 28, 2009, Reed filed a second PCR application, in which he alleged his trial counsel was ineffective in failing to obtain audio tape recordings of five State witnesses. Finding Reed could have raised the claim within the time limit for bringing PCR actions, the district court granted the State's motion for summary disposition. Reed appeals.

We review PCR proceedings for errors at law. *Taylor v. State*, 752 N.W.2d 24, 27 (Iowa Ct. App. 2008). The district court may grant summary disposition of a PCR application "when it appears from the pleadings, depositions, answers to interrogatories, and admissions and agreements of fact, together with any affidavits" that "there is no genuine issue of fact and the moving party is entitled to judgment as a matter of law." Iowa Code § 822.6.

A PCR applicant must initiate a PCR action within three years of the conviction or disposition on appeal. *Id.* § 822.3. “However, this limitation does not apply to a ground of fact or law that could not have been raised within the applicable time period.” *Id.* Exceptions to the time bar include newly-discovered evidence or a ground that the applicant was not alerted to in some way. *Wilkins v. State*, 522 N.W.2d 822, 824 (Iowa 1994).

We concur with the district court’s finding Reed had the opportunity to raise his ineffective-assistance-of-counsel claim before the three-year time bar became enforceable. Reed acknowledges he knew of the existence of the five tape-recorded interviews at trial, but did not raise the issue in his direct appeal. Reed testified he informed his first PCR counsel of the issue. Despite knowing the tapes existed and were not secured by his trial counsel, Reed failed to raise an ineffectiveness claim on direct appeal, in his first PCR action, or on appeal from denial of PCR relief. Reed “cannot assert ignorance of the claim because he should have at least been alerted to trial counsel’s failure” to secure the tape recordings “and appellate and postconviction counsels’ failure to raise ineffectiveness claims.” See *id.* Because Reed could have raised the issue within the three-year time frame and failed to do so, his claim is barred.

AFFIRMED.