

IN THE COURT OF APPEALS OF IOWA

No. 6-274 / 03-1969
Filed May 24, 2006

ARTHUR POYNER,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Montgomery County, Gordon C. Abel, Judge.

Arthur Poyner appeals the district court's denial of his postconviction relief application. **AFFIRMED.**

Tiffany Koenig of Kragnes, Tingle & Koenig, P.C., for appellant.

Thomas J. Miller, Attorney General, Martha E. Boesen and Bridget Chambers, Assistant Attorneys General, Matt Wilber, County Attorney, and Margaret Reyes, Assistant County Attorney, for appellee-State.

Heard by Vogel, P.J., and Zimmer and Vaitheswaran, JJ.

VAITHESWARAN, J.

Arthur Poyner, found guilty of first-degree murder in 1979, appeals the district court's denial of his postconviction relief application, filed in 2002. Poyner concedes the application "was not filed within the three year time limit as prescribed by Iowa Code section 822.3," but maintains his action falls within an exception to this time bar for "a ground of fact or law that could not have been raised within the applicable time period." Iowa Code § 822.3 (2001).

Poyner hangs his hat on what he contends is newly discovered evidence in the form of a knife, a related lab receipt, and a police report. He maintains that all these items were in the State's possession but were not timely disclosed to the defense. In his view, the evidence generated a ground of fact that could not have been raised within the three-year limitations period.

Poyner is correct that "[a] ground of fact would present itself, if, for example, newly-discovered evidence became known." *State v. Edman*, 444 N.W.2d 103, 106 (Iowa Ct. App. 1989). However, the evidence must be "of the type that would be relevant and which would likely change the result of the case." *Id.* Assuming without deciding that the evidence was "newly discovered,"¹ Poyner cannot establish these factors.

On the question of relevance, Poyner argues that the three pieces of evidence, and particularly the police report, support his trial theory that his brother committed the crime. He notes that the knife was found in a police

¹ Poyner now concedes he knew about the knife around the time of trial. Therefore, this item could not be newly discovered evidence that would support the "ground of fact" exception to the time-bar. Nevertheless, we will proceed to address the other factors.

vehicle that may have transported his brother to the police station. He also cites the testimony of a witness who met him after the stabbing and confirmed the existence of a knife. This witness testified Poyner had the knife with him. She also testified that Poyner told her his brother used the knife to stab someone, and then gave the knife to Poyner.

If this were the only record on the subject of the knife, we would have no trouble concluding the knife and related documents were relevant to Poyner's defense. However, we also have Poyner's evolving testimony at the postconviction relief hearing.

On direct examination, Poyner testified that the knife, the laboratory receipt, and the police report were relevant because they disclosed that none of the victim's blood was found on the knife. He did not assert the knife was his brother's.

Later during his direct examination, Poyner stated the knife was indeed the one he had with him on the night of the stabbing, but he did not explain how the absence of blood on the knife was consistent with his theory that his brother used the instrument to commit the murder.

On cross-examination, Poyner completely changed tracks, testifying that the knife was not used in the stabbing. First, the county attorney asked him whether the knife was the murder weapon. Poyner answered, "No, it's not." Then, the county attorney asked, "So if it's not the murder weapon, you wouldn't expect to see the victim's blood on it, would you?" Poyner answered, "No." This testimony dispels any notion that the knife or related documents were relevant to the case.

Based on Poyner's testimony that the recovered knife was not the murder weapon, Poyner cannot show that the new evidence would likely have changed the result. Even if Poyner's trial attorney had the evidence during trial, any use of it for cross-examination would have muddied rather than clarified the defense theory that Poyner's brother committed the crime.

As Poyner did not establish "a ground of fact or law that could not have been raised within the applicable time period," his 2002 postconviction relief application is time-barred. This is the same conclusion reached by the district court. We discern no error in the court's conclusion. See *Wilkins v. State*, 522 N.W.2d 822, 823-24 (Iowa 1994) (reviewing for errors of law).

Poyner raises several other arguments in support of reversal. We find it unnecessary to address his contention that newly discovered evidence warranted the grant of a new trial and his contention that postconviction relief counsel was ineffective in failing to call attorneys to testify about the knife. These arguments are premised on the claimed new "ground of fact." Accordingly, they are time-barred. See, e.g., *Wilkins*, 522 N.W.2d at 824 (rejecting attempts to circumvent time-bar by alleging ineffective assistance of postconviction relief counsel).

Poyner raises a final ineffective-assistance-of-counsel claim. He asserts postconviction relief counsel should have withdrawn in light of an ethical complaint he filed against the attorney. This issue was first raised in a document filed before the postconviction relief hearing. In that document, Poyner stated he intended to file a complaint against his attorney based on counsel's performance in a different case. At the postconviction relief hearing, Poyner did not mention a complaint and did not request that counsel withdraw. After the hearing, Poyner

filed a “report to court.” The report stated Poyner “sent in a complaint” against his attorney before the postconviction relief hearing. The complaint was not attached and the contents were not described. As the only record concerning the complaint reveals that it was related to a different case, we conclude this ineffective-assistance-of-counsel claim lacks merit.

We affirm the district court’s denial of Poyner’s postconviction relief application.²

AFFIRMED.

² Poyner’s motion for leave to submit supplemental briefs and a supplemental appendix is denied.