

**IN THE COURT OF APPEALS OF IOWA**

No. 7-894 / 06-1784  
Filed February 13, 2008

**DARRELL SMITH,**  
Applicant-Appellant,

**vs.**

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

---

Appeal from the Iowa District Court for Polk County, Glenn E. Pille, Judge.

Darrell Smith appeals from the denial of his application for postconviction relief. **AFFIRMED.**

Della M. Arriaga of Arriaga Law Office, P.C., Urbandale, for appellant.

Darrell Smith, pro se.

Thomas J. Miller, Attorney General, Robert Ewald and Mary Tabor, Assistant Attorneys General, John P. Sarcone, County Attorney, and Joseph P. Weeg, Assistant County Attorney, for appellee State.

Considered by Sackett, C.J., and Vaitheswaran and Baker, JJ.

**VAITHESWARAN, J.**

Darrell Smith was found guilty of first-degree kidnapping and assault causing bodily injury. On direct appeal, we upheld his judgment and sentence. *State v. Smith*, No. 09-069 (Iowa Ct App. March 31, 1999). Smith subsequently filed an application for postconviction relief, which was denied on its merits.

Almost five years after his direct appeal was resolved, Smith filed a second application for postconviction relief (PCR). His appointed attorney amended the application, and then moved to withdraw. The State moved for summary disposition, asserting the action was barred by a three-year statute of limitations and by a provision that has been interpreted to preclude re-litigation of claims. See Iowa Code §§ 822.3, 822.8 (1999); *Berryhill v. State*, 603 N.W.2d 243, 245 (Iowa 1999). The district court afforded Smith an opportunity to respond to his attorney's motion to withdraw. Smith filed objections as well as additional claims he wished to have the court consider.

The court granted the State's motion, concluding the statute of limitations barred the action and Smith failed "to assert any ground of fact or law that could not have been raised within this applicable time period." The court also concluded Smith failed "to assert any ground that has not been litigated by multiple courts or that has any merit." Smith appealed.

Our review of the court's ruling on the State's statute-of-limitations defense is for correction of errors of law. *Harrington v. State*, 659 N.W.2d 509, 519 (Iowa 2003).

Iowa Code section 822.3 provides that 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 statute contains an exception for “a ground of fact or law that could not have been raised within the applicable time period.” Smith’s application was filed after the three-year time frame. Therefore, his claims survive the statute of limitations only if they are based on a ground of law or fact that could not have been raised within the applicable time period.

Smith’s amended and substituted application for postconviction relief raised a single claim: that the prosecution withheld from the defense police reports naming someone else as a suspect. After PCR counsel filed the amended and substituted petition, counsel filed a statement with the court asserting he reviewed trial counsel’s original and appellate file and discovered that the defense was furnished copies of the key police report.<sup>1</sup> In his objection to counsel’s statement, Smith denied the police report was produced and asserted PCR counsel could not speak for trial counsel. The district court’s ruling cites to PCR counsel’s statement that the claimed exculpatory evidence was provided to trial counsel.

In the face of PCR counsel’s assertion that he physically reviewed trial counsel’s files and determined the claimed exculpatory evidence was produced to Smith’s trial counsel, we believe Smith had to do more to avoid summary disposition than simply deny the attorney received the evidence. See *Manning v. State*, 654 N.W.2d 555, 559 (Iowa 2002) (noting court may grant either party’s

---

<sup>1</sup> This type of statement by defense counsel is now disfavored. See *State v. Gamble*, 723 N.W.2d 443, 446 (Iowa 2006). However, we view counsel’s statement concerning the claimed exculpatory evidence as a correction, upon investigation, of statements made in the amended application for postconviction relief.

motion for summary disposition when “it appears from the pleadings, depositions, answers to interrogatories, and admissions and agreements of fact, together with any affidavits submitted, that there is no genuine issue of material fact and the [State] is entitled to judgment as a matter of law”) (citing Iowa Code § 822.6). Smith’s objections did not generate a genuine issue of material fact and the district court did not err in concluding the statute of limitations barred the exculpatory evidence claim.

We turn to the remaining claims Smith sought to add. They are as follows:

- i) The district court’s response to jury queries prejudiced defendant.
- ii) The jury instructions were defective in several instances.
- iii) Shauntell Brown testified falsely during her trial testimony since, she testified to five different trials and comparison of each expose that she perjured herself at Mr. Smith’s trial.
- iv) Shauntell Brown’s trial testimony reciting codefendants’ statements violated Mr. Smith’s Sixth Amendment Confrontation rights.
- v) The Court of Appeals basis upon which it affirmed Mr. Smith’s conviction constituted a discrepancy between their reasoning and that which the jury verdict rested, in violation of Mr. Smith’s Fifth and Fourteenth Amendment Due Process rights.

All these claims could have been raised during the three-year limitations period. See *Smith v. State*, 542 N.W.2d 853, 854 (Iowa Ct. App. 1995). Therefore, they cannot fall within the “ground of fact or law” exception to the limitations bar. Additionally, at least two of these claims, those asserted in paragraphs ii and iv, were raised and adjudicated in prior proceedings and are barred on that basis. See Iowa Code § 822.8.

Finally, in a pro se filing with the appellate courts, Smith alleges his second postconviction counsel was ineffective in several respects. He cannot

circumvent the three-year time bar by claiming the ineffective assistance of postconviction counsel. *Id.*

For these reasons, we affirm the district court's summary disposition of Smith's second PCR application.

**AFFIRMED.**