

IN THE COURT OF APPEALS OF IOWA

No. 8-117 / 07-0008
Filed March 14, 2008

ROBERT WOODBERRY,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Arthur E. Gamble,
Judge.

Applicant appeals the district court's dismissal of his application for
postconviction relief. **AFFIRMED.**

Jesse A. Macro, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Richard J. Bennett, Assistant Attorney
General, John P. Sarcone, County Attorney, and George Karnas, Assistant
County Attorney, for appellee.

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

SACKETT, C.J.

Applicant, Bobby Woodberry, appeals the district court's dismissal of his application for postconviction relief. The district court found Woodberry's ineffective assistance of counsel claim was barred by the three-year statute of limitations of Iowa Code section 822.3 (2003). Woodberry appeals contending the district court erred in ruling that (1) Woodberry's attorney in his first postconviction relief action did not provide ineffective assistance, and (2) the three-year statute of limitations applied to the action and barred his claim. We affirm.

I. BACKGROUND AND COURSE OF PROCEEDINGS.

Woodberry was convicted of first-degree murder and assault with intent to commit serious injury on July 13, 1995 and we affirmed this conviction on December 20, 1996. The supreme court denied further review and a procedendo was filed on March 25, 1997. Woodberry filed his first application for postconviction relief on May 19, 1997, and an attorney was appointed to represent him in this action. The matter was tried on August 4, 2000, and the judge filed a ruling on September 27, 2000, denying relief. Although the ruling directed copies to be sent to Woodberry and his attorney, it is unclear whether they were sent. There is no certification of service on the ruling by the clerk's office or by a court attendant to suggest that copies were mailed or served to the parties. According to Woodberry, he did not appeal the ruling because he did not know of the decision.

Sometime in 2004, Woodberry contacted the clerk of court and inquired about his case. This is apparently the first time he learned of the ruling. On June

25, 2004, Woodberry filed a pro se motion requesting a default hearing. On July 30, 2004, the court denied the motion finding it had no authority over the matter since no motion to vacate the judgment was filed. Woodberry did not appeal this ruling.

On October 25, 2004, Woodberry filed the present postconviction relief application. Among other things, Woodberry claimed he received ineffective assistance of counsel when his first postconviction relief attorney failed to notify Woodberry of the decision and failed to perfect an appeal on the first postconviction relief ruling. On August 10, 2006, this issue was tried and the court filed a ruling on November 22, 2006. The court held that Woodberry's first postconviction relief counsel was not ineffective in failing to inform Woodberry of the decision. In addition, it noted that Woodberry's ineffective assistance claim had no nexus to his underlying conviction, a condition necessary for extension of the limitations period. Woodberry appeals.

II. SCOPE OF REVIEW.

We generally review postconviction relief proceedings for errors of law. *Harrington v. State*, 659 N.W.2d 509, 519 (Iowa 2003). Those claims concerning alleged constitutional violations, including ineffective assistance of counsel claims, are reviewed de novo. *Osborn v. State*, 573 N.W.2d 917, 920 (Iowa 1998). "Our review of the court's ruling on the State's statute-of-limitations defense is for correction of errors at law." *Harrington*, 659 N.W.2d at 519-20. Under this standard, we affirm if the trial court's fact findings "are supported by substantial evidence and if the law was correctly applied." *Id.* at 520.

III. ANALYSIS.

Iowa Code section 822.3 provides a statute of limitation period for applicants to file for postconviction relief. It provides in relevant part,

All other applications 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. However, this limitation does *not apply to a ground of fact or law that could not have been raised within the applicable time period.*

Iowa Code § 822.3 (emphasis supplied). Since the procedendo in Woodberry's case was issued on March 25, 1997, the statute of limitation period for postconviction relief expired in March of 2000. The present application was not filed until 2004. Therefore, Woodberry's claim is only viable if it concerns "a ground of fact or law that could not have been raised within the applicable time period" under section 822.3.

Woodberry asserts that there are two reasons why his claim could not have been raised within the statute of limitation period. First, he argues that the original postconviction relief decision was not issued until September of 2000, approximately six months after the statute of limitations had run. Therefore, it was impossible to discover any errors in this ruling or proceeding within the statutory period. Secondly, he argues that it was impossible to file the application earlier since he was not notified of the decision until 2004. The State argues that the claim fails because the supreme court previously found, in *Dible v. State*, 557 N.W.2d 881 (Iowa 1996), that this type of claim does not fall within the exception to the statute of limitations.

In *Dible*, the Iowa Supreme Court considered "whether the ineffective assistance of postconviction counsel can constitute a 'ground of fact' within the

meaning of the exception to the three-year statute of limitations.” *Dible*, 557 N.W.2d at 883. In analyzing prior case law and the statute, the court found the claim was not a “ground of fact” within the exception. *Id.* at 884. However, portions of *Dible* were abrogated by *Harrington v. State*, 659 N.W.2d 509 (Iowa 2003). In *Harrington*, the court reconsidered the exception to the statute of limitations for postconviction relief claims and clarified what is required under the exception. *Harrington*, 659 N.W.2d at 520-21. They confirmed that an applicant “must show the ground of fact is relevant to the challenged conviction.” *Id.* at 521. This requirement is met when there is a nexus between the ground of fact or alleged error and the applicant’s underlying conviction. *Id.* The district court found this nexus lacking in Woodberry’s claim noting,

even if [counsel] did not properly monitor the progress of this case, her ineffective assistance of counsel does not rescue this case from the statute of limitations because it is not a ground of fact that has a nexus to Woodberry’s criminal conviction.

We find no error in this finding. The ground of fact Woodberry asserts is his counsel’s failure to notify him of the first postconviction relief decision and failure to perfect an appeal of it. These facts are not relevant to Woodberry’s underlying conviction. Woodberry asserts no ground of fact that relates to the validity of his original conviction and thus his claim is barred by the statute of limitations.

Nonetheless, assuming *arguendo* that Woodberry’s claim does fall within the exception, his application was properly denied for failure to prove ineffective assistance of counsel. To establish an ineffective assistance of counsel claim, Woodberry must prove by a preponderance of the evidence that his counsel “failed to perform an essential duty” and “he was prejudiced by counsel’s omission.” *State v. Wissing*, 528 N.W.2d 561, 563-64. Prejudice is proved when

there is “a reasonable probability that but for his trial attorney’s unprofessional errors, the resulting conviction and sentence would have been different.” *Id.* at 564. “A reasonable probability is “one sufficient to undermine confidence in the outcome.” *Id.* We need not address the essential duty prong if the applicant fails to prove prejudice. *Id.*

After reviewing Woodberry’s original postconviction relief action and the record, we find there is no merit to his claims. Thus, even had Woodberry’s attorney appealed the decision, there is not a reasonable probability that the outcome would have been different. Woodberry made various claims of prosecutorial misconduct, ineffective assistance of counsel, and newly discovered evidence in his first application for postconviction relief. The district court denied the application on several grounds including, (1) that Woodberry waived his claims by not raising them on direct appeal, and (2) that Woodberry failed to prove that his case was prejudiced by any alleged errors. The court found no prejudice because there was overwhelming evidence that Woodberry fired the shots and all of the challenged testimony was cumulative of other evidence presented. We agree with these findings in all respects and find that Woodberry suffered no prejudice by his attorney’s failure to perfect an appeal on his first postconviction relief action.

AFFIRMED.