

IN THE COURT OF APPEALS OF IOWA

No. 8-552 / 07-0712
Filed August 13, 2008

ROBERT CHARLES BRENNEMAN, JR.,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Johnson County, Patrick R. Grady,
Judge.

Applicant appeals the district court decision denying his request for
postconviction relief. **AFFIRMED.**

Robert C. Brenneman, Jr., Plainfield, Indiana, appellant pro se.

Thomas J. Miller, Attorney General, Linda J. Hines, Attorney General, and
Janet M. Lyness, County Attorney, for appellee.

Considered by Vaitheswaran, P.J., and Eisenhauer, J., and Schechtman,
S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2007).

SCHECHTMAN, S.J.**I. Background Facts & Proceedings**

On April 1, 1996, Robert Brenneman pled guilty to assault with intent to commit sexual abuse, in violation of Iowa Code section 709.11 (1995).¹ The minutes of testimony show Brenneman, twenty-seven, walked into a convenience store in Iowa City on January 1, 1996, dropped his trousers, and began masturbating in front of a lone female clerk. He graphically told the clerk he wanted to engage in sexual activities with her. Brenneman proceeded to walk behind the counter and ejaculated onto the floor. The clerk threw an object at him, he exited, and was later apprehended and arrested. Brenneman was sentenced to a term of imprisonment not to exceed two years, suspended, and placed on probation for two years. He later violated his probation, and served the term of imprisonment.

Ten years later, on November 27, 2006, Brenneman filed an application for postconviction relief.² The State filed a motion to dismiss, alleging Brenneman's application was untimely under Iowa Code section 822.3 (2005), as not filed within three years after his conviction. Brenneman responded by asserting that he had long suffered from multiple mental disorders which prevented him from compliance with the time requirements of that statute. He additionally alleged that it was not until 2006, when given access to legal

¹ Brenneman also pled guilty to charges of assault, indecent exposure, and interference with official acts causing injury. His application for postconviction relief, however, relates only to the charge of assault with intent to commit sexual abuse.

² In an affidavit attached to his application, Brenneman states he is currently serving a twenty-year sentence for burglary in Indiana.

research, that it became clear that his conduct did not constitute an assault with intent to commit sexual abuse, and there was no factual basis for his guilty plea.

The district court granted the State's motion to dismiss, noting under section 822.3, an application for postconviction relief must be filed within three years after a conviction, unless there is "a ground of fact or law that could not have been raised within the applicable time period." The court engaged in a thorough review of Brenneman's allegations and concluded, "Applicant simply has failed to set forth any ground of fact or law that could not have been raised within the applicable time period." The court also noted, "In fact, the Applicant's filings acknowledge that his behavior has been ongoing at least since he was twelve years old." The court concluded that Brenneman's alleged postponed realization of the sex-offender implications of this Iowa conviction in Indiana, his home state, is not a new ground of fact or law that would justify an untimely application for postconviction relief. Brenneman appeals.

II. Standard of Review

We review the district court's dismissal of a postconviction action on the grounds it was time barred for the correction of errors at law. *State v. Harrington*, 659 N.W.2d 509, 519 (Iowa 2003). We consider whether the district court's findings of fact are supported by substantial evidence, and whether the law was correctly applied. *Id.* at 520.

III. Analysis

Iowa Code section 822.3 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.

The exception in section 822.3 applies to claims that “could not” have been previously raised because they were not available. *Wilkins v. State*, 522 N.W.2d 822, 824 (Iowa 1994). Examples might be “newly-discovered evidence or a ground that the applicant was at least not alerted to in some way.” *Id.* A party must show that this newly-discovered ground of fact is relevant to the conviction.³ *Harrington*, 659 N.W.2d at 521.

In his resistance to the State’s motion to dismiss, Brenneman stated that the Indiana Department of Corrections had not considered him a sex offender, and, in light of his expected release from prison, he located a residence and obtained employment. The Department then changed its mind, based on his Iowa conviction for assault with intent to commit sexual abuse.⁴ Brenneman was notified his planned residence and employment were not acceptable, and he would be required to participate in sex offender monitoring and management. Brenneman claimed the stress of the situation prompted a return to his exhibitionist conduct, which led to re-incarceration.

We determine there is substantial evidence in the record to support the district court’s finding that Brenneman failed to set forth any ground of fact or law that “could not have been raised” within the applicable time period, including his

³ There is no requirement, however, “that an applicant must show the ground of fact would likely or probably have changed the outcome of the underlying criminal case in order to avoid a limitations defense.” *Harrington*, 659 N.W.2d at 521.

⁴ Indiana defines a “sex offender” to include a person “who is required to register as a sex offender in any jurisdiction.” Indiana Code § 11-8-8-4.5(b)(1) (2007).

mental status.⁵ The evidence does not show Brenneman “could not have . . . raised” these issues within the three-year time period. Rather, it is clear Brenneman has raised these issues, at this juncture, because the protective consequences of his conviction have now been realized by him.

We affirm the dismissal by the district court.

AFFIRMED.

⁵ According to Brenneman he is a graduate of Ball State University in Muncie, Indiana, with a 3.89 GPA, having earned a 4.0 GPA on every required and elective psychology course.