

IN THE COURT OF APPEALS OF IOWA

No. 8-703 / 07-0725
Filed October 1, 2008

RAYMOND LEE THOMAS, JR.,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Des Moines County, John G. Linn,
Judge.

Applicant appeals the district court's dismissal of his postconviction claim
on the ground it was untimely. **AFFIRMED.**

Andrew B. Howie of Hudson, Mallaney & Shindler, P.C., West Des
Moines, for appellant.

Thomas J. Miller, Attorney General, Thomas W. Andrews, Assistant
Attorney General, Patrick Jackson, County Attorney, and Amy Beavers, Assistant
County Attorney, for appellee.

Considered by Vogel, P.J., and Eisenhauer, J., and Robinson, S.J.*
Miller, J., takes no part.

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

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

Raymond Thomas Jr. was convicted of first-degree murder for the shooting death of Christina Martin. During his criminal trial, on January 18, 1995, Eric Parham, an eyewitness to the crime, testified for the State. Parham testified he helped Thomas move Martin's body, drove Thomas from the scene of the crime, and helped him attempt to burn the victim's purse. Parham also took possession of the murder weapon and told a friend to dispose of it. Because Parham was facing possible criminal charges for his participation in the incident, at the trial he was asked, "Have you made any kind of deal with the prosecutors in this case in exchange for your testimony here today?" and he replied, "No."

After the jury's verdict, Thomas filed a motion for new trial raising the issue, "The State's eyewitness, Eric Parham lied in his testimony at trial concerning whether or not he had a 'deal' with the State in return for his testimony." In a resistance, the State asserted that a final decision on whether or not to charge Parham was not reached until after trial, and "[a]t that time, Defendant was charged with Accessory After the Fact to Murder in the First Degree, to which he entered a plea of guilty and received a suspended sentence and a \$500.00 fine."

On February 20, 1995, Parham testified that after talking to law enforcement personnel he thought he had a deal at the time of trial but he did not have anything in writing. He admitted, however, that he was never told that if he did not testify he would be charged with a higher crime. The district court found

that while law enforcement personnel may have indicated to Parham what the likely charge against him might be, there was no agreement as to disposition if that charge were brought. The court concluded, “The evidence simply does not establish that the witness, Mr. Parham, lied in his testimony at trial or was dishonest in that testimony.”

Thomas appealed his conviction, but did not raise the issue concerning whether Parham had lied about receiving a deal from the State. See *State v. Thomas*, No. 95-0359 (Iowa Ct. App. May 31, 1996). *Procedendo* issued on August 21, 1996. Thomas filed an unsuccessful application for postconviction relief, which also did not raise this issue. He appealed, and *procedendo* in that case issued on February 11, 1999.

Thomas filed his second application for postconviction relief on April 21, 2006, raising the issue of “known use of perjured testimony by the State,” based on Parham’s statement that he did not have a deal with the State. The State filed a motion for summary disposition, claiming Thomas’s application was untimely under Iowa Code section 822.3 (2005). The district court granted the motion for summary disposition. The court found Thomas had not asserted any newly discovered evidence, and the application was barred by section 822.3.

Thomas then filed a *pro se* motion to amend his application, and a motion to enlarge or amend the court’s decision, based on a claim of newly discovered evidence. He presented a written arraignment, guilty plea and judgment entry for Parham dated February 16, 1995, which states, “the State advises the Court of a plea agreement wherein the State recommends a suspended sentence in

consideration of the Defendant's co-operation as a witness in the case of State of Iowa vs. Raymond Lee Thomas, Jr." The district court denied the motions.¹ The court found the motion to amend was untimely. The court also found the claimed newly discovered evidence could have been earlier discovered with reasonable diligence. Additionally, the court found the evidence was not material and would not have produced a different result at trial. Thomas 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. Merits

The relevant portion of section 822.3 provides:

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.

Newly discovered evidence is a ground that "could not have been raised" previously. See *Wilkins v. State*, 522 N.W.2d 822, 824 (Iowa 1994). A party must show that the newly-discovered evidence is relevant to the conviction.

¹ Thomas filed a notice of appeal of the district court's order granting summary disposition before the court ruled on his pending motions. The court was not aware of the appeal, and ruled on the motions. Thomas then filed a request to amend his notice of appeal. The Iowa Supreme Court treated the request as a motion for limited remand. The matter was remanded back to the district court for a ruling on the motions. The court denied the motions, and this appeal proceeded.

Harrington, 659 N.W.2d at 521. There is no requirement, however, that the evidence would likely or probably have changed the outcome of the underlying criminal case to avoid a limitations defense. *Id.*

Parham testified he did not have a deal with the State on January 18, 1995. The written guilty plea is dated February 16, 1995. At the time of the post-trial hearing on February 20, 1995, the parties were aware Parham had been charged and pled guilty. The written guilty plea would have been discoverable at that time if Thomas had exercised diligence. The fact that Thomas was aware Parham pled guilty, but did not seek the written guilty plea, does not make the written document “newly-discovered evidence” at this time. The exception in section 822.3 applies to claims that “could not” have been previously raised because they were not available. *Wilkins*, 522 N.W.2d at 824.

Furthermore, the written guilty plea is not relevant to prove Thomas’s claim that Parham lied during his testimony on January 18, 1995. The written document only shows that as of the date of that document, February 16, 1995, Parham had an agreement with the State regarding his guilty plea.

We conclude the district court did not err in finding Thomas’s second application for postconviction relief was untimely under section 822.3. We affirm the decision of the district court.

AFFIRMED.