

IN THE COURT OF APPEALS OF IOWA

No. 8-800 / 08-0652
Filed October 15, 2008

NANCY CARMENZA GALLOWAY,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Scott D. Rosenberg,
Judge.

Nancy Galloway appeals a ruling dismissing her application for
postconviction relief. **AFFIRMED.**

Jeffrey Mains, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Mary Tabor, Assistant Attorney
General, John P. Sarcone, County Attorney, and Susan Cox, Assistant County
Attorney, for appellee State.

Considered by Sackett, C.J., and Miller and Potterfield, JJ.

POTTERFIELD, J.**I. Background Facts and Proceedings**

On June 14, 2002, Nancy Galloway pled guilty to child endangerment in violation of Iowa Code section 726.6(1)(a) (2001). She received a deferred judgment and was placed on informal probation for one year. She successfully completed and was discharged from her probation on December 19, 2002. On November 27, 2007, Galloway applied for postconviction relief from the June 14, 2002 deferred judgment entry, claiming that her counsel was ineffective in allowing her to enter a guilty plea. The State filed a motion to dismiss the postconviction relief action alleging, among other things, that the district court lacked jurisdiction to consider the matter because postconviction relief does not apply to deferred judgments.¹ The district court dismissed the postconviction relief application, concluding that Galloway's deferred judgment allowed her to escape both an adjudication of guilt and the imposition of a sentence, barring her application for postconviction relief. Galloway appeals arguing that a deferred judgment fits within the language of the Uniform Postconviction Procedure Act.

II. Standard of Review

We review the dismissal of an application for postconviction relief to correct errors of law. *Brown v. State*, 589 N.W.2d 273, 274 (Iowa Ct. App.1998). When the applicant alleges the denial of a constitutional right, our review is de novo. *McLaughlin v. State*, 533 N.W.2d 546, 547 (Iowa 1995).

¹ The State also argued that Galloway's application should be dismissed because it was filed beyond the three-year statute of limitations established by Iowa Code section 822.3 (2007). The district court did not address this argument because it found that Galloway was barred from pursuing an action for postconviction relief on other grounds. We decline to address the argument for the same reasons.

III. Merits

The Uniform Postconviction Procedure Act states that it is applicable to anyone “who has been convicted of, or sentenced for, a public offense.” Iowa Code § 822.2 (2007). We agree with the district court that a deferred judgment does not come within the provisions of the Uniform Postconviction Procedure Act. When a defendant receives a deferred judgment, “no conviction occurs in the strict legal sense because no adjudication of guilt is made.” *State v. Farmer*, 234 N.W.2d 89, 92 (Iowa 1975). “Deferred judgment” is defined in the Iowa Code as “a sentencing option whereby both the adjudication of guilt and the imposition of a sentence are deferred by the court.” Iowa Code § 907.1(1). Thus, when a deferred judgment is granted and not revoked, the defendant is not convicted of, or sentenced for, a public offense as required by the Uniform Postconviction Procedure Act.² Accordingly, we find that because Galloway received a deferred judgment on the charge of child endangerment, the Uniform Postconviction Procedure Act is not available to her.

AFFIRMED.

² When the court grants a deferred judgment, it retains the power to pronounce judgment if the defendant fails to comply with specified conditions. However, Galloway complied with the conditions of her deferred judgment, and no modification was ever made to substitute the deferred judgment with a conviction or sentence.