

IN THE COURT OF APPEALS OF IOWA

No. 0-807 / 10-0592
Filed January 20, 2011

CORD D. CHRISTENSON,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Robert B. Hanson,
Judge.

Applicant appeals the district court order dismissing his application for
postconviction relief based on the statute of limitations. **AFFIRMED.**

Jeffrey T. Mains of Mains Law Office, P.L.C., Des Moines, then Amanda
DiMichelis, Chariton, for appellant.

Thomas J. Miller, Attorney General, Thomas W. Andrews, Assistant
Attorney General, John P. Sarcone, County Attorney, and James P. Ward,
Assistant County Attorney, for appellee.

Considered by Sackett, C.J., Vaitheswaran, J., and Miller, S.J.* Tabor, J.,
takes no part.

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

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

Cord Christenson was convicted of first-degree kidnapping, first-degree burglary, and second-degree sexual abuse. The State alleged that on February 4, 1998, Christenson broke into the home of his former girlfriend, Bekki, used a stun-gun on her, and raped her. He then forced her to drive him to Kansas City, Missouri, where he got on a bus.¹ Bekki returned to Des Moines and reported the incident. Christenson was sentenced to life in prison on the kidnapping charge, and a term of imprisonment not to exceed twenty-five years on each of the other charges, all to be served consecutively.

On direct appeal Christenson's convictions for first-degree kidnapping and first-degree burglary were affirmed.² *State v. Christenson*, No. 98-2013 (Iowa Ct. App. April 12, 2000). The Iowa Court of Appeals, however, vacated his conviction for second-degree sexual abuse, finding the conviction merged into the conviction for first-degree kidnapping. *Id.* The Iowa Supreme Court denied Christenson's application for further review. *Procedendo* was issued on August 3, 2000.

¹ Christenson demanded that Bekki take her child out of school and bring the child along on the trip to Kansas City. He told Bekki he needed to go to Mexico to evade outstanding warrants in the United States.

² In the direct appeal, Christenson claimed the prosecutor should not have activated the stun-gun for the jury, and he was entitled to a new trial based on newly discovered evidence from a police cadet. His two claims of ineffective assistance of counsel—failure to move to suppress interrogation statements and failure to object to evidence of prior bad acts—were preserved for possible postconviction proceedings.

Christenson filed an application for postconviction relief on August 1, 2001. His counsel raised six claims of ineffective assistance of counsel.³ Christenson raised forty more claims of ineffective assistance in a pro se brief filed on February 7, 2004. Included in Christenson's claims were the following: "The prosecutor engaged in misconduct by presenting false information to the jury;" "The prosecutor engaged in misconduct by misleading the jury;" and "The prosecutor engaged in misconduct by using manufactured and tainted evidence." In a detailed ruling filed on June 14, 2004, the district court denied the application for postconviction relief. The court addressed each of the issues raised by counsel and Christenson, including his claims of prosecutorial misconduct.

The decision of the district court was affirmed on appeal. *Christenson v. State*, No. 04-0989 (Iowa Ct. App. July 13, 2005). Christenson's application for further review by the Iowa Supreme Court was denied. Procedendo on this appeal issued on September 29, 2005.

Christenson filed a petition for writ of habeas corpus in federal court on October 19, 2005.⁴ After review by a magistrate judge, Christenson's request for habeas relief was denied by the federal district court. Christenson appealed, and the Eighth Circuit Court of Appeals affirmed the district court. *Christenson v.*

³ Postconviction counsel raised the following six claims of ineffective assistance of counsel: (1) failure to seek suppression of statements made during interrogation; (2) failure to object to evidence of prior bad acts; (3) failure to investigate evidence concerning whether Bekki's telephone line had been cut; (4) failure to call Darcy Scott as a witness; (5) failure to question Robert Corey; and (6) failure to object to a jury instruction concerning prior bad acts.

⁴ In the petition for writ of habeas corpus Christenson claimed the State violated *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 214 (1963), by failing to timely disclose exculpatory evidence concerning Bekki's telephone lines. He also claimed he received ineffective assistance because his defense counsel did not independently investigate and discover allegedly exculpatory evidence.

Ault, 598 F.3d 990, 997 (8th Cir. 2010). The Eighth Circuit court found, “Based on the trial record, demonstrating prejudice resulting from the alleged ineffective assistance would be impossible in this case.” *Id.* Also, “Examination of the facts recounted by the Magistrate Judge reveals that the evidence of Christenson attacking, raping, and kidnapping the victim was overwhelming.” *Id.*

Christenson filed a second application for postconviction relief in the Iowa district court on January 26, 2009. He claimed he received ineffective assistance from all previous counsel because they did not raise the issue that the prosecutor engaged in misconduct by deliberately soliciting known perjured testimony. The State filed a motion to dismiss, claiming Christenson’s claims were barred by the three-year statute of limitations in Iowa Code section 822.3 (2009). The State argued Christenson was not asserting any ground of fact or law that could not have been raised within the three-year time period.

The district court granted the motion to dismiss, finding Christenson’s postconviction action was filed past the three-year statute of limitations found in section 822.3. The court determined the claims of ineffective assistance of counsel raised in this action had been raised in the first postconviction action. The court found that in the prior action, “Petitioner was alleging a concerted effort by Respondent to mislead the jury with false and perjured evidence and/or by withholding other evidence.” The court found it “strains credulity” to argue Christenson was not alleging the State did so knowingly. The court further stated it was “equally implausible to argue that Petitioner was not alerted to that specific

ground during the period of limitations.”⁵ Christenson appeals the district court decision finding his application for postconviction relief is barred by the statute of limitations.

II. Standard of Review

A district court decision denying an application for postconviction relief is reviewed on appeal for the correction of errors at law. *Brown v. State*, 589 N.W.2d 273, 274 (Iowa Ct. App. 1998). We will affirm the court’s decision if the court’s factual findings are supported by substantial evidence and the law was correctly applied. *Benton v. State*, 199 N.W.2d 56, 57 (Iowa 1972).

III. Statute of Limitations

The applicable 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.

The purpose of this section is to “conserve judicial resources, promote substantive goals of criminal law, foster rehabilitation, and restore a sense of repose in our criminal judicial system.” *Cornell v. State*, 529 N.W.2d 606, 610 (Iowa Ct. App. 1994).

Christenson’s second application for postconviction relief states that the writ of procedendo in the direct appeal was filed on August 3, 2000. This application for postconviction relief was filed on January 26, 2009. On its face, the second application was filed beyond the three-year time period found in

⁵ The district court also briefly addresses an alternate theory that the grounds for relief in a postconviction application must be all-inclusive. See Iowa Code § 822.8.

section 822.3. An action filed outside the statute of limitations is barred unless an exception applies.⁶ *Harrington v. State*, 659 N.W.2d 509, 520 (Iowa 2003).

Section 822.3 creates an exception for “a ground of fact or law that could not have been raised within the applicable time period.” *Id.* A party must additionally “show a nexus between the asserted ground of fact and the challenged conviction.” *Id.* The asserted ground of fact must be relevant. *Id.* at 521. An applicant is not required to show, however, that the ground of fact would likely or probably have changed the result of the underlying criminal case. *Id.*

The purpose of the exception in section 822.3 “is to provide relief from the limitation period when an applicant had ‘no opportunity’ to assert the claim before the limitation period expired.” *Cornell*, 529 N.W.2d at 611. The exception 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 of claims that would not be time-barred would be “newly discovered evidence or a ground that the applicant was at least not alerted to in some way.” *Id.*

When an applicant is aware of a claim before it is time-barred, the claim is not one that “could not” have been raised within the applicable time period. *Whitsel v. State*, 525 N.W.2d 860, 864-65 (Iowa 1994). Specifically, when an applicant raised the same claims in an earlier, timely, postconviction action, the applicant cannot establish that he did not know of the claims within the three-year period. *Dible v. State*, 557 N.W.2d 881, 884 (Iowa 1996), abrogated on other grounds by *Harrington*, 659 N.W.2d at 521. In this circumstance, the applicant

⁶ The statute of limitations in section 822.3 does not apply to claims of an illegal sentence. *Veal v. State*, 779 N.W.2d 63, 65 (Iowa 2010).

“has failed to establish a ‘ground of fact’ that could not have been raised within the three-year period.” *Id.* at 884-85.

We agree with the district court’s conclusion that in the first postconviction action Christenson alleged the State engaged in a concerted effort to mislead the jury with false and perjured evidence. His present underlying claim, that the prosecutor deliberately solicited known perjured testimony, does not differ from the claims he earlier raised within the three-year time period. Christenson therefore cannot successfully assert that his present claims involve a “ground of fact or law that could not have been raised within the applicable time period.” See Iowa Code § 822.3; *Dible*, 557 N.W.2d at 884-85.

We affirm the decision of the district court dismissing Christenson’s second postconviction action on the ground it is barred as untimely under section 822.3.

AFFIRMED.