

**IN THE COURT OF APPEALS OF IOWA**

No. 1-654 / 10-0731  
Filed October 5, 2011

**MAURICE CURRIE,**  
Applicant-Appellant,

**vs.**

**STATE OF IOWA,**  
Respondent-Appellee.

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Appeal from the Iowa District Court for Hardin County, William Pattinson,  
Judge.

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

Rockne O. Cole of Cole & Vondra, L.L.P., Iowa City, for appellant.

Thomas J. Miller, Attorney General, Thomas Tauber, Assistant Attorney  
General, Randall J. Tilton, County Attorney, and Jim R. Sween, Assistant County  
Attorney, for appellee.

Considered by Eisenhauer, P.J., and Doyle and Mullins, JJ.

**MULLINS, J.**

Maurice Currie appeals from the district court's dismissal of his second application for postconviction relief. In 2002, Currie was convicted of first-degree robbery. Currie appealed and argued, in relevant part, that the district court erred in instructing the jury as to joint criminal conduct. This court held Currie "could not have been found guilty of anything other than his own conduct or as an aider or abettor" and therefore, the error was harmless. *State v. Currie*, No. 02-1335 (Iowa Ct. App. Dec. 10, 2003). We affirmed his conviction. *Id.* In 2004, Currie filed an application for postconviction relief, which was denied and this court affirmed on appeal. *See Currie v. State*, No 05-2107 (Iowa Ct. App. Sept. 7, 2006).

In October 2008, Currie filed a second application for postconviction relief, asserting the conviction was in violation of the Due Process Clause of the United States Constitution. *See* Iowa Code § 822.2(1)(a) (2007). He again argued the district court erred in instructing the jury as to joint criminal conduct, but claimed that *State v. Smith*, 739 N.W.2d 289 (2007) clarified an ambiguity in existing law and should be applied retroactively. The State filed a motion to dismiss, arguing Currie's application for postconviction relief (1) was barred by the three year statute of limitations, Iowa Code § 822.3, and (2) raised an issue that had been raised and decided on direct appeal. Iowa Code § 822.8; *see also Jones v. Scurr*, 316 N.W.2d 905, 911 (Iowa 1982) ("A person is barred from relitigating in a postconviction proceeding any ground which was finally adjudicated on direct appeal."). In its subsequent ruling, the district court found that under *Goosman v.*

*State*, 764 N.W.2d 539, 544 (Iowa 2009), *Smith* should not be retroactively applied. Consequently, there was no ground of law that could not have been raised within the three-year limitations period and Currie's application was untimely. See Iowa Code § 822.3. Moreover, the district court found that even if *Smith* was retroactively applied, Currie's claim was an attempt to relitigate an issue that had been raised and decided on direct appeal. The district court granted the State's motion to dismiss.

Currie appeals and asserts that *Smith* should be retroactively applied. However, as the district court found, even if *Smith* was retroactively applied, Currie's claim had previously been adjudicated. On direct appeal, Currie argued the jury had erroneously been instructed as to joint criminal conduct. This court examined *Jackson*, a case where a joint criminal conduct instruction was erroneously given that held,

[T]he giving of a joint criminal conduct instruction in instances in which the alleged multiple participants are either principals or aiders and abettors in the same crime does not require reversal if there is no opportunity for the defendant to have been found guilty based on anything other than his own conduct as a principal or an aider and abettor of the crime with which he is charged.

587 N.W.2d at 766. This court held Currie "could not have been found guilty of anything other than his own conduct or as an aider or abettor. Based on [*State v. Jackson*, 587 N.W.2d 764 (Iowa 1998)], we find no reversible error."

Following the direct appeal, *Smith* was decided by our supreme court. In *Smith*, the court reaffirmed the *Jackson* holding and stated,

In *State v. Jackson*, this court stated when the district court erroneously gives a joint criminal conduct instruction in instances where the alleged multiple participants are either principals or

aiders and abettors in the same crime, a reversal is not required as long as there is no opportunity for the defendant to be found guilty based on anything other than the defendant's own conduct as a principal or aider and abettor of the crime charged. The corollary to the rule announced in *Jackson* is that in instances where the alleged multiple participants are either principals or aiders and abettors in the same crime, a reversal is required if the district court erroneously gives a joint criminal conduct instruction and there is an opportunity for the jury to find the defendant guilty based on anything other than the defendant's own conduct as a principal or aider and abettor of the crime charged.

739 N.W.2d at 295. Assuming that *Smith* should be retroactively applied, the issue remains whether “there [was] no opportunity for the defendant to be found guilty based on anything other than the defendant's own conduct as a principal or aider and abettor of the crime charged.” *Id.* (citing *Jackson*, 587 N.W.2d at 766). This issue was decided on direct appeal. We agree with the district court that Currie's application for postconviction relief raises an issue that had been previously been adjudicated. We therefore affirm.

**AFFIRMED.**