

IN THE COURT OF APPEALS OF IOWA

No. 3-500 / 12-0690
Filed August 21, 2013

ENRIQUE GARCIA,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

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

A postconviction relief applicant contends a case decided after his conviction in relation to a willful injury jury instruction renders his conviction invalid. **AFFIRMED.**

Enrique Garcia, Fort Madison, appellant pro se.

Christine E. Branstad of Branstad Law, P.L.L.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Richard J. Bennett, Assistant Attorney General, John P. Sarcone, County Attorney, and Steve Foritano, Assistant County Attorney, for appellee State.

Considered by Vogel, P.J., and Vaitheswaran and Bower, JJ.

VAITHESWARAN, J.

A jury found Enrique Garcia guilty of first-degree murder after receiving instructions on several alternatives, including participation in the predicate felony of willful injury. Garcia appealed, and the Iowa Supreme Court affirmed. *State v. Garcia*, No. 98-2266, 2000 WL 504505, at *1 (Iowa Ct. App. Apr. 28, 2000), *vacated by State v. Garcia*, No. 98-2266 (Iowa Nov. 16, 2000). *Procedendo* issued in 2000.

Garcia filed an application for postconviction relief. The district court dismissed all claims, and the court of appeals affirmed. *Garcia v. State*, No. 05-1013, 2009 WL 1066520, at *1 (Iowa Ct. App. Apr. 22, 2009).

Garcia filed a second application for postconviction relief, contending that *State v. Schuler*, 774 N.W.2d 294 (Iowa 2009), disavowing a jury instruction similar to the one given in his case, rendered his conviction invalid. The State moved to dismiss the application on the ground that it was filed beyond the three-year statute of limitations prescribed by Iowa Code section 822.3 (2009). The district court granted the motion. The court first noted that the application was filed “over nine years after” *procedendo* issued. The court next considered an exception to the limitations period for “a ground of fact or law that could not have been raised within the applicable time period.” Iowa Code § 822.3. The court concluded Garcia could not rely on the “ground of law” exception because *Schuler* was not “a change in the law that would affect the validity of the conviction” but “merely clarified existing law.”

We discern no error in this conclusion. For the reasons articulated in *Jones v. State*, No. 12-0706 (Iowa Ct. App. Aug 21, 2013), filed on this date, we affirm the dismissal of Garcia's second postconviction relief application.¹

AFFIRMED.

¹ Jones alternately argues that *Goosman v. State*, 764 N.W.2d 539 (Iowa 2009) requires a different conclusion. We disagree. *Goosman* addressed the retroactive application of *State v. Heemstra*, 721 N.W.2d 549 (Iowa 2006), and held that the defendant did not have a federal due process right to have it applied retroactively. *Goosman*, 764 N.W.2d at 545. In that context, the court stated that *Heemstra* marked a change in the law and was not a mere clarification. *Id.* Garcia concedes *Schuler* involved a clarification of the law. In any event, the court in *Goosman* took pains to state that it was not deciding whether the claim was time-barred under section 822.3. *Id.* at 545 n.1.