

IN THE COURT OF APPEALS OF IOWA

No. 3-993 / 12-1369
Filed November 20, 2013

JOSEPH ROBINSON,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Robert A. Hutchison,
Judge.

Joseph Eugene Robinson appeals from the order dismissing his
postconviction relief application. **AFFIRMED.**

John Audlehelm of Audlehelm Law Office, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Tyler Buller, Assistant Attorney
General, Mathias Robinson, Student Legal Intern, John P. Sarcone, County
Attorney, and Stephan Bayens, Assistant County Attorney, for appellee.

Considered by Potterfield, P.J., Danilson, J., and Miller, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2013).

MILLER, S.J.

Joseph Eugene Robinson appeals from the order dismissing his postconviction relief (PCR) application, which was filed more than three years after his conviction of failure to possess a drug tax stamp. He contends the district court erred in dismissing the action because his claim could not have been raised within the three-year limitation period set forth in Iowa Code section 822.3 (2011). More specifically, he argues that his claim counsel was ineffective in failing to inform him of the collateral consequences of his guilty plea could not have been raised before those collateral consequences occurred. We review his claim for the correction of errors at law. *See Harrington v. State*, 659 N.W.2d 509, 519 (Iowa 2003) (holding appellate courts review a statute-of-limitations defense in a PCR case for correction of errors at law).

In 2007, Robinson pled guilty to failure to possess a drug tax stamp and was sentenced to five years of incarceration, with the sentence suspended. He was placed on two years of probation. In December 2008, his probation was revoked and the five-year sentence was imposed.

Robinson was subsequently convicted on federal charges. As a result of his 2007 state conviction, he faces federal sentencing enhancements. Because his state trial counsel never advised him of the possibility of receiving a sentencing enhancement if convicted on federal charges if he pled guilty to the tax stamp violation, Robinson filed a PCR application alleging he received ineffective assistance of trial counsel under an expanded reading of *Padilla v. Kentucky*, 559 U.S. 356 (2010). His PCR application was filed on February 15,

2012—more than three years after his state conviction became final. The State filed a motion to dismiss, alleging the PCR action was untimely. The district court granted the motion after a hearing.

PCR applications “must be filed within three years from the date the conviction or decision is final.” Iowa Code § 822.3. This three-year limitation period “does not apply to a ground of fact or law that could not have been raised within the applicable time period.” *Id.* Robinson argues his PCR claim relating to counsel’s failure to inform him of the collateral consequences of his plea could not have been raised within the time limit because he could not have known about the federal enhancements at the time of his guilty plea.¹ He claims that “[a]s long as he learned about [the enhancements] no earlier than Feb. 15, 2009, his application was within the three-year statute of limitations.”

In dismissing Robinson’s PCR application, the district court found that the “sole basis” Robinson alleged for the delay in filing his PCR action was “that he has been housed in multiple correctional facilities since his probation was revoked, and he was unable to obtain the necessary paperwork to file his application.” The court rejected this argument, stating: “Petitioner has failed to cite any authority in support of his position that incarceration in numerous correctional facilities may constitute a basis for avoidance of the three-year limitation period set forth in Iowa Code § 822.3, and the Court is aware of no such authority.”

¹ Robinson’s PCR application also alleged there was no factual basis for his guilty plea or that he could have raised an affirmative defense. He concedes “the order is correct” in dismissing those claims.

The order dismissing the PCR application makes no reference to the argument Robinson advances on appeal.

It is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before we will decide them on appeal. When a district court fails to rule on an issue properly raised by a party, the party who raised the issue must file a motion requesting a ruling in order to preserve error for appeal.

Lamasters v. State, 821 N.W.2d 856, 862 (Iowa 2012) (quotations and citations omitted). Because the order dismissing the PCR application does not address the issue Robinson raises on appeal and Robinson did not thereafter request a ruling on the matter, error is not preserved. Accordingly, we affirm.

AFFIRMED.