

**IN THE COURT OF APPEALS OF IOWA**

No. 9-1034 / 08-0904  
Filed February 10, 2010

**LEWIS EUGENE ANDERSON,**  
Applicant-Appellant,

**vs.**

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

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Appeal from the Iowa District Court for Washington County, Dan F. Morrison, Judge.

Lewis Eugene Anderson appeals from the summary 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, Kevin Cmelik, Assistant Attorney General, and Barbara A. Edmondson, County Attorney, for appellee.

Considered by Eisenhauer, P.J., Potterfield, J., and Huitink, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

**EISENHAUER, P.J.**

Lewis Eugene Anderson appeals from the summary dismissal of his application for postconviction relief. He contends his constitutional right to due process was violated by the supreme court's ruling on retroactivity in *State v. Heemstra*, 721 N.W.2d 549, 558 (Iowa 2006). Our review is for correction of errors at law. *DeVoss v. State*, 648 N.W.2d 56, 60 (Iowa 2002).

In 1988, Anderson was convicted of first-degree murder. His conviction was affirmed on appeal and his first application for postconviction relief was denied. In 2008, Anderson filed this second postconviction action, seeking a new trial based on a retroactive application of the *Heemstra* decision. *Heemstra* held willful injury cannot serve as the predicate felony for felony-murder purposes if it is the same act that causes the victim's death. *Heemstra*, 721 N.W.2d at 550. However, the *Heemstra* court went on to say:

The rule of law announced in this case regarding the use of willful injury as a predicate felony for felony-murder purposes shall be applicable only to the present case and those cases not finally resolved on direct appeal in which the issue has been raised in the district court.

*Id.*

On appeal, Anderson "readily admits that the *Heemstra's* retroactivity statement requires this court to affirm the district court." However, he argues the statement violates his state and federal due process rights. In the recently decided case of *Goosman v. State*, 764 N.W.2d 539, 545 (Iowa 2009), our supreme court held "the limitation of retroactivity announced in *Heemstra* to cases on direct appeal where the issue has been preserved [does] not violate

federal due process rights . . . .” We find no reason to apply a different analysis in considering Anderson’s state constitutional due process claim. See *State v. James*, 393 N.W.2d 465, 466 (Iowa 1986) (stating “we interpret provisions in our constitution which are similar to those in the federal constitution as being identical in scope, import and purpose” after noting the due process guarantees of the state constitution are identical to that of the federal constitution). Accordingly, we affirm.

**AFFIRMED.**