

**IN THE COURT OF APPEALS OF IOWA**

No. 2-563 / 11-1044  
Filed August 22, 2012

**GERALD RIEFLIN,**  
Applicant-Appellant,

**vs.**

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

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Appeal from the Iowa District Court for Linn County, Douglas S. Russell,  
Judge.

Gerald Rieflin appeals the district court denial of his application for  
postconviction relief. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Shellie Knipfer, Assistant  
Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sheryl Soich, Assistant Attorney  
General, Jerry Vander Sanden, County Attorney, and Robert Hruska, Assistant  
County Attorney, for appellee State.

Considered by Vaitheswaran, P.J. and Doyle and Danilson, JJ.

**DANILSON, J.**

Gerald Rieflin appeals the district court dismissal of the application for postconviction relief (PCR) he filed nine years after his conviction was affirmed on direct appeal. Rieflin asserts he was denied effective assistance because his postconviction counsel failed to argue that Rieflin's mental illness precluded timely filing and thus justified equitable tolling of the statute of limitations for his PCR application. Because Rieflin fails to demonstrate prejudice, we affirm.

**I. Background Facts and Proceedings.**

Gerald Rieflin shot and killed two of his co-workers and wounded two others at the Ralston Foods cereal plant on January 27, 1995. Rieflin was diagnosed with paranoid schizophrenia but received treatment throughout his incarceration. After four psychological evaluations and two competency hearings, the district court found him competent to stand trial. Rieflin filed an interlocutory appeal challenging that determination. The Iowa Supreme Court upheld the district court determination and remanded the case for trial. *State v. Rieflin*, 558 N.W. 2d 149, 153 (Iowa 1996), *overruled on other grounds by State v. Lyman*, 776 N.W.2d 865, 872-73 (Iowa 2010). Rieflin made another request for the trial court to address his competency, which was denied.

In 1997, Rieflin was convicted by a jury on two counts of murder in the first degree and two counts of attempted murder. After the jury's verdict, he filed yet another motion to determine competency and an objection to the sentencing, which the district court summarily denied. Our court affirmed his convictions in 1998. *State v. Rieflin*, 589 N.W.2d 749, 753 (Iowa Ct. App. 1998).

Nine years later in August 2007, Rieflin filed a pro se PCR application.<sup>1</sup> The State filed a motion to dismiss on grounds of untimeliness.<sup>2</sup> Postconviction counsel appointed to represent Rieflin resisted, arguing that the statute of limitation was stayed by Iowa Code section 614.8(1) (207), which provides in pertinent part that statutes of limitation “are extended in favor of persons with mental illness, so that they shall have one year from and after the termination of the disability within which to file a complaint . . . or to otherwise commence an action.” However, that section applies only to actions brought under chapters 216, 614, 669, and 670.<sup>3</sup>

The district court found that Rieflin’s mental illness was not a “new fact” that excused tardy filing, Rieflin failed to demonstrate that his illness actually prevented him from filing within the limitations period, and Iowa Code section 614.8 did not apply. Thus, the court granted the State’s motion to dismiss. Rieflin appeals the dismissal, asserting ineffective assistance of postconviction counsel.

## **II. Standard of Review.**

Generally, we review the district court’s dismissal of a postconviction action on the grounds it was time-barred for the correction of errors at law. *State*

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<sup>1</sup> Rieflin’s pro se PCR application advanced arguments related to retroactive application of *State v. Heemstra*, 721 N.W.2d 549 (Iowa 2006), and ineffective assistance of trial counsel for failure to raise arguments later adopted by *Heemstra*. The district court found all of the arguments to be not only untimely, but also meritless, based on state and federal precedent. The underlying merits of Rieflin’s PCR action were not argued on appeal.

<sup>2</sup> Iowa Code section 822.3 requires that individuals seeking postconviction relief file their application within three years from issuance of procedendo, unless the application is supported by a new ground of fact or law that could not have been raised within the limitation period.

<sup>3</sup> The parties agree that the argument Rieflin’s postconviction counsel presented in resistance to the motion to dismiss had no merit.

*v. Harrington*, 659 N.W.2d 509, 519 (Iowa 2003). We consider whether the district court's findings of fact are supported by substantial evidence, and whether the law was correctly applied. *Id.* at 520. However, applications that raise a constitutional challenge, we review de novo. *Id.*

If postconviction counsel is ineffective, the applicant may raise an ineffective-assistance claim in an appeal from the postconviction court's denial of his application for relief. *Dunbar v. State*, 515 N.W.2d 12, 16 (Iowa 1994).

### **III. Discussion.**

A. *Ineffective assistance of postconviction counsel—equitable tolling.*

On appeal, Rieflin asserts that he was denied effective assistance because his postconviction counsel failed to argue that Rieflin's mental illness precluded timely filing and thus justified equitable tolling of the statute of limitations for his PCR application.

To prevail on a claim of ineffective assistance of counsel, a defendant must prove by a preponderance of the evidence (1) the attorney failed to perform an essential duty and (2) prejudice resulted from the failure. *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *State v. Fountain*, 786 N.W.2d 260, 265–66 (Iowa 2010). The claim fails if either element is lacking. *Strickland*, 466 U.S. at 700; *Fountain*, 786 N.W.2d at 266. The applicant must overcome a strong presumption of counsel's competence. *Irving v. State*, 533 N.W.2d 538, 540 (Iowa 1995); see also *Cullen v. Pinholster*, 131 S. Ct. 1388, 1404 (2011).

To establish prejudice, a defendant must show there is “a reasonable probability that, but for counsel's unprofessional errors, the result of the

proceeding would have been different.” *Strickland*, 466 U.S. at 694; *accord Bowman v. State*, 710 N.W.2d 200, 203 (Iowa 2006). A “reasonable probability is a probability sufficient to undermine confidence in the outcome” of the defendant’s trial. *Strickland*, 466 U.S. at 694; *accord State v. Maxwell*, 743 N.W.2d 185, 196 (Iowa 2008).

Even if his postconviction counsel had raised the arguments he presents on appeal, Rieflin cannot establish that the district court would have adopted an equitable tolling exception to the statute of limitations provision found in Iowa Code section 822.3, as the doctrine has not been recognized in Iowa.<sup>4</sup> Had the legislature intended to allow an exception for mental illness and incapacity to initiate a pro se application for postconviction relief, it could have explicitly provided one.

*B. Section 822.3.*

In his pro se application, Rieflin further argues the exception to the limitation period for a new ground of fact or law, provided in Iowa Code section 822.3, applies.

“A party claiming an exception to a normal limitations period must plead and prove the exception.” *Cornell v. State*, 529 N.W.2d 606, 610 (Iowa Ct. App.

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<sup>4</sup> The Sixth Circuit found a petitioner entitled to an evidentiary hearing to determine whether mental incompetence prevented him from filing a habeas petition, and if so, whether that entitles him to equitable tolling in *Ata v. Scutt*, 662 F.3d 736 (6th Cir. 2011). Rieflin invites us to extend the doctrine to his untimely PCR application. Federal law regarding equitable tolling of a habeas corpus claim is not binding upon our review of an untimely filing of a postconviction relief action in state court. Moreover, in *Ata* the court noted that a blanket assertion of mental incompetence is insufficient and observed that application of equitable tolling would require a showing of incompetence which caused failure to comply with the statute. 662 F.3d at 742. Even if the doctrine had been recognized in Iowa, Rieflin failed to provide specific evidence demonstrating that his mental illness prevented him from filing within the time provided by the legislature.

1994). Rieflin has failed to establish that under the facts alleged an exception to the normal limitations period is available by law.

“[T]he legislative intent of section 822.3 was to conserve judicial resources, promote substantive goals of criminal law, foster rehabilitation, and restore a sense of repose in our criminal judicial system.” *Id.* at 610. “[T]he objective of the escape clause of 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.” *Id.* at 611 (citing *Wilkins v. State*, 522 N.W.2d 823-24 (Iowa 1994)).

The *Heemstra* decision does not present a new ground of fact or law under Iowa Code section 822.3. First, Rieflin argues that *Heemstra* should be applied retroactively. However, the decision itself clearly declines to do so. *Heemstra*, 721 N.W.2d at 558. Furthermore, federal due process law does not require retroactive application of the change in substantive law. *Goosman v. State*, 764 N.W.2d 539, 545 (Iowa 2009). Framing his claim as an ineffective-assistance-of-trial-counsel claim does not allow Rieflin to circumvent the bar on untimely applications. See *Whitsel v. State*, 525 N.W.2d 860, 864 (Iowa 1994).

Moreover, the validity of the law regarding the use of willful injury as a predicate felony for felony murder was criticized and litigated long before Rieflin’s conviction. See *Heemstra*, 721 N.W.2d at 555-58. Rieflin had an opportunity to raise these arguments in a timely application for postconviction relief. Rieflin’s claims neither involve new evidence nor are they novel legal claims.

**IV. Conclusion.**

The district court correctly concluded Rieflin's application for postconviction relief was time-barred. Moreover, before dismissing the petition, the postconviction court thoroughly analyzed Rieflin's substantive claims, finding them all meritless. Even if Rieflin's mental status permitted a tolling of the three-year statute of limitations, we agree Rieflin's substantive claims are meritless. Because Rieflin cannot establish prejudice resulted from postconviction counsel's assistance, we affirm.

**AFFIRMED.**