IN THE COURT OF APPEALS OF IOWA

No. 3-021 / 12-0598
Filed May 15, 2013

JEFFREY WHEELDON,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Pottawattamie County, Jeffrey L. Larson, Judge.

Jeffrey Wheeldon appeals the district court order dismissing his application for postconviction relief. **REVERSED AND REMANDED.**

Mark C. Smith, State Appellate Defender, and Stephan Japuntich, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Richard J. Bennett, Assistant Attorney General, Matthew Wilber, County Attorney, and Margaret Popp Reyes, Assistant County Attorney, for appellee.

Considered by Eisenhauer, C.J., and Danilson and Bower, JJ.

BOWER, J.

Jeffrey Wheeldon appeals the district court order granting summary disposition by dismissing his application for postconviction relief. Wheeldon argues the district court erred in finding that his application is barred by the statute of limitations. Because we find that a question of material fact exists as to Wheeldon's competency at the time of his plea and sentence, we reverse.

I. Background Proceedings and Facts

Jeffrey Wheeldon was charged with murder in the first degree, pursuant to Iowa Code sections 707.1, 707.2(1), and 707.8 (2001) with attempted murder, pursuant to section 707.11 and willful injury, pursuant to sections 708.4 and 702.18. Wheeldon gave notice of his intention to rely upon the defense of insanity.

On October 31, 2002, the parties submitted exhibits concerning Wheeldon's competency to stand trial. On November 4, 2002, Wheeldon appeared with counsel and pleaded guilty to an amended charge of murder in the second degree and attempted murder.[1] During the plea and sentencing hearing, the district court inquired into Wheeldon's mental condition at length and acknowledged receiving the medical records and opinions provided in anticipation of the competency hearing. The motion for a competency hearing was withdrawn by Wheeldon's counsel, and Wheeldon provided a believable summary of the course of events surrounding the commission of his crimes. The

[1] The willful injury count was dismissed.

district court sentenced Wheeldon to a term of imprisonment not to exceed seventy-five years.

On December 16, 2011, more than nine years later, Wheeldon filed an application for postconviction relief. Wheeldon argues that he was incompetent at the time of the plea and sentencing hearing and that counsel was ineffective for failing to request a determination of his competency. On February 15, 2012, the State filed a motion for summary disposition and argued that Wheeldon's application was time barred by the statute of limitations. Wheeldon resisted the motion arguing that his insanity at the time of the plea and sentencing hearing should toll the statute of limitations. The district court granted the State's motion for summary disposition. Wheeldon appeals.

II. Standard of Review

We review postconviction relief proceedings for errors at law. *Harrington v. State*, 659 N.W.2d 509, 519 (Iowa 2003). This includes summary dismissal by the district court in such proceedings. *Castro v. State*, 795 N.W.2d 789, 792 (Iowa 2011). We consider whether findings of fact by the district court are supported by substantial evidence, and whether the law was applied correctly. *Harrington*, 659 N.W.2d at 519.

When the issue presented is ineffective assistance of counsel, however, we employ a de novo review. *Castro*, 795 N.W.2d at 792.

III. Discussion

Chapter 822 of the Iowa Code specifies that applications for postconviction relief must be filed within three years from the date the decision

becomes final or procedendo is issued. Iowa Code § 822.3 (2011). An exception is provided for "a ground of fact or law that could not have been raised within the applicable time period." *Id.* The party relying upon the exception to the statute of limitations must show a ground of fact that could not have been raised earlier and must show a nexus between the ground of fact and the conviction. *Harrington*, 659 N.W.2d at 520. "A reasonable interpretation of the statute compels the conclusion that exceptions to the time bar would be, for example, newly-discovered evidence or a ground that the applicant was at least not alerted to in some way." *Wilkins v. State*, 522 N.W.2d 822, 824 (Iowa 1994).

Our courts are allowed to dismiss applications for postconviction relief "when it appears from the pleadings, depositions, answers to interrogatories, and admissions and agreements of fact, together with any affidavits submitted, that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Iowa Code § 822.6. Following such a motion, the rules of summary judgment apply. *Manning v. State*, 654 N.W.2d 555, 560 (Iowa 2002).

In the present matter, there is no dispute that the application was filed after the statute of limitations expired. Wheeldon argues that he was incompetent at the time of his plea and sentencing but later regained his competency and, by regaining his competency, he is now able to raise the issue for the first time. The question for us is whether his competency was a ground of fact which could not have been raised within three years from the date of his conviction.

There is conflicting evidence in the record as to the state of Wheeldon's competency at the time of his plea and sentencing. He answered questions from the court concisely and offered a believable story concerning the night of his father's murder. Wheeldon also had one medical opinion concluding he lacked the capacity to stand trial. There were two additional medical opinions, however, which concluded that Wheeldon was competent to stand trial. The district court never made a formal determination of Wheeldon's competency.

If Wheeldon were incompetent at the time of his plea and sentencing, and for a period of years thereafter, he would not have been aware of his incompetency until after the statute of limitations had passed. This is not to say that we find that he was incompetent in the years following the plea and sentencing, but he has provided sufficient evidence which, at a minimum, presents a question of material fact precluding summary judgment.[2] Because we find that a question of material fact exists as to whether Wheeldon was incompetent and could not have been alerted to the question in a timely fashion,

[2] We note that this is not an equitable tolling of the statute of limitations. The State argues that we should reach a similar conclusion as our opinion in *Rieflin v. State*, No. 11-1044, 2012 WL 3590453 (Iowa Ct. App. Aug. 22, 2012). In *Rieflin*, we rejected an equitable tolling argument as part of an ineffective-assistance claim. *Id.* at *2. The applicant in *Rieflin* was determined to be competent by the district court and argued that counsel's failure to argue the determination on appeal equitably tolled the statute of limitations. *Id.* We recognized that there is no special, equitable tolling of the statute for mental incompetency. *Id.* Because this case fits within the well-defined exception to the limitation, as found in the statute itself, we are not confronted with the equitable argument found in *Rieflin.*

we reverse the district court and remand for an evidentiary hearing on the merits of the application.[3]

REVERSED AND REMANDED.

[3] Wheeldon also raises a claim of ineffective assistance. He does not set forth a factual argument on the issue; however, it appears that he is arguing that counsel was ineffective for failing to pursue a competency hearing. Having reviewed the issue, we find it without merit.