IN THE COURT OF APPEALS OF IOWA

No. 3-182 / 12-0993
Filed March 27, 2013

ANTWAN COPLEN,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Eliza J. Ovrom, Judge.

Antwan Coplen appeals from the dismissal of his application for postconviction relief. **AFFIRMED.**

Bart K. Klaver of Thornton, Coy & Huss, P.L.L.C., Ames, for appellant.

Thomas J. Miller, Attorney General, Benjamin M. Parrott, Assistant Attorney General, John Sarcone, County Attorney, and Daniel Voogt, Assistant County Attorney, for appellee State.

Considered by Vogel, P.J., and Potterfield and Doyle, JJ.

POTTERFIELD, J.

Antwan Coplen appeals from the dismissal of his application for postconviction relief on the grounds that it was not filed within the three-year statutory time period. We affirm, finding the district court properly dismissed Coplen's application as his petition included no exception to the statutory time bar.

I. Facts and Proceedings.

Coplen was convicted in 1997 after he pleaded guilty to possession of a controlled substance. He filed a pro se application for postconviction relief in 2010, arguing probable cause did not exist for the search of his person in 1997 and his trial counsel was ineffective in several ways. Postconviction counsel filed an amended application clarifying the pro se arguments, arguing Coplen's "conviction and sentence were in violation" of the federal and Iowa constitutions due to ineffective assistance of counsel and the trial court failed to inquire as to whether communications between Coplen and his attorney had broken down. The district court dismissed Coplen's application, finding his claim time-barred under Iowa Code section 822.3 (2009). The court concluded the claims did not fall into an exception to the time bar. Coplen appeals.

II. Argument.

We review the dismissal of an application for postconviction relief based on the three-year statutory time bar for the correction of errors at law. *Veal v. State*, 779 N.W.2d 63, 64 (Iowa 2010). Coplen argues his application should not have been dismissed for two reasons: because the ineffectiveness of his counsel resulted in the imposition of an illegal sentence, and the district court's failure to

inquire as to the breakdown of his attorney-client relationship constituted a new ground of law.

Coplen first argues the ineffectiveness of his counsel resulted in the imposition of an illegal sentence. *See id.* at 65 ("[W]e conclude that the time restrictions that apply in ordinary postconviction relief actions do not apply in illegal sentence challenges. A claim that a sentence is illegal goes to the underlying power of a court to impose a sentence, not simply to its legal validity."). Our supreme court has declined to interpret constitutional arguments like a Sixth Amendment ineffective-assistance claim as an illegal sentence claim.

> In *State v*. *Ramirez*, 597 N.W.2d 795, 797 (Iowa 1999), the defendant claimed that he was not required to preserve error on a claim that his sentence constituted cruel and unusual punishment. We rejected the argument, holding that the proper avenue for considering the alleged error was through an ineffective-assistance-of-counsel claim. *Id.* Similarly, in *State v*. *Ceaser*, 585 N.W.2d 192, 195 (Iowa 1998), we held a claim that a sentence was illegal because it violated equal protection did not amount to an illegal sentence and was governed by our normal error preservation rules.
>
> We conclude the better view is that a challenge to an illegal sentence includes claims that the court lacked the power to impose the sentence or that the sentence itself is somehow inherently legally flawed, including claims that the sentence is outside the statutory bounds or that the sentence itself is unconstitutional. This conclusion does not mean that any constitutional claim converts a sentence to an illegal sentence. *For example*, *claims under the Fourth*, *Fifth and Sixth Amendments ordinarily do not involve the inherent power of the court to impose a particular sentence*. Nor does this rule allow litigants to reassert or raise for the first time constitutional challenges to their underlying conviction.

State v. *Bruegger*, 773 N.W.2d 862, 871 (Iowa 2009) (emphasis added). No claim raised by Coplen goes to the inherent power of the court to impose its sentence. Therefore, his argument does not fall into the illegal sentence exception to the statutory time-bar.

Next, Coplen argues the court improperly dismissed his claim that the court failed to investigate whether the attorney-client relationship had broken down under *State v*. *Tejada*, 677 N.W.2d 744 (Iowa 2004), as it constituted a new ground of law under Iowa Code section 822.3. We disagree. Our supreme court wrote the following in *Tejada* regarding a defendant's request for substitute counsel:

> Implicit in *Lopez*, however, was the recognition of a [court's] duty to inquire; otherwise our examination of the adequacy of the inquiry makes little sense. In light of *Lopez* and the federal authority cited therein, we therefore now explicitly recognize that there is a duty of inquiry once a defendant requests substitute counsel on account of an alleged breakdown in communication.

677 N.W.2d at 750 (referencing *State v*. *Lopez*, 633 N.W.2d 774, 778 (Iowa 2001)). In *Wilkens v*. *State,* the court noted:

> Section 822.3 creates an exception for untimely filed applications if they are based on claims that could not have been previously raised because they were not available. In other words, the exception applies to situations in which there would be no opportunity to test the validity of the conviction in relation to the ground of fact or law that allegedly could not have been raised within the time period. 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.

522 N.W.2d 822, 824 (Iowa 1994) (internal citations and quotations marks omitted). In *State v*. *Webb*, our supreme court considered a claim that a court "violated his right to counsel by denying . . . [the defendant's] request for substitute counsel." 516 N.W.2d 824, 828 (Iowa 1994). The court noted:

> We have stated that a defendant must demonstrate sufficient cause to warrant the appointment of substitute counsel. Such justifiable dissatisfaction with appointed counsel includes a conflict of interest, an irreconcilable conflict, or a complete breakdown in communication between the attorney and the defendant. Further,

> the court must balance the defendant's right to counsel of his choice and the public's interest in the prompt and efficient administration of justice.

Id. (internal citations and quotation marks omitted). *Tejada*, therefore, clarified the existing law that substitute counsel can be appointed where a breakdown of communication occurs between an attorney and a defendant. *See Tejada*, 677 N.W.2d at 778. It did not constitute a new rule of law under Iowa Code section 822.3, and Coplen's claim based on *Tejada* is also therefore time-barred. *See Perez v. State*, 816 N.W.2d 354, 361 (Iowa 2012) (finding the appellant could not explain how a case "can be both a clarification of the law and a ground he could not have raised within the three-year time bar. . . . If [the law is retroactive], Perez should have raised his claim [for postconviction relief] within the three-year time bar."). The district court properly concluded none of Coplen's arguments fell within an exception to the three-year limitation.

AFFIRMED.