

IN THE COURT OF APPEALS OF IOWA

No. 3-498 / 12-0499
Filed June 26, 2013

LANCE DIXON,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Arthur E. Gamble,
Judge.

Lance Dixon appeals the trial court's ruling that his postconviction relief application is barred by the statute of limitations. **AFFIRMED.**

Bruce H. Stoltze Jr. of Stoltze & Updegraff, P.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Richard J. Bennett, Assistant Attorney General, John Sarcone, County Attorney, and Daniel C. Voogt, Assistant County Attorney, for appellee State.

Considered by Vogel, P.J., and Vaitheswaran and Bower, JJ.

VOGEL, P.J.

Lance Dixon appeals from the district court's dismissal of his postconviction relief application. Dixon claims a jury instruction used in his original trial is improper under recent Iowa case law, and that trial counsel was ineffective for failing to object to the instruction. In its ruling on the State's motion for summary disposition, the district court concluded Dixon's application is time barred, pursuant to Iowa Code section 822.3 (2011), and that counsel was not ineffective for failing to object. We affirm.

I. Background Facts and Proceedings

In April 2001, Dixon and his co-defendant were convicted of first-degree murder on alternative theories of premeditation with malice aforethought and felony murder. The case was submitted to the jury with the instruction that either Dixon "or a person he aided and abetted" shot the victim, and the victim died as a result of being shot; or, Dixon "or someone he aided and abetted was participating in the forcible felony of Willful Injury or Terrorism." The willful injury instruction included the wording that the victim must have "sustained" a bodily injury. Dixon appealed his conviction, which this court affirmed. *State v. Dixon*, No. 00.829, 2001 WL 1450991 at *6 (Iowa Ct. App. Nov. 16, 2001). Dixon then filed his first postconviction relief application asserting ineffective assistance of counsel, which was denied in 2004. Dixon's second application for postconviction relief was based on errors at trial in addition to asserting ineffective assistance of counsel, which was denied in 2007.

Dixon then filed his third postconviction relief action, which is at issue now. He asserts a uniform jury instruction, as later interpreted by *State v. Schuler*, 774

N.W.2d 294 (Iowa 2009), was improperly used at the criminal trial. Dixon further claims trial counsel was ineffective for failing to object to the instruction. The State filed a motion for summary disposition, and after hearing oral arguments on the legal issues, the district court ruled in favor of the State, dismissing Dixon's claims. Specifically, the district court held *Schuler* was not a change in the law, so the exception to section 822.3, which allows a claim to be filed outside the three year time frame, did not apply. As such, Dixon's claims were time barred. Moreover, the ineffective-assistance-of-counsel claim failed because there was no breach of duty or resulting prejudice when counsel did not object to the jury instruction. Dixon appeals, asserting the district court erred in concluding his claim was time barred.

II. Statute of Limitations

The district court's ruling on the applicability of the statute of limitations in postconviction cases is reviewed for errors at law. *Harrington v. State*, 659 N.W.2d 509, 519 (Iowa 2003). The ruling is affirmed "if the trial court's findings of fact are supported by substantial evidence and the law was correctly applied." *Id.* at 520.

Iowa Code section 822.3, which governs the statute of limitations for postconviction relief applications, requires that the action "be filed within three years from the date the conviction or decision is final or, in the event of an appeal, from the date the writ of procedendo is issued." Iowa Code § 822.3. Here, Dixon concedes his action was filed over eight years after the writ of procedendo was issued. However, Dixon argues his claim is based on a new ground of law, and as such, the statute of limitations does not apply.

The exception to the statute of limitations states: “this limitation does not apply to a ground of fact or law that could not have been raised within the applicable time period.” Iowa Code § 822.3. Furthermore, “[i]n addition to the obvious requirement that an applicant relying on section 822.3 must show the alleged ground of fact could not have been raised earlier, the applicant must also show a nexus between the asserted ground of fact and the challenged conviction.” *Harrington*, 659 N.W.2d at 520. Dixon asserts that *Schuler* is a new ground of law, such that it “would [a]ffect the validity of the conviction.” *State v. Edman*, 444 N.W.2d 103, 106 (Iowa Ct. App. 1989).

Schuler held that the uniform jury instruction defining willful injury was not a correct statement of law, as set forth in Iowa Code section 708.4(1). Specifically, the supreme court held the jury instruction that stated a victim “sustained” a serious injury was not equivalent to an instruction that stated the defendant “caused” the victim’s injury, particularly where there were issues of causation presented at trial. *Schuler*, 774 N.W.2d at 298-99. As such, the uniform jury instruction did not properly define causation, as required by the statute, and the case was remanded for a new trial. *Id.* at 299. Based on the supreme court’s rejection of this jury instruction, Dixon asserts that *Schuler* is a substantive change in Iowa law, rather than a clarification, and so the exception to the statute of limitations applies.

The district court reasoned that, because the actual statutory definition of willful injury never changed, *Schuler* was a clarification of the law rather than a substantive alteration, which rendered the exception to section 822.3 inapplicable. We agree with this reasoning. While uniform jury instructions tend

to be preferred, a trial court is not bound by them. *State v. Holtz*, 548 N.W.2d 162, 164 (Iowa Ct. App. 1996). Thus, an alteration to a jury instruction, as opposed to a change in the actual statute or elements of the crime, is not a change in the law as contemplated by the section 822.3 exception. Consequently, the holding set forth in *Schuler* is a clarification. See, e.g., *State v. Guzman-Juarez*, 591 N.W.2d 1, 3 (Iowa 1999) (an amendment to a statute can act as a clarification to the law, rather than a change). Therefore, the section 822.3 exception does not apply, and Dixon's claim is barred by the statute of limitations.

Furthermore, we agree with the district court that this case is distinguishable from the facts set forth in *Schuler*. Dixon was convicted as either the principle or as an aider or abettor. Additionally, the defense presented no contention that the gunshot fired by either Dixon or his co-defendant did not "cause" the victim's "sustained" fatal injury. Thus, even if *Schuler* did in fact change the law, Dixon could not satisfy the *Harrington* requirement of showing a nexus between his conviction and the change in law, such that it would affect the validity of his conviction. *Harrington*, 659 N.W.2d at 520; *Edman*, 444 N.W.2d at 106.

III. Ineffective Assistance of Counsel

Given that the statute of limitations prevents Dixon from bringing his *Schuler* challenge, his ineffective assistance of counsel claim is time barred as well. Moreover, we agree with the district court that, even if Dixon's claim was not time barred, his counsel was not ineffective for failing to object to the jury instruction. Given there was no causation issue at trial, and Dixon was convicted

under alternate theories as a principle or as an aider or abettor, the instruction used at trial was not faulty as applied to Dixon. Therefore, trial counsel did not breach an essential duty by not objecting to the instruction.

AFFIRMED.