

IN THE COURT OF APPEALS OF IOWA

No. 8-922 / 08-0188
Filed December 17, 2008

WILLIAM LOVELLE STRINGER,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Karen A. Romano,
Judge.

Petitioner appeals the dismissal of his third application for postconviction relief as time-barred, contending that had the doctrine of equitable tolling been applied, his application would have been timely. **AFFIRMED.**

Brandon Brown of Parrish, Kruidenier, Dunn, Boles, Gribble, Cook, Parrish, Gentry & Fisher, L.L.P., Des Moines, and Angela Campbell of Dickey & Campbell Law Firm, PLC, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Sharon Hall, Assistant Attorney General, John P. Sarcone, County Attorney, and Joseph P. Weeg, Assistant County Attorney, for appellee State.

Considered by Mahan, P.J., and Vaitheswaran and Potterfield, JJ.

VAITHESWARAN, J.

The district court dismissed William Stringer's third application for postconviction relief on the ground that it was time-barred. Stringer appeals the dismissal, contending that had the court applied the equitable tolling doctrine, his application would have been timely.

I. Background Proceedings

In 1987, a jury found Stringer guilty of first-degree murder. This court affirmed his judgment and sentence in 1988. *State v. Stringer*, No. 87-473 (Iowa Ct. App. Aug. 24, 1988). Stringer then petitioned for a federal writ of habeas corpus. A United States district court held the application in abeyance pending Stringer's exhaustion of state remedies. Stringer next filed two state applications for postconviction relief, both of which were denied. He returned to federal court and pursued his habeas corpus petition. The United States District Court granted habeas corpus relief, but the federal Eighth Circuit Court of Appeals reversed that decision in 2002. *Stringer v. Hedgepeth*, 280 F.3d 826, 831 (8th Cir. 2002). Stringer requested a writ of certiorari from the United States Supreme Court. That request was denied on October 7, 2002. *Stringer v. Hedgepeth*, 537 U.S. 909 (2002).

Stringer filed his third state application for postconviction relief on October 25, 2006. The State moved to dismiss the application as untimely. Following an evidentiary hearing, the district court granted the motion and this appeal followed.

II. Analysis

The sole issue on appeal is whether Stringer's third postconviction relief application was timely filed. Our review of this issue is for correction of errors at law. *Harrington v. State*, 659 N.W.2d 509, 519 (Iowa 2003).

Postconviction relief proceedings are generally governed by a three-year statute of limitations, but an exception exists for "a ground of fact or law that could not have been raised within the applicable time period." Iowa Code § 822.3 (2005).

As a preliminary matter, Stringer asserts that the three-year limitations period began to run only after the United States Supreme Court denied his request for certiorari in 2002. Neither Iowa Code section 822.3 nor Iowa case law supports that reading. Section 822.3 states that an application for postconviction relief "must 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." *Id.* This language refers to the direct appeal from the state court conviction, not final review of rulings on federal habeas corpus petitions. *Id.* (referring to the date the writ of procedendo is issued). Stringer's third postconviction relief application was filed approximately eighteen years after his direct appeal was finalized. Therefore, the application was untimely.

Stringer cannot circumvent this bar by repackaging his claim under an ineffective-assistance-of-counsel rubric. See *Dible v. State*, 557 N.W.2d 881, 885 (Iowa 1996), ("If the legislature had intended that ineffective assistance of counsel serve as an exception to the statute of limitations, it would have said so.") *abrogated on other grounds by Harrington v. State*, 659 N.W.2d 509 (Iowa

2003); *Wilkins v. State*, 522 N.W.2d 822, 824 (Iowa 1994) (“Wilkins labels his claim ineffective-assistance-of-postconviction-counsel in the hope that the court will reach the merits of his contention that his trial counsel was ineffective. However, his claims neither involve new evidence nor are they new legal claims.”). The substantive claim he raised in his third postconviction relief application was known to him and indeed raised in his direct appeal from his judgment and sentence. See *State v. Stringer*, No. 87-473 (Iowa Ct. App. Aug. 24, 1988).

Nor can Stringer avail himself of an equitable tolling doctrine. See *Pace v. DiGuglielmo*, 544 U.S. 408, 418, 125 S. Ct. 1807, 1814, 161 L. Ed. 2d 669, 679 (2005) (authorizing tolling of federal statute of limitations if (1) the litigant pursued his rights diligently and (2) some extraordinary circumstance stood in the way of filing habeas corpus petition within the statutory period). In *Pace*, the doctrine was raised in an effort to circumvent a one-year limitations period for filing federal habeas corpus petitions. *Id.* at 410, 125 S. Ct. at 1810, 161 L. Ed. 2d at 674. The United States Supreme Court recognized the doctrine but concluded it did not apply. *Id.* at 419, 125 S. Ct. at 1815, 161 L. Ed. 2d at 679–80.

Stringer concedes “Iowa courts have yet to officially recognize the defense of equitable tolling” as a means of circumventing the state limitations period for postconviction relief actions. The district court acknowledged this, stating, “There is no Iowa case law to support Stringer’s assertion that the statute of limitations contained in Iowa Code § 822.3 can be equitably tolled.” The court nonetheless applied the doctrine and concluded Stringer “would not be entitled to equitable tolling under these circumstances.”

We conclude the equitable tolling doctrine is unavailable to Stringer, as it has not been recognized in Iowa. We find it unnecessary to take the additional step of applying the doctrine. See *Feaker v. Bulicek*, 538 N.W.2d 662, 664 (Iowa Ct. App. 1995) (declining to adopt an interpretation of an attorney's lien statute that had no support under Iowa case law).

The district court correctly concluded Stringer's third application for postconviction relief was time-barred. Accordingly, the court did not err in dismissing the application.

AFFIRMED.