

IN THE COURT OF APPEALS OF IOWA

No. 9-213 / 08-0021
Filed May 29, 2009

CHARLES JAMES, JR.,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Robert A. Hutchison,
Judge.

Postconviction relief applicant appeals the summary dismissal of his
petition. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.**

Lynn C.H. Poschner of Borseth Law Office, Altoona, for appellant.

Charles James, Jr., Fort Madison, pro se.

Thomas J. Miller, Attorney General, Richard J. Bennett, Assistant Attorney
General, John P. Sarcone, County Attorney, and Dan Voogt, Assistant County
Attorney, for appellee.

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

EISENHAUER, J.

Charles James, Jr. appeals the district court's summary dismissal of his second application for postconviction relief. We adopt the trial court's statement of facts.

James first argues his original conviction should be overturned on the basis of *State v. Heemstra*, 721 N.W.2d 549 (Iowa 2006). We review the constitutional claims based on *Heemstra* de novo. *Harrington v. State*, 659 N.W.2d 509, 519 (Iowa 2003). We conclude the district court correctly granted summary dismissal of all *Heemstra*-based claims. See *Goosman v. State*, ___ N.W.2d ___ (Iowa 2009).

James next argues the court erred in dismissing his postconviction claim based on newly discovered evidence, the Jones affidavit. We review for correction of errors at law. *Harrington*, 659 N.W.2d at 519. We agree with the district court's *Summage* analysis: (1) the affidavit is cumulative, and (2) the affidavit would not change the outcome of the case. See *Summage v. State*, 579 N.W.2d 821 (Iowa 1998). Dismissal on the basis of newly discovered evidence is appropriate.

Finally, James argues the court erred by using the wrong legal test in its statute of limitations analysis. The State concedes the trial court failed to use the nexus test explained in *Harrington*, 659 N.W.2d at 520-21. We remand solely for reconsideration of the statute of limitations issue. We do not retain jurisdiction.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.