IN THE COURT OF APPEALS OF IOWA

No. 9-332 / 08-1207
Filed July 22, 2009

RUTHANN VEAL,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Black Hawk County, Bradley J. Harris, Judge.

Ruthann Veal appeals the district court's grant of the State's motion to dismiss her application for postconviction relief. **AFFIRMED.**

Philip B. Mears of Mears Law Office, Iowa City, and Aaryn M. Urell and Bryan A. Stevenson of Equal Justice Initiative of Alabama, Montgomery, Alabama, for appellant.

Thomas J. Miller, Attorney General, Thomas W. Andrews, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Kimberly A. Griffith, Assistant County Attorney, for appellee.

Heard by Sackett, C.J., and Vogel and Miller, JJ.

MILLER, J.

Ruthann Veal appeals the district court's grant of the State's motion to dismiss her application for postconviction relief. She claims the court erred in concluding her application is time barred under Iowa Code section 822.3 (2007). We affirm.

I. BACKGROUND FACTS AND PROCEEDINGS.

From the evidence presented at trial of the underlying criminal charge against Veal, a reasonable jury could have found the following facts. Approximately sixteen years ago, on the evening of June 15, 1993, Veal was running away from a juvenile group home in Waterloo. Veal was fourteen years of age at that time.[1] Waterloo police chased Veal on foot that evening, but she successfully evaded them by ducking into a garage. At some point Veal apparently found the door of the victim's Waterloo residence unlocked and entered the empty home.

Around 9:00 p.m., sixty-six-year-old Catherine Haynes returned to her unlocked Waterloo home from visiting a neighbor. A reasonable fact finder could find from the evidence that Veal lurked in hiding behind an upstairs door with a knife she had taken from a butcher block in Haynes's kitchen, and then stabbed the retired librarian as she entered or passed by the spare bedroom. Veal inflicted twenty-three separate stab wounds to Haynes's head, neck, and torso. There were also defensive wounds on Haynes's arms and hands, including one that nearly severed her ring finger. Veal stabbed her with such force that the

[1] Veal's birth date is July 20, 1978, and thus she was approximately five weeks from her fifteenth birthday at the time of her crime.

blade of the knife she was using snapped off. In addition, Veal beat Haynes's face and body, fracturing four of Haynes's ribs. After Haynes collapsed on the floor, Veal covered her with a bedspread while she continued her occupation of the house, including making a number of long distance telephone calls from Haynes's residence to Veal's family and friends. It appears that at some time Haynes tried to reach the phone to call 911, because her blood was found near the number nine on the phone. However, the handset had been severed from the phone and was found lying next to Haynes's body.

Around midnight Veal drove Haynes's car to a Waterloo convenience store where she displayed credit cards and offered to pay for several acquaintances to accompany her to Cedar Rapids. Veal spent that night and the next two days driving to various locations in Waterloo, Cedar Rapids, and Iowa City making purchases by using cash, a checkbook, and credit cards stolen from Haynes's purse. Haynes's body was found by one of her neighbors on the afternoon of June 16, 1993. Veal was apprehended by police on June 17 based on a tip from the grandmother of one of her companions.

Veal was charged with first-degree murder, in violation of Iowa Code section 707.2 (1993), a class "A" felony. On May 25, 1995, a jury found her guilty as charged. The court sentenced her to life in prison, pursuant to Iowa Code section 902.1, on November 13, 1995. Her conviction was affirmed on direct appeal. *State v. Veal,* 564 N.W.2d 797 (Iowa 1997). Veal did not file a postconviction application after her unsuccessful direct appeal and a writ of procedendo was issued on June 17, 1997. Veal filed a petition for writ of habeas

corpus in federal court on February 24, 1998. Relief was denied by the United States District Court for the Northern District of Iowa, but the court certified for appeal Veal's claim she was denied a fair tribunal. On December 5, 2001, the judgment of the district court denying habeas corpus relief was affirmed by the United States Court of Appeals for the Eighth Circuit. *Veal v. Iowa Corr. Inst. for Women*, 274 F.3d 479 (8th Cir. 2001), *cert. denied*, 537 U.S. 834, 123 S. Ct. 142, 154 L. Ed. 2d 51(2002).

Veal filed the current application for postconviction relief on February 28, 2008, contending that a sentence of "life imprisonment without parole"[2] for a crime she committed while only fourteen years of age violated the Eighth and Fourteenth Amendments to the United States Constitution and Iowa law. The

[2] A person convicted of a class "A" felony is sentenced to custody "for the rest of the defendant's life" and "shall not be released on parole unless the governor commutes the sentence to a term of years." Iowa Code § 902.1 (1993, 2009). The governor's authority to commute a sentence of life imprisonment to a term of years flows from the Iowa Constitution and implementing statutes. *See* Iowa Const. art. IV, § 16 (granting the governor the "power to grant . . . commutations . . . after conviction, for all offences except treason and cases of impeachment, subject to such regulations as may be provided by law"); Iowa Code § 914.1 (2009) (providing that the power of the governor to grant a commutation of sentence shall not be impaired); *id.* ch. 914 (providing procedures for applications, recommendations, and consideration of commutation requests); *id.* § 902.2 (authorizing a person sentenced to life imprisonment to make periodic applications requesting commutation to a term of years, and authorizing the director of the Iowa department of corrections to request commutation of a person's sentence to a term of years). A person whose sentence has been commuted to a term of years becomes eligible for release on parole. *See id.* § 906.1 (defining parole as the release of a person, subject to supervision and conditions, "which release occurs prior to the expiration of the person's term").

Certain circumstances supportive of commutation in appropriate cases have been suggested by Iowa's attorney general. *See* 1937 Op. Iowa Att'y Gen. 334 (opining, in a case involving a sentence of life imprisonment, that the sentence, "by appropriate action of the governor and board of parole . . . may be hereafter modified *as the equities of the situation and the good behavior of the convict* may render such change desirable" (emphasis added)). It thus readily appears that although Veal's initial sentence is "life imprisonment without parole," the possibility of parole in fact exists if she has maintained consistent good behavior and the governor should find equity, including her background and her age at the time of her crime, conviction, and sentence, in her situation.

State filed a motion to dismiss, arguing Veal's application was barred pursuant to Iowa Code section 822.3 (2007) as it had been significantly more than three years since the June 17, 1997 procedendo had issued. Veal argued the law had changed since the time of her sentencing, based on *Roper v. Simmons*, 543 U.S. 551, 125 S. Ct. 1183, 161 L. Ed. 2d 1 (2005). She asserted that the exception to the three-year statute of limitations in section 822.3 applied because there was a new "ground of fact or law that could not have been raised within the applicable time period."

Following a hearing the district court granted the State's motion to dismiss. In granting the State's motion the court determined the exception under 822.3 did not apply. The court concluded,

> The *Roper* case has not changed the law regarding a life sentence for a juvenile offender.
> . . . .
> The court . . . determines that there has been no change in the law regarding the sentencing of juveniles in non-capital cases and therefore no ground of fact or law that could not have been raised within the applicable time period."

Veal appeals the district court's grant of the State's motion to dismiss, contending in relevant part that the court erred in determining her application is time barred under section 822.3.

II. SCOPE AND STANDARDS OF REVIEW.

We review the dismissal of an application for postconviction relief to correct errors of law. Iowa R. App. P. 6.4; *Dible v. State,* 557 N.W.2d 881, 883 (Iowa 1996), *abrogated in part on other grounds by Harrington v. State,* 659 N.W.2d 509, 520-21 (Iowa 2003); *Brown v. State*, 589 N.W.2d 273, 274 (Iowa Ct.

App. 1998). A postconviction proceeding is a law action, ordinarily reviewed for errors of law. *Bugley v. State,* 596 N.W.2d 893, 895 (Iowa 1999).

III. MERITS.

Iowa Code section 822.3 regarding the filing of postconviction applications provides, in relevant part,

> applications 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. However, this limitation does not apply to a ground of fact or law that could not have been raised within the applicable time period.

Following Veal's unsuccessful direct appeal of her conviction, the writ of procedendo was issued on June 17, 1997. Her application for postconviction relief was filed on February 28, 2008. Thus, clearly the application was significantly past the three-year statute of limitation set forth in section 822.3. However, Veal contends the exception in 822.3 to this limitation applies here because there is a ground of law that could not have been raised within the applicable time period. More specifically, she argues that applicable law has changed since the time of her sentencing based on the United States Supreme Court's opinion in *Roper.*

In a five-four decision the Supreme Court in *Roper* held that the Eighth and Fourteenth Amendments forbid the imposition of the death penalty on offenders who were under eighteen years of age at the time they committed their capital crime. *Roper,* 534 U.S. at 578, 125 S. Ct. at 1200, 161 L. Ed. 2d at 28. Under this holding we read *Roper* to be strictly a death penalty case. Therefore, we do not believe *Roper* has any application outside the capital punishment

context. Iowa does not have the death penalty. Accordingly, we agree with the district court that *Roper* provided no change in the law regarding sentencing of juveniles in non-capital cases and therefore did not provide a "ground of fact or law" that could not have been raised within the applicable time period that would allow Veal to avoid the time bar set forth in section 822.3.

Furthermore, and perhaps more importantly, at the time Veal committed her crime in 1993 at the age of fourteen the Supreme Court *had already* concluded that the Eighth and Fourteenth Amendments prohibit the execution of a person who was under sixteen years of age at the time of his or her offense. *Thompson v. Oklahoma*, 487 U.S. 815, 838, 108 S. Ct. 2687, 2700, 101 L. Ed. 2d 702, 720 (1988). *Roper* did nothing more than extend the rational of *Thompson* to include sixteen and seventeen year old offenders. Therefore, assuming without deciding that these death penalty cases were to apply by analogy to a case involving life imprisonment such as the one before us, it is clear that at the time of Veal's crime, conviction, sentence, direct appeal, and the issuance of procedendo, well-established law already provided that the Eighth Amendment prohibited the execution of persons who were her age (fourteen) at the time they committed their crime. *Id.* Thus, *Roper* cannot provide Veal a new ground of law that would allow her to circumvent the three-year statute of limitations in section 822.3.

Accordingly, we conclude Veal had multiple opportunities before the three-year statute of limitations ran to raise the Eighth Amendment claim she is now presenting. She could have raised it during her criminal trial, on direct appeal, or

in a timely postconviction application. "The legal and factual underpinnings of each of [Veal's] claims were in existence during the three-year period and were available to be addressed" in Veal's prior proceedings. *Smith v. State,* 542 N.W.2d 853, 854 (Iowa Ct. App. 1995). As set forth above, the Supreme Court had already determined the Eighth Amendment prohibited the execution of a person who was under sixteen years of age at the time of his or her offense. *Thompson*, 487 U.S. at 838, 108 S. Ct. at 2700, 101 L. Ed. 2d at 720. "The issue is not whether [her] present claims were previously raised, it is whether they *could* have been raised during the three-year time period." *Smith*, 542 N.W.2d at 854. Here Veal's Eighth Amendment claim clearly could have been raised during the three-year period because the legal underpinnings for it were in existence and available to her throughout her underlying criminal proceedings. Accordingly, we conclude the district court was correct in granting the State's motion to dismiss.

Veal attempts to raise a claim that her counsel was ineffective for failing to raise the issue of the alleged Eighth Amendment violation at an earlier time. However, our prior case law is clear that a claim of ineffective assistance of counsel does not constitute a claim that "could not have been raised within the applicable time period" under section 822.3. *Whitsel v. State*, 525 N.W.2d 860, 864 (Iowa 1994); *Wilkins v. State,* 522 N.W.2d 822, 823 (Iowa 1994).

> If the legislature had intended that ineffective assistance of counsel serve as an exception to the statute of limitations [in section 822.3], it would have said so. It certainly knew how to do so, as shown by the language it used in section 822.8.

Dible, 557 N.W.2d at 885.

IV. CONCLUSION.

For the reasons set forth above, we conclude the district court was correct in determining Veal did not assert any ground of fact or law that could not have been raised within the applicable time period, and thus her postconviction application is time barred under section 822.3. We affirm the court's grant of the State's motion to dismiss.

AFFIRMED.