

FILED

FEB 21 1984

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

EARL EMERY,)

Petitioner-Appellant,)

vs.)

STATE OF IOWA,)

Respondent-Appellee.)

Filed February 21, 1984 **289**

4-02
2-68270

Appeal from the Iowa District Court for Polk County - Dale S. Missildine,
Judge.

Petitioner appeals a trial court ruling which was made upon appellate
remand of the trial court's denial of postconviction relief. **AFFIRMED.**

Kermit L. Dunahoo, Des Moines, for petitioner-appellant.

Thomas J. Miller, Attorney General, and Lona Hansen, Assistant Attorney
General, for respondent-appellee.

Heard by Oxberger, C.J., and Donielson and Snell, JJ.

In 1974 Earl Emery was convicted of robbery with aggravation and was sentenced to a prison term of up to 25 years. The Iowa Supreme Court affirmed the conviction on direct appeal. State v. Emery, 230 N.W.2d 521 (Iowa 1975).

In 1978 Emery applied for postconviction relief on the ground of newly discovered evidence. He alleged that while incarcerated he had met a fellow inmate who had admitted committing the robbery for which Emery had been convicted. At a hearing, the fellow inmate testified that he had committed the crime. However, the trial court dismissed Emery's application for postconviction relief on the ground the fellow inmate's testimony did not constitute "newly discovered credible evidence"; the court noted that the fellow inmate did not risk prosecution by his testimony because the statute of limitations had run on the 1974 robbery.

Emery appealed the denial of postconviction relief. In an unpublished decision, we concluded that the trial court had not stated adequate findings of fact to explain its conclusion that the fellow inmate's testimony was not credible; therefore, we remanded "for development of an adequate record of trial court's findings of fact and conclusions of law." Upon remand, the trial court filed enlarged findings of fact and conclusions of law and once again dismissed Emery's application for postconviction relief.

Nearly a year after the trial court's ruling on remand, Emery sought permission to challenge the ruling by means of a delayed appeal. The supreme court granted permission for a delayed appeal, and the present proceeding has ensued. Emery contends the trial court's ruling on remand does not comply with our directions for remand because the findings of fact still are inadequate to demonstrate the basis for the conclusion that the fellow inmate's testimony was not credible. He also contends that, because the trial court's finding of lack of credibility was not properly explained, there was not substantial evidence to

support the denial of postconviction relief.

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We disagree. The trial court enunciated sufficient reasons for denying Emery postconviction relief. See State v. Rincones, 209 Kan. 176, 180, 495 P.2d 1019, 1023 (1972). It reiterated its belief that the fellow inmate's testimony was not credible. The court once again stressed that the fellow inmate did not risk prosecution by his testimony because the statute of limitations had run; the court also noted the strong evidence presented against Emery in his 1974 trial. The trial court's conclusions are based on adequate facts. It has complied with our order for limited remand; its decision is sufficient.

AFFIRMED.