

IN THE COURT OF APPEALS OF IOWA

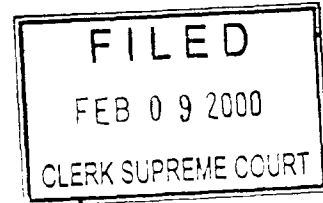
No. 1999-536 (9-797) / 98-1982

Filed February 9, 2000

RAYMOND BRODENE,
Appellant.

vs.

STATE OF IOWA,
Appellee.



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

Brodene appeals the dismissal of his second application for post-
conviction relief. **AFFIRMED.**

Thomas J. Clarke, Jr., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Thomas S. Tauber, Assistant Attorney
General, John P. Sarcone, County Attorney, and Odell G. McGhee and Joseph
P. Weeg, Assistant County Attorneys, for appellee.

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

VOGEL, J.

Raymond Brodene appeals the dismissal of his second application for post-conviction relief. Because we find that Brodene did not file his application for post-conviction relief in a timely manner, we affirm.

Background facts. Brodene was convicted of first-degree murder in August, 1990. This conviction was affirmed by the Supreme Court in December 1992. Brodene timely filed his first application for post-conviction relief alleging ineffective assistance of trial counsel. That application was denied in March 1996 and was affirmed on appeal. In July 1998, Brodene filed a second application for post-conviction relief alleging he was denied a fair trial because use of methamphetamine and a prescription drug rendered him incompetent to stand trial and his attorney was ineffective for failing to pursue this issue. This application for post conviction relief was dismissed in August 1998. Brodene now appeals this dismissal.

Scope of review. The standard of review is best summarized as follows:

Postconviction proceedings are law actions ordinarily reviewed for errors of law. *Carter v. State*, 537 N.W.2d 715, 716 (Iowa 1995). When summary judgment is granted in a postconviction relief action, we examine the record to determine if a genuine issue of fact exists and whether the moving party is entitled to a judgment as a matter of law. Iowa R. Civ. P. 237(c); *Grissom v. State*, 572 N.W.2d 183, 184 (Iowa App. 1997). However, when there is an alleged denial of constitutional rights our review is de novo. *Osborn v. State*, 573 N.W.2d 917, 920 (Iowa 1998).

Bugley v. State, 596 N.W.2d 893, 895 (Iowa 1999).

Statute of limitations. The statute of limitations for an application of post-conviction relief requires that it be filed within three years from the date the writ of procedendo is issued. Iowa Code section 822.3 (1997). Although we do

not have an exact date, we know that the writ of procedendo in this case issued in 1993. Brodene filed his second application for post-conviction relief in September 1997. Therefore, the three-year statute of limitations had already run.

Brodene contends there is an exception for claims that were unavailable to be raised within the three-year limitation. We agree the statute does allow for exceptions when a ground of fact or law could not be raised within the time limitation. *Id.* Brodene claims he was not aware of his drug induced incompetency at the time of trial until after the limitation period. However, on April 21, 1998, Brodene filed an affidavit which stated that he advised his first post-conviction relief counsel he did not feel he was competent during his trial. In the affidavit, Brodene stated:

On 2-2-95 I filed an application for Post-Conviction Relief, at which time the Court appointed Francis C. Hoyt to represent me on this action.

I informed Mr. Hoyt that during the period of time I was going through my original trial proceedings I was heavily medicated, and unable to understand the full gravity of the situation, as well as unable to assist my trial attorney fully, due to this condition.

The affidavit is an admission that Brodene was aware of the competency issue while preparing for his first post-conviction relief hearing. Because this issue was available to Brodene within the three-year statute of limitations and he failed to raise it during that time, he is now barred from doing so. Therefore, we find the district court correctly dismissed the second application for post-conviction relief.

AFFIRMED.