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IN THE COURT OF APPEALS OF IOWA

FILED
MAR 27 1998
CLERK SUPREME COURT

No. 8-093 / 97-724

DOUGLAS K. LINDAMAN and **BRANDON T. JAMES,**
Appellants,

vs.

STATE OF IOWA, DEPARTMENT OF CORRECTIONS, and **DUDLEY ALLISON,**
Appellees.

Appeal from the Iowa District Courts for Wapello, Mitchell, and Floyd Counties, Dan F. Morrison and Gregory A. Hulse, Judges.

The applicants, in this consolidated appeal, challenge various rulings by various district courts dismissing their postconviction claims and civil petitions for punitive damages and injunction. **AFFIRMED.**

Douglas K. Lindaman, Charles City, pro se, and Norman Klemesrud of Klemesrud Law Office, Charles City, for applicant Brandon T. James.

Thomas J. Miller, Attorney General, William A. Hill, Assistant Attorney General, Marilyn Dettmer, Floyd County Attorney, Jerry L. Folkers, Mitchell County Attorney, Mark L. Walk, Assistant Mitchell County Attorney, Victoria Siegel, Wapello County Attorney, and Ron Kelly, Assistant Wapello County Attorney, for appellees.

Heard by Sackett, P.J., and Vogel and Mahan, JJ., but decided en banc. Cady, C.J., takes no part.

PER CURIAM

Douglas Lindaman and Brandon James ("appellants") in this consolidated appeal, challenge various rulings by various district courts dismissing their postconviction claims and civil petitions for punitive damages and injunction.

Background facts. On December 23, 1996, Douglas Lindaman, a disbarred attorney and former inmate in the Iowa Department of Corrections system, and Brandon James, a current inmate in Anamosa, filed identical actions in Wapello, Floyd, and Mitchell Counties seeking postconviction relief, tort damages, punitive damages, and injunctive relief based on alleged personal injuries sustained by James while in prison.

Specifically, appellants appeal from the judgment of the Wapello County District Court denying James's postconviction and civil claims. They also jointly appeal from the judgments of the Floyd and Mitchell County District Courts denying Lindaman's postconviction claims (identical to the claims in Wapello County, above) and dismissing the civil claims as precluded.

The State filed motions to dismiss the postconviction claims of James and Lindaman. The Wapello County district court granted the motion to dismiss. In the Floyd and Mitchell County actions, the cases were consolidated. The district court granted the State's subsequent motions to dismiss, ruling Lindaman failed to file the postconviction action with the three-year statute of limitations. The court additionally

ruled that Lindaman's and James's remaining claims were barred by claim preclusion based on the earlier Wapello County ruling. The court also ruled that all remaining civil claims were barred by the statute of limitations. Lindaman and James appeal.

We review postconviction relief proceedings for correction of errors of law, unless constitutional errors are raised, in which case our review is de novo. *Cuevas v. State*, 415 N.W.2d 630, 632 (Iowa 1987).

Lindaman's Postconviction Relief. Lindaman filed his first application for postconviction relief on March 7, 1991. He appealed its denial and we affirmed the denial. *Lindaman v. State*, No. 91-737/1-633 slip op. (Iowa App. Mar. 24, 1992). He filed this application for postconviction relief on December 16, 1997. Iowa Code section 822.3 bars applications not made within three years from the date of conviction. The only exception is for a ground of fact or law which could not have been raised within that time period. *Id.* Lindaman asserts the Supreme Court's decision in *Romer v. Evans*, 517 U.S. 620, 116 S. Ct. 1620, 134 L. Ed. 2d 855 (1996), provides such a ground in law. We conclude *Romer* does not address lascivious acts with a child nor criminal sentences. Consequently, it does not provide the basis for a new postconviction relief proceeding. Lindaman's application was untimely and properly dismissed by the district court. In addition, Lindaman raised homosexuality in his disbarment proceedings and his earlier postconviction relief appeal. *Committee on Professional Ethics & Conduct v. Lindaman*, 449 N.W.2d 341, 342 (Iowa 1989);

Lindaman v. State, No. 91-737/1-633 slip op. (Iowa App. Mar. 24, 1992). Nothing in *Romer* affects the reasoning of our supreme court in the disbarment case or allows Lindaman to raise homosexuality in this proceeding.

James's Postconviction Relief. The trial court dismissed James's postconviction relief claim as frivolous; for lack of prosecution, (as Lindaman, an unlicensed attorney plead James's case for him through an alleged assignment of James's case to Lindaman); because James did not attack his plea in a motion in arrest of judgment or appeal his conviction; and because his sexual orientation was not the criminal behavior for which he was incarcerated. On appeal, James argues he had ineffective assistance of trial counsel, the trial court should have appointed counsel for the postconviction proceeding, and "new and novel" legal arguments exist for seeking postconviction relief.

James did not attack his plea in a motion in arrest of judgment or appeal his conviction. His claim of ineffective assistance of trial counsel is waived because he did not raise it on direct appeal and presented no sufficient reason or cause for his failure to raise it on appeal. *LeGrand v. State*, 540 N.W.2d 667, 668 (Iowa App. 1995). The trial court did not need to appoint counsel on the postconviction action pursued by Lindaman because no substantial issue of law or fact was set forth in the application. The trial court dismissed the action as frivolous. *See Dunbar v. State*, 515 N.W.2d 12, 14 (Iowa 1994) (citing Iowa Code § 663A.5 as giving the trial court

discretion to appoint counsel if a substantial issue of law or fact exists). All of the "new and novel" legal arguments which James asserts are based on his sexual orientation and the *Romer* decision. However, James's sexual orientation was not the criminal behavior for which he was incarcerated. Our discussion above of *Romer*'s impact on Lindaman's claim applies here as well. We conclude the trial court properly dismissed James's postconviction relief application.

Civil Claims. In their combined petition filed contemporaneously in three counties, Lindaman and James allege injuries in tort and seek damages, punitive damages, and injunctive relief. The trial court in Wapello County dismissed the claims as frivolous, for lack of prosecution, for lack of jurisdiction, and because the underlying convictions had not been reversed or invalidated. *See Heck v. Humphrey*, 512 U.S. 477, 488, 114 S. Ct. 2364, 2373, 129 L. Ed. 2d 383, 394 (1994) (stating an individual must first prove the underlying sentence has been invalidated before recovering for alleged damages). We conclude the Wapello County court properly dismissed the civil claims.

The trial court for Floyd and Mitchell counties dismissed the civil claims as barred by claim preclusion, because they had been argued and adjudicated previously in Wapello County. Claim preclusion prevents relitigating the same claims or causes of action once they have been adjudicated. *Riley v. Maloney*, 499 N.W.2d 18, 20 (Iowa 1993); *Suehl v. Suehl*, 544 N.W.2d 642, 644-45 (Iowa App. 1995). The court

properly dismissed the Floyd and Mitchell county civil claims as precluded by their adjudication in Wapello County.

Constitutional Claims. Iowa appellate courts have consistently refrained from answering constitutional questions when the issue can be otherwise resolved. *State v. Quintero*, 480 N.W.2d 50, 51 (Iowa 1992). We therefore decline to address appellants' First, Eighth, and Fourteenth Amendment claims.

Having carefully considered all of the issues and arguments, whether discussed explicitly in this opinion or not, we affirm the trial courts' denial of Lindaman's and James's petitions.

AFFIRMED.

All judges concur except Sackett, J., who specially concurs without opinion.