

IN THE COURT OF APPEALS OF IOWA

No. 0-560 / 89-1716

FILED

APR 02 1991

CLERK SUPREME COURT

WILLIAM MALCOLM BARGER

Appellant,

8

vs.

STATE OF IOWA,

Appellee,

Appeal from the Iowa District Court for Muscatine County, Max R. Werling, Judge.

Barger sought postconviction relief to challenge his 1984 convictions for unlawful possession of explosives, possession of offensive weapons, and possession of a firearm by a felon. The district court denied postconviction relief, and Barger appeals. **AFFIRMED.**

Linda Del Gallo, Appellate Defender, for applicant-appellant.

Bonnie J. Campbell, Attorney General; Mark Joel Zbieroski and Mike Wallace, Assistant Attorneys General, for respondent-appellee.

Considered by Donielson, P.J., and Schlegel and Habhab, JJ.

DONIELSON, P.J.

In 1984 William Barger was convicted of unlawful possession of explosives, possession of offensive weapons, and possession of a firearm by a felon. Much of the evidence against Barger at the 1984 trial resulted from a warranted search of Barger's residence. The search warrant was based on information provided by Barger's estranged wife and her boyfriend.

Upon direct appeal, Barger's conviction was affirmed by this court in an unpublished opinion. State v. Barger, No. 5-530/85-87 (Iowa App. January 29, 1986).

In 1988 Barger filed the present application for postconviction relief. The district court denied postconviction relief and Barger appeals.

Barger contends he is entitled to postconviction relief on the ground of newly-discovered evidence. The alleged new evidence concerns the reliability of the information on which the 1984 search warrant was based and especially the reliability of his former wife and her boyfriend as informants.

A postconviction relief applicant must establish four elements before a new trial will be granted on the grounds of newly-discovered evidence. See Jones v. Scurr, 316 N.W.2d 905, 907 (Iowa 1982) interpreting Iowa Code section 663A.2(4). The applicant must show (1) the evidence was discovered after judgment; (2) the evidence could not have been discovered earlier in the exercise of due diligence;

(3) it is material to the issue, not merely cumulative or impeaching; and (4) it would probably change the result if a new trial is granted. Id. The postconviction relief applicant must establish the facts asserted by a preponderance of the evidence. Id.

Barger knew the identity of the informant at the time of the suppression hearing. The reliability of the informant was central to his attack on the warrant. If the informant possessed exculpatory evidence, the information was available to Barger at the time of trial. Barger has failed to establish, by a preponderance of the evidence, that the alleged newly-discovered evidence could not have been discovered earlier in the exercise of due diligence. His failure to carry the burden on this element makes further inquiry unnecessary. We therefore affirm the district court's denial of postconviction relief.

AFFIRMED.