IN THE COURT OF APPEALS OF IOWA

No. 2-658 / 91-1872

FILED
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CLERK SUPREME COURT

RICKI L. BRADLEY,

Appellant,

vs.

STATE OF IOWA,

Appellee.

Appeal from the Iowa District Court for Dubuque County, Robert J. Curnan, Judge.

Ricki Bradley appeals a district court ruling denying his application for postconviction relief. **AFFIRMED.**

Thomas J. Goodman, Dubuque, for appellant.

Bonnie J. Campbell, Attorney General, Ann E. Brenden, Assistant Attorney General, Fred H. McCaw, County Attorney, and Timothy J. Gallagher, Assistant County Attorney, for appellee.

Considered by Oxberger, C.J., and Sackett and Habhab, JJ.

OXBERGER, C.J.

This is an appeal from a district court denial of postconviction relief. A jury found Ricki Bradley guilty of burglary in the second degree. The district court entered judgment on the conviction and sentenced him to ten years in prison. Bradley appealed and the court of appeals affirmed the judgment of the district court. State v. Bradley, No. 86-1425, (Ct. App. September 30, 1987) (unpublished).

On October 2, 1989, Bradley filed this application for postconviction relief. He subsequently filed an amended application alleging newly-discovered evidence existed.

The application for postconviction relief was heard on November 5, 1991. Lori Peterson, the stepsister of Susan Schumacher, testified that Schumacher came to visit her in Kentucky. Peterson testified that Schumacher told her that she intended to set Bradley up by making it appear he had committed a burglary. Peterson testified Schumacher told her she was going to have stolen goods and guns in her basement. Peterson testified that she left Kentucky sometime in 1985, a year prior to the burglary. Peterson also wrote Bradley in 1991 indicating that Schumacher told her in Kentucky that she had framed him in the burglary. Schumacher testified at the postconviction hearing and denied making the statements. Schumacher testified that she and Peterson have not gotten along since Peterson's former husband moved in with her.

The district court denied Bradley's application for postconviction relief. The district court found Peterson's testimony would not change the result if a new trial was granted. In addition, the district court found the alleged admission occurred so far prior to the date of the burglary it would carry little weight or credence, especially in light of the animosity between Schumacher and Peterson. Finally, the district court found Peterson's letter to Bradley was inconsistent with her testimony.

Bradley has appealed.

Scope of Review

Postconviction relief actions are law actions and are ordinarily reviewed only on error. Bear v. State, 417 N.W.2d 467, 469 (Iowa App. 1987).

Discussion

Bradley contends the district court erred in refusing to grant him a new trial on the basis of newly-discovered evidence.

To prevail in a motion for a new trial or postconviction relief on a claim of newly-discovered evidence, the defendant must show:

1) The evidence could not have been discovered earlier in the exercise of due diligence;
2) the evidence is material and not merely cumulative and impeaching; and
3) its admission would probably change the result if a new trial were granted.

Bear v. State, 417 N.W.2d 467, 471-72 (Iowa App. 1987).

There is little dispute that the evidence could not have been discovered earlier in the exercise of due diligence. Peterson, the witness testifying to the newly-discovered evidence, claims she did not know about Bradley's conviction until 1991.

However, Peterson's testimony is largely impeaching and would not likely have changed the result of the trial. Her testimony was clearly aimed at impeaching the key state witness, Susan Schumacher's testimony. In addition, there were inconsistencies between Peterson's original letter to Bradley and her testimony at the postconviction hearing. Schumacher denied ever making statements regarding an alleged "setup" to Peterson. Finally, Schumacher testified there had been numerous problems between herself and Peterson since Peterson's former husband moved in with Schumacher. In fact, Peterson mailed the letter to Bradley alleging the "setup" one month after Peterson's former husband moved in with Schumacher.

We find Bradley has failed to satisfy the elements necessary to obtain a new trial. Accordingly, we affirm the trial court's decision denying Bradley postconviction relief.

AFFIRMED.