

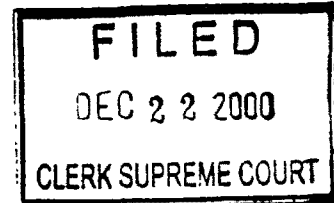
IN THE COURT OF APPEALS OF IOWA

No. 0-578 / 99-472
Filed December 22, 2000

FRED L. LAMP,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.



Appeal from the Iowa District Court for Polk County, Robert D. Wilson,
Judge.

Fred Lamp appeals the district court's summary dismissal of his second
application for postconviction relief. **AFFIRMED.**

Fred L. Lamp, El Dorado, Kansas, pro se.

Thomas J. Miller, Attorney General, Thomas W. Andrews, Assistant
Attorney General, John P. Sarcone, County Attorney, and Joseph Weeg,
Assistant County Attorney, for appellee.

Considered by Zimmer, P.J., and Hecht and Vaitheswaran, JJ.

VAITHESWARAN, J.

Fred Lamp appeals the district court's summary dismissal of his second postconviction relief application filed seventeen years after his first-degree murder conviction was affirmed. We conclude his action is time-barred and accordingly, we affirm.

I. Background Facts and Proceedings

In 1980, a jury convicted Lamp of first-degree murder in the death of a sixteen-year old Des Moines girl. The Iowa Supreme Court affirmed his conviction in an opinion filed on July 21, 1982. *State v. Lamp*, 322 N.W.2d 48 (Iowa 1982). Lamp then sought a writ of habeas corpus in federal court. The district court and Eighth Circuit Court of Appeals rejected his application. *Lamp v. Farrier*, 763 F.2d 994 (8th Cir. 1985) *cert. denied*, 474 U.S. 1009, 106 S. Ct. 534, 88 L. Ed. 2d 465 (1985). Lamp next filed a state postconviction relief action. The district court dismissed the application and we affirmed. *Lamp v. State*, 455 N.W.2d 304 (Iowa App. 1989). Lamp proceeded to file a second habeas corpus application in federal court. The district court and Eighth Circuit Court of Appeals rejected this application as well. *Lamp v. State*, 122 F.3d 1100 (8th Cir. 1997).¹

On February 12, 1999, Lamp filed the state postconviction relief application that is the subject of this appeal. The district court summarily dismissed the application, stating, "[t]he court has reviewed petitioner's application for postconviction relief. There is nothing new to litigate." appeal followed.

¹ The opinion contains a comprehensive list of issues raised by Lamp in his proceedings up to that point. See *Lamp*, 122 F.3d at 1103, n.2, 3.

II. Statute of Limitations

Citing Iowa Code section 822.3 (1997), the State maintains we should affirm the court's summary dismissal of this proceeding because the action is time-barred. That section requires a postconviction relief application to be filed within three years from the date the conviction or decision is final or, if the case was appealed, within three years from the date procedendo issued, except where the application raises grounds of fact or law which could not have been raised during that time period.² Lamp's second postconviction relief application was filed nearly eighteen years after the Iowa Supreme Court affirmed his conviction and issued a procedendo. Therefore, the only issue is whether this application raises a ground of fact or law that could not have been raised in the applicable time period. If it does, the statutory time bar would not apply.

Lamp's application sets forth the following grounds for relief:

- 1) Ineffective assistance of counsel in the first postconviction relief application;
- 2) Failure of the State to disclose exculpatory evidence;

² **822.3. How to commence proceeding--limitation**

A proceeding is commenced by filing an application verified by the applicant with the clerk of the district court in which the conviction or sentence took place. However, if the applicant is seeking relief under section 822.2, subsection 6, the application shall be filed with the clerk of the district court of the county in which the applicant is being confined within ninety days from the date the disciplinary decision is final. *All other applications must be filed within three years from the date the conviction or decision is final or, in the event of an appeal, from the date the writ of procedendo is issued. However, this limitation does not apply to a ground of fact or law that could not have been raised within the applicable time period.* Facts within the personal knowledge of the applicant and the authenticity of all documents and exhibits included in or attached to the application must be sworn to affirmatively as true and correct. The supreme court may prescribe the form of the application and verification. The clerk shall docket the application upon its receipt and promptly bring it to the attention of the court and deliver a copy to the county attorney and the attorney general. (Emphasis added).

- 3) State's use of false and/or perjured testimony;
- 4) State's interference with a police informant;
- 5) State's interference with his direct appeal to the Iowa Supreme Court;
- 6) Alteration of the trial transcript;
- 7) Chain of custody for the blood samples;
- 8) Reliability of the blood test;
- 9) Use of false or perjured testimony at the suppression hearing;
- 10) The State "withheld or was deceitful in the use of evidence;"
- 11) Lamp's innocence.

Our highest court has held Lamp's first issue (ineffective assistance of postconviction counsel) does not create an exception to the statutory time bar. *See Dible v. State*, 557 N.W.2d 881, 884 (Iowa 1996); *Wilkins v. State*, 522 N.W.2d 822, 824 (Iowa 1994). Lamp raised the second, fourth, seventh, eighth, tenth and eleventh issues in prior proceedings. *Lamp*, 122 F.3d at 1103-04. Therefore, they are clearly not issues "that could not have been raised." *See Cornell v. State*, 529 N.W.2d 606, 611 (Iowa App. 1994). Lamp's fifth issue (State interference with direct appeal) is essentially an ineffective assistance of appellate counsel claim which, under *Dible*, cannot serve as a basis for avoiding the limitation period. *Dible*, 557 N.W.2d at 884.

Lamp's sixth contention is that the trial transcript was altered because, to the best of his recollection, the word "interfere" was typed outside the margin in the original transcript but appeared inside the margin in a later version. Lamp contends he did not learn of the alteration until 1996, rendering this issue an issue of fact which could not have been raised in the applicable time period. However, he concedes the alteration took place before the Iowa Supreme Court ruled on his direct appeal. Therefore, we conclude Lamp could have discovered

this issue within the limitations period and could have raised it within the statutory time frame. *See Smith v. State*, 542 N.W.2d 853, 854 (Iowa App. 1995).

Lamp's third and ninth contentions are that the State used false and perjured testimony at the suppression hearing and at trial. These issues relate to the testimony of a cellmate named Trotter concerning confessions Lamp made to him. Although couched differently, Lamp raised challenges to Trotter's testimony in his first postconviction relief proceeding and his first and second habeas corpus proceedings. *Lamp*, 122 F.3d at 1103-04. Therefore, these challenges also cannot serve as the basis for extending the limitations period.

We conclude all the claims Lamp raises in his second postconviction relief application are time-barred pursuant to Iowa Code section 822.3. Accordingly, we affirm the district court's dismissal of his application.

AFFIRMED.