IN THE COURT OF APPEALS OF IOWA

No. 7-576 / 96-1855 000049

ROBERT CAMPBELL, JR.,

Applicant-Appellant,

vs.

STATE OF IOWA,

Respondent-Appellee.

FILED
DEC 29 1997
CLERK SUPREME COURT

Appeal from the Iowa District Court for Black Hawk County, Jon Fister, Judge.

Robert Campbell, Jr., appeals the denial of his application for postconviction relief. **AFFIRMED.**

John A. Stitely, Cedar Rapids, for appellant.

Thomas J. Miller, Attorney General, Thomas S. Tauber, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Shawn Wehde, Assistant County Attorney, for appellee.

Considered by Sackett, P.J., and Streit and Vogel, JJ.

PER CURIAM.

Applicant-appellant Robert Campbell, Jr., appeals the trial court's denial of his application for postconviction relief. Campbell contends: (1) the trial court erred in approving a jury where all black jurors were struck; (2) the trial court erred in refusing to consider testimony he contends exonerated him; (3) his trial counsel was inadequate; and (4) the postconviction court erred in applying a three-year statute of limitations to his claims. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

Campbell was convicted in 1986 of three counts of third-degree sexual abuse. His convictions were affirmed in an unpublished opinion filed by the court of appeals. *State v. Campbell*, No. 86-1320 (Iowa App. Oct. 28, 1987). Procedendo was issued on January 13, 1988.

Campbell filed a pro se application for postconviction relief on March 24, 1994. It was amended by an attorney on December 21, 1994, and again on October 8, 1996, to add eight additional claims. The claims included (1) trial counsel's failure to present alibi witnesses in response to the State's rebuttal witnesses; (2) trial counsel's failure to allow certain evidence; (3) trial counsel's failure to do adequate discovery; (4) trial counsel's failure to conduct voir dire directed at the competency of a six-year-old witness; (5) trial counsel's inadequate strategy; (6) new exculpatory evidence had become available; (7) trial counsel's failure to object to the prosecutor

striking black jurors without valid reasons; and (8) trial counsel's failure to make a record on the racial composition of the jury panel and failure to object to the composition.

Following a trial, the district court ruled Campbell's claims were barred under Iowa Code section 822.3 (1995), but addressed the merits of the claims and rejected all of them.

We agree with the trial court that the majority of Campbell's claims are barred under Iowa Code section 822.3, which provides in relevant part:

> 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.

Id. Campbell's claims of ineffective assistance of trial counsel and jury selection are barred by section 822.3. We therefore affirm the district court on these issues.

Campbell's remaining claim concerns the testimony of witnesses who would offer testimony that prosecution witnesses said they recanted their testimony at trial. Recanted testimony is looked upon with suspicion. *See Carroll v. State*, 466 N.W.2d 269, 272 (Iowa App. 1990). Campbell did not offer testimony from the prosecution witnesses their testimony at trial was false. He offered only the statement of others as to what the witnesses said. Such testimony would be inadmissible. In addition, the offered testimony merely impeaches the witnesses' testimony and does not

constitute newly discovered evidence which would entitle Campbell to a new trial. *See Origer v. State*, 495 N.W.2d 132, 139 (Iowa App. 1992); *Carroll*, 466 N.W.2d at 272.

We affirm the decision of the district court denying Campbell's application for postconviction relief.

AFFIRMED.