

IN THE COURT OF APPEALS OF IOWA

No. 0-614 / 89-1567

FILED

APR 23 1991

CLERK SUPREME COURT

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JOSEPH PHAMS,

Appellant,

vs.

STATE OF IOWA

Appellee.

Appeal from the Iowa District Court for Black Hawk
County, Robert E. Mahan, Judge.

Phams appeals the district court denial of
postconviction relief. **APPEAL DISMISSED.**

David J. Mason, Waterloo, for appellant.

Bonnie J. Campbell, Attorney General, Ann E. Brenden,
Assistant Attorney General, and Thomas Ferguson, County
Attorney, for appellee.

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

OXBERGER, C.J.

Joseph Phams was one of several persons involved in a 1981 confrontation with police officers. While Joseph Phams struggled with a police officer, his confederate James Taylor grabbed the officer's gun and fatally shot two officers.

In 1982 Phams was convicted of two counts of first-degree murder. Upon direct appeal, the Iowa Supreme Court affirmed both convictions. State v. Phams, 342 N.W.2d 792 (Iowa 1983). The writ of procedendo was issued January 13, 1984.

Phams, acting pro se, filed an application for appointment of counsel on February 14, 1985, to assist him in applying for postconviction relief. On February 19, 1985, the court appointed counsel to represent Phams. That attorney and another subsequently appointed attorney were allowed to withdraw as counsel for Phams due to conflicts of interest. Apparently on December 23, 1986, Craig Ament was appointed to represent Phams. Also on December 23, 1986, the court issued an order removing the case from the provisions of Iowa Rule of Civil Procedure 215.1 based on a stipulation signed by an attorney for the State. On December 24, 1986, another order was issued removing the case from the provisions of Rule 215.1 and providing the case would not be dismissed on January 1, 1987.

On September 17, 1987, Ament filed the application for postconviction relief presently before us. The State then moved for summary dismissal of the application because it was filed more than three years after procedendo was issued on Phams' direct appeal. The trial court overruled the State's motion holding that because Phams filed an application for appointment of counsel before the three year statute of limitations had run, Phams' application for relief was timely. Upon reaching the merits of Phams' application, the trial court found none of his claims to warrant postconviction relief and dismissed the application. Phams appealed.

Iowa Code section 663A.3(1989) provides the procedure for applying for postconviction relief:

A proceeding is commenced by filing an application verified by the applicant with the . . . clerk of the court of the county in which the applicant is being confined. An application must be filed within three years . . . 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.

Prior to July 1, 1984, section 663A.3 allowed applications for postconviction relief to be filed at any time. Brewer v. Iowa District Court, 395 N.W.2d 841, 842

(Iowa 1986). In Brewer, the supreme court held "all potential postconviction applicants whose convictions became final prior to July 1, 1984, must file their applications for postconviction relief on or before June 30, 1987, or be barred from relief." Id. at 844.

Iowa Code section 663A.4(1989) discusses what an application for postconviction relief should contain:

The application shall identify the proceedings in which the applicant was convicted, give the date of the entry of the judgment of conviction or sentence complained of, specifically set forth the grounds upon which the application is based, and clearly state the the relief desired. Facts within the personal knowledge of the applicant shall be set forth separately from other allegations of facts and shall be verified as provided in section 663A.3. Affidavits, records, or other evidence supporting its allegations shall be attached to the application or the application shall recite why they are not attached. The application shall identify all previous proceedings, together with the grounds therein asserted, taken by the applicant to secure relief from the conviction or sentence. Argument, citations, and discussion of authorities are unnecessary.

The February 14, 1985, application filed by Phams merely requested the appointment of counsel to assist him in filing an application for postconviction relief. Phams did not state what grounds he sought relief upon. The February 14, 1985, document filed by Phams did not meet even the minimal requirements of section 663A.4. Because the February 14, 1984, document did not meet the requirements of an application for postconviction relief, Phams, under the authority of Brewer, had to file an

application for postconviction relief on or before June 30, 1987, or be barred from doing so. Phams' September 17, 1987, application was not timely filed and therefore he was barred from litigating his claims. We have not been presented with any cause why attorney Ament was unable to file the application for relief by June 30, 1987, such that the time bar of section 663A.3 did not apply. See Id. n.1.

The district court was without jurisdiction to entertain Phams' application for relief because it was not filed prior to June 30, 1987. Consequently, we are also without jurisdiction to entertain Phams' appeal.

APPEAL DISMISSED.