IN THE COURT OF APPEALS OF IOWA

No. 8-083 / 97-0466

FILED
APR 24 1998
CLERK SUPREME COURT

JUANITA PARRISH,

Applicant-Appellant,

vs.

STATE OF IOWA,

Respondent-Appellee.

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

Juanita Parrish appeals from the denial of her application for postconviction relief. **AFFIRMED.**

Nathaniel K. Hsieh of Law Office of Nathaniel K. Hsieh, Chicago, Illinois, for appellant.

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

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

PER CURIAM.

Applicant-appellant Juanita Kay Parrish appeals the district court's dismissal of her application for postconviction relief. She claims her trial counsel was not effective. She contends newly-discovered evidence supports her request for a new trial. We affirm.

Parrish was convicted on April 7, 1992, following a jury trial for possession of cocaine with intent to deliver and failure to affix a drug stamp. On direct appeal, she argued the evidence was insufficient to support her convictions. Her conviction was affirmed on June 16, 1993. *State v. Parrish*, 502 N.W.2d 1 (Iowa 1993).

On March 25, 1996, Parrish filed an application for postconviction relief. She was not represented by an attorney. She claimed there was insufficient evidence to support her convictions. This filing, within three years of procedendo, was timely. *See* Iowa Code § 822.3 (1995).

On August 15, 1996, attorney John Bishop entered an appearance in Parrish's proceeding. On February 10, 1997, Bishop filed a second application for postconviction relief on behalf of Parrish alleging she should have a new trial because of newly-discovered evidence and the ineffective assistance of trial counsel. Following a hearing, the district court dismissed Parrish's applications for postconviction relief. This appeal follows.

We review postconviction relief actions for correction of errors of law. *Origer v. State*, 495 N.W.2d 132, 135 (Iowa App. 1992). Because Parrish claims violation

of constitutional safeguards, we make our own evaluation of the totality of the circumstances, which is the equivalent of de novo review. *Carroll v. State*, 466 N.W.2d 269, 271 (Iowa App. 1990). We will not disturb the district court's denial of postconviction relief if the court's findings in support of its judgment are supported by substantial evidence and are justified as a matter of law. *Benton v. State*, 199 N.W.2d 56, 57 (Iowa 1972).

The State contends Parrish's first application is timely but her second is not. Parrish's first application was limited to her contention there was not substantial evidence to support her conviction. This issue was raised and litigated in her direct appeal. *Parrish*, 502 N.W.2d at 3. We affirm the dismissal of this petition.

In the second application, Parrish contended her trial counsel was ineffective in not striking two jurors and in not calling additional witnesses. The State contends these claims were not timely.

A defendant must file an application within three years from the date procedendo issues except when raising a ground of fact or law that could not have been raised within that time period. Iowa Code § 822.3 (1997). All grounds for relief must be raised in the application. Iowa Code § 822.8. Issues not raised at trial or on direct appeal, including constitutional issues, generally cannot be raised for the first time in postconviction proceedings unless sufficient reason is shown for not raising the issue earlier. *Collins v. State*, 477 N.W.2d 374, 376 (Iowa 1991).

Parrish contends, among other things, the second application reverts back to the filing of the first. We consider these claims without addressing the State's contention they are time-barred.

Parrish argues her trial counsel should have struck juror Essie Henderson because Henderson's ex-husband had been a friend of Parrish's husband. She testified she told her attorney about her concerns. She also contends juror Dolores Smith should have been struck because Smith's mother many years before had dated the same man Parrish had dated.

The trial court found Parrish introduced no evidence either juror was hostile to her or that the verdict in her trial would have been different had they not been members of the panel. These findings are supported by substantial evidence and we find no reason to disagree with them. *See Carroll*, 466 N.W.2d at 269. We affirm on this issue.

Parrish claims her defense counsel should have called as witnesses Dolores Smith, Beverly Henderson, Joyce Epps, her daughter Juanita, and her grandchildren.

Parrish's arrest followed the search of her home and a car not licensed and parked outside Parrish's home. A small amount of cocaine and drug paraphernalia were found in the house. Fifty grams of cocaine base and about $10,000 in small bills and food stamps were found in the car. Parrish contends the witnesses she wanted called could have testified on the night police executed the search warrant at her home Parrish was away at the Cattle Congress with her grandchildren.

Parrish's own evidence was she returned home shortly before the search warrant was executed. There was also evidence from officers Parrish was caught during the raid trying to flush drugs down the toilet. Parrish has not demonstrated the witnesses' expected testimony would have changed the result of the trial. *Jones v. State*, 479 N.W.2d 265, 274 (Iowa 1991). We affirm on this issue.

We have considered Parrish's other claims and find them to be without merit

We conclude the district court did not err in dismissing Parrish's application for postconviction relief.

AFFIRMED.