

**IN THE COURT OF APPEALS OF IOWA**

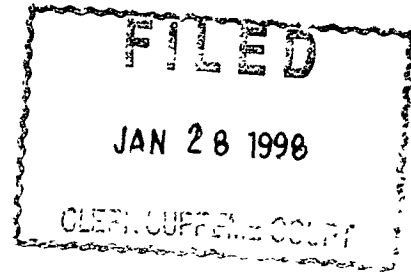
No. 7-663 / 96-1880

000341

**MICHAEL LEE YOUNG,**  
Appellant,

vs.

**STATE OF IOWA,**  
Appellee.



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Appeal from the Iowa District Court for Black Hawk County, James L.  
Beeghly, Judge.

Michael Young appeals the denial of his application for postconviction relief.

**AFFIRMED.**

Martha M. McMinn, Sioux City, for appellant.

Thomas J. Miller, Attorney General, Mary Tabor, Assistant Attorney General,  
Thomas J. Ferguson, County Attorney, and Shawn Wehde and James Metcalf,  
Assistant County Attorneys, for appellee.

Considered by Cady, C.J., and Streit and Vogel, JJ.

**VOGEL, J.**

Michael Young was charged with assault with intent to commit sexual abuse, in violation of Iowa Code section 709.11. A jury found Young guilty of the crime charged. The supreme court, in an unpublished decision, affirmed the conviction. *State v. Young*, No. 88-310 (Iowa Apr. 3, 1989). *Procedendo* was issued on April 25, 1989.

On June 23, 1995, Young filed an application for postconviction relief. The district court denied the application, finding it was untimely under the three-year statute of limitations found in section 822.3. Young has appealed.

Young contends his application for postconviction relief was not barred by the statute of limitations. He believes the State waived this defense because it was not raised in the answer.

Section 822.3 provides, in pertinent 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.

Here, the untimeliness of Young's application is apparent on its face. When it is obvious from the face of a petition it was time-barred when the action commenced, the action may be subject to a motion to dismiss. *Davis v. State*, 443

N.W.2d 707, 708 (Iowa 1989). We determine the State could properly raise this issue at the postconviction hearing.

A party claiming an exception to a normal limitations period must plead and prove the exception. *Cornell v. State*, 529 N.W.2d 606, 610 (Iowa App. 1994). Young had the burden of showing “a ground of fact or law that could not have been raised within the applicable time period.” *See Dible v. State*, 557 N.W.2d 881, 883 (Iowa 1996). The alleged exonerating ground must be relevant and likely to change the result of the case. *Hogan v. State*, 454 N.W.2d 360, 361 (Iowa 1990).

Young has claimed he was denied a fair trial because the trial court judge left the courtroom during closing arguments and that he received ineffective assistance because his trial counsel did not request to have closing arguments recorded. These claims would have been apparent to Young within the three years after his conviction. We determine Young has not shown sufficient reason why he failed to bring his claims within the applicable statute of limitations.

We affirm the decision of the district court denying Young’s application for postconviction relief. Costs of this appeal are assessed to Young.

**AFFIRMED.**