

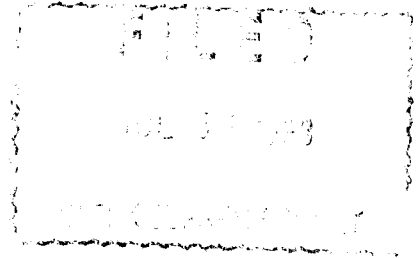
IN THE COURT OF APPEALS OF IOWA

No. 8-289 / 97-1370

JON L. PAYTON,
Appellant,

vs.

STATE OF IOWA,
Appellee.



Appeal from the Iowa District Court for Polk County, Gregory A. Hulse,
Judge.

Jon Payton appeals the denial of his application for postconviction relief.

AFFIRMED.

Linda Del Gallo, State Appellate Defender, and James G. Tomka, Assistant
State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Mary Tabor, Assistant Attorney General,
John P. Sarcone, County Attorney, and Steven Foritano, Assistant County Attorney,
for appellee.

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

VOGEL, J.

Applicant-appellant, Jon Payton, appeals from the district court's denial of his application for postconviction relief from his four sexual abuse convictions. He claims the recantation of two key witnesses against him is newly discovered evidence and requires vacation of the convictions in the interest of judgment. We affirm.

Payton's four convictions arose from acts alleged by his two daughters and one son. At the postconviction hearing, the two daughters testified they had lied at the criminal trial. They both denied any sexual abuse occurred. The district court denied Payton's application for postconviction relief, finding the trial testimony of the daughters more credible than their recantations. The court also found their trial testimony was consistent with the testimony of each other, their brother, and evidence from a forensic genital exam.

We review denial of postconviction relief for correction of errors of law. *Whitsel v. State*, 525 N.W.2d 860, 862 (Iowa 1994). The district court has broad discretion in determining whether witness recantation provides the basis for a new trial. *State v. Taylor*, 287 N.W.2d 576, 578 (Iowa 1980). We will not disturb the district court's denial of relief if its findings are supported by substantial evidence and are justified as a matter of law. *Adcock v. State*, 528 N.W.2d 645, 646 (Iowa App. 1994).

Motions for a new trial based upon newly discovered evidence are not favored and should be closely scrutinized and sparingly granted. *State v. Carter*, 480 N.W.2d 850, 853 (Iowa 1992); *State v. Compiano*, 261 Iowa 509, 517, 154 N.W.2d 845, 849 (1967). However, a claim based upon recanted testimony “is not really based on newly discovered evidence, although it is frequently referred to in that way.” *Taylor*, 287 N.W.2d at 578. Unless the district court is satisfied the trial testimony was false and that a jury might reach a different result without it, a new trial should not be granted. *Id.*; see *Jones v. State*, 479 N.W.2d 265, 275 (Iowa 1991).

We find substantial evidence in the record supporting the court’s assessment of the credibility of the recantations compared with the original trial testimony. The girls’ trial testimony is more consistent with other testimony and evidence. It also is consistent with statements made by Payton to a counselor and by one daughter to her grandfather on his deathbed. The circumstances of the recantations make them suspect. We conclude the district court was correct in denying Payton’s application for postconviction relief.

AFFIRMED.