IN THE COURT OF APPEALS OF IOWA

CASEY J. KNIPE,	)	
Applicant-Appellant,	)	
vs	)	7-5[illegible]1
		86-1864
STATE OF IOWA,	)	
Resister-Appellee.	)	

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Appeal from the Iowa District Court for Pottawattamie County (No. 56737), Glen M McGee, Judge.

Casey J. Knipe appeals the district court's denial of his application for postconviction relief. **AFFIRMED.**

Gary K. Anderson and Troyce A. Wheeler of Anderson and Wheeler, Council Bluffs, for applicant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Lona Hansen, Assistant Attorney General, for resister-appellee.

Considered by Oxberger, C.J., Donielson and Schlegel, JJ.

PER CURIAM 171

The defendant Casey Knipe is appealing the denial of postconviction relief. He contends his trial counsel rendered ineffective assistance because he misled Knipe on the current state of the law. We affirm.

Knipe asserts his trial counsel misled him at the plea hearing. Knipe pled guilty to first-degree robbery. He argues he pled guilty only because he thought he would receive a concurrent sentence. The court explained to the defendant that the State and court did not agree with his assertion that a concurrent sentence was appropriate. The court then sentenced the defendant to twenty-five years to be served consecutively with a prior sentence for second-degree robbery.

The court was presented with a consecutive sentencing issue which was unresolved by the supreme court at the time of sentencing. Knipe's counsel argued the position most favorable to Knipe but did not prevail at sentencing or on appeal. See State v. Knipe, 349 N.W.2d 770 (Iowa 1984).

Knipe now contends that his counsel was ineffective because he did not advise him that consecutive sentencing was mandatory. The State argues that the defendant cannot raise the ineffectiveness claim since he failed to raise it on direct appeal, and that, even if the claim can be raised, he was not rendered ineffective assistance.

Iowa Code section 633A.8 bars a defendant from raising matters in a postconviction relief hearing that were not raised at trial, sentencing, or "any other proceeding" used to secure relief unless he can show sufficient reason why it was not raised. The trial court did not rule on this issue and ruled directly on the merits of Knipe's application. Since the record is incomplete on this issue, we decline to address the error preservation issue and will address the merits of Knipe's claim. An attorney does not have to be a "crystal gazer" who can

predict future changes in the law State v Schoelerman, 315 N.W.2d 67, 72 (Iowa 1982), Snethen v State, 308 N W 2d 11, 16 (Iowa 1981) This is especially true when there are no published decisions addressing the issue in question.

We conclude that Knipe has not carried his burden to show his counsel was ineffective At the sentencing hearing the issue of whether consecutive sentences were necessary under Iowa Code section 901 8 had not been fully resolved. Defendant's counsel argued for the interpretation that would be the most favorable to his client The State, of course, argued the converse The trial court also explained to the defendant that he could receive a consecutive sentence rather than a concurrent one For these reasons we hold the defendant's application for postconviction relief was properly denied

AFFIRMED.