IN THE COURT OF APPEALS OF IOWA

No. 1-206 / 00-1266
Filed April 27, 2001

FILED
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CLERK SUPREME COURT

GEORGE LEE HENDERSON,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

STATE OF IOWA,
Plaintiff-Appellee,

vs.

GEORGE LEE HENDERSON,
Respondent-Appellant.

Appeal from the Iowa District Court for Polk County, Artis I. Reis (postconviction) and Robert Wilson (probation revocation), Judges.

George Henderson appeals from the district court ruling revoking his probation. **AFFIRMED.**

Pamela Vandel, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Martha E. Boesen, Assistant Attorney General, John P. Sarcone, County Attorney, and Mike Hunter, Assistant County Attorney, for appellee.

Considered by Mahan, P.J., and Miller and Vaitheswaran, JJ.

MAHAN, P.J.

George Henderson appeals the district court's revocation of his probation. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

In July 1998 the State filed a trial information charging Henderson with two counts of second-degree sexual abuse. Pursuant to a plea agreement, Henderson entered pleas of guilty to two counts of lascivious acts with a child. The court imposed two five-year terms of incarceration, but suspended the sentence and placed Henderson on probation for two years. The court entered a no-contact order, prohibiting Henderson's contact with the two victims until completion of his probation.

In July 1999 the Iowa Department of Correctional Services filed a probation violation report, alleging Henderson violated the terms of his probation. Among the violations, the department alleged Henderson attended a wedding where his victims were present. In January 2000, after a hearing on the matter, the district court revoked Henderson's probation and imposed the original sentence.

Henderson filed an application for postconviction relief in February 2000. The district court denied the application, but raised *sua sponte* the issue of allocution. The court concluded Henderson had been denied his right to allocution prior to the court's imposition of the previously suspended sentence. The postconviction court vacated the sentence imposed at the time of revocation, and remanded for "resentencing."

At the June 2000 "resentencing," the district court concluded Henderson received his right to allocution at his original sentencing in November 1998, and nothing in the rules or Iowa case law required a second right of allocution. The court reimposed its ruling of January 2000, revoking Henderson's probation. Henderson appeals the June 2000 ruling.

In the sole issue he raises on appeal, Henderson contends the district court erred in revoking his probation. Probation revocation can be challenged only by application for postconviction relief and not by direct appeal. *State v. Allen*, 402 N.W.2d 438, 441 (Iowa 1987). To properly preserve error, Henderson should have filed an application for postconviction relief following the June 2000 hearing or, in the alternative, appealed the denial of his application for postconviction relief. Henderson attempts to bootstrap the district court's first probation revocation ruling into this direct appeal. We conclude Henderson's appeal is not properly before this court.

Even if Henderson had properly preserved error, we find the issue he raises without merit. A careful review of the record indicates the State proved by a preponderance of the evidence the existence of grounds to support revocation of his probation. The district court properly revoked Henderson's probation.

AFFIRMED.