**IN THE COURT OF APPEALS OF IOWA**

No. 1-019 / 00-405
Filed February 28, 2001

FILED
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CLERK SUPREME COURT

**JAMIE L. LUTTRELL,**
**Applicant-Appellant,**

**vs.**

**STATE OF IOWA,**
**Respondent-Appellee.**

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Appeal from the Iowa District Court for Cerro Gordo County, James M. Drew, Judge.

Applicant appeals from the district court ruling dismissing his postconviction relief application. **AFFIRMED.**

Timothy L. Lapointe of Lapointe & Lapointe, P.C., Mason City, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney General, and Paul L. Martin, County Attorney, and William J. Hoekstra, Assistant County Attorney, for appellee.

Considered by Streit, P.J., and Hecht and Vaitheswaran, JJ.

**VAITHESWARAN, J.**

The State charged Luttrell with delivery of a schedule II controlled substance (methamphetamine) as an habitual offender. *See* Iowa Code §§ 124.401(1)(c)(6); 124.206(4)(b), 902.8, 902.9(2) (1997). Luttrell moved to dismiss the charge based on a claimed violation of his right to a speedy trial. *See* Iowa R. Crim. P. 27(2)(c). The motion was denied and Luttrell subsequently pled guilty to the charge. During the plea proceedings, the court advised Luttrell of his right to file a motion in arrest of judgment to challenge errors or irregularities associated with the plea. Luttrell did not do so. The district court sentenced him to an indeterminate term not to exceed fifteen years and advised him of his right to appeal. Luttrell did not file an appeal. Instead, he filed a postconviction relief application challenging the district court's refusal to dismiss his case under the speedy trial rule. The State moved for summary judgment. The district court granted the motion and dismissed Luttrell's postconviction relief application. This appeal followed.

***I. Preservation/Waiver of Error***

The State contends Luttrell may not challenge his guilty plea in a postconviction relief proceeding because: (A) he did not first challenge the plea by filing a motion in arrest of judgment; (B) he did not file a direct appeal from his judgment and sentence; and (C) his guilty plea waived the defense he now asserts. We agree with all these contentions.

***A. Motion in Arrest of Judgment.*** A defendant wishing to raise defects in a guilty plea must do so by filing a motion in arrest of judgment. Iowa R. Crim. P. 8(2)(d). Failure to file a motion will generally preclude a defendant from

raising the asserted defects on appeal, unless the omission was due to ineffective assistance of counsel. *State v. Gant*, 597 N.W.2d 501, 504 (Iowa 1999); *State v. Carter*, 582 N.W.2d 164, 165 (Iowa 1998). Luttrell did not file a motion in arrest of judgment and did not assert his failure to do so was due to ineffective assistance of counsel. Therefore, he did not preserve error.

***B. Direct Appeal.*** Iowa Code section 822.8 (1993) requires a postconviction relief applicant to raise all grounds for relief available to the applicant in the original, supplemental or amended application "unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental, or amended application." Our highest court has interpreted this provision to require a showing by the postconviction relief applicant that sufficient reasons exist for not previously asserting the grounds for relief on direct appeal. *Bugley v. State*, 596 N.W.2d 893, 896 (Iowa 1999). Ineffective assistance of original trial or appellate counsel, or postconviction trial or appellate counsel may constitute sufficient reason for failing to raise an issue in the original proceeding. *Berryhill v. State*, 603 N.W.2d 243, 246 (Iowa 1999); *Collins v. State*, 588 N.W.2d 399, 402-03 (Iowa 1998); *Earnest v. State*, 508 N.W.2d 630, 632 (Iowa 1993).

For the first time in this appeal, Luttrell contends his second trial attorney told him he did not need to file an appeal to challenge the court's ruling on his motion to dismiss. Accordingly, he asserts, this trial attorney provided ineffective assistance, affording him sufficient reason for bypassing a direct appeal. Luttrell did not raise this assertion before the postconviction relief court, nor does he now argue postconviction relief counsel was ineffective in failing to raise the

ineffective assistance of trial counsel claim. Therefore, he has waived this contention. *State v. Westeen*, 591 N.W.2d 203, 206 (Iowa 1999). As Luttrell did not establish sufficient reason for failing to file a direct appeal, he was precluded from challenging the trial court's actions in a postconviction relief action.

***C. Waiver of Defense.*** Our supreme court has held a valid guilty plea waives all defenses and objections except assertions that: (1) the information or indictment charges no offense or (2) the plea itself contains irregularities. *State v. Mattly*, 513 N.W.2d 739, 740-41 (Iowa 1994). Challenges to speedy trial rights are among the objections that are waived. *See State v. Morehouse*, 316 N.W.2d 884, 885 (Iowa 1982). By entering a guilty plea, Luttrell waived his right to directly challenge the State's failure to try the case within a year of arraignment. He also waived his right to challenge the delay under the rubric of an ineffective assistance of counsel claim. *See State v. Yodprasit*, 564 N.W.2d 383, 387 (Iowa 1997) (noting ineffective assistance of counsel claim involved a personal right that could be waived by entering a guilty plea); *State v. Delano*, 161 N.W.2d 66, 73 (Iowa 1968) (noting constitutional right, like any other right, may be waived). Accordingly, Luttrell waived this defense.

***II. Disposition***

We affirm the district court's dismissal of Luttrell's postconviction relief application.

**AFFIRMED.**