IN THE COURT OF APPEALS OF IOWA

No. 7-338 / 96-0717

000313

BRYAN SCOTT MAY,

Applicant-Appellant,

vs.

STATE OF IOWA,

Respondent-Appellee.

FILED
JUL 30 1997
CLERK SUPREME COURT

Appeal from the Iowa District Court for Scott County, John A. Nahra, Judge.

Bryan Scott May appeals the district court's denial of his application for postconviction relief. **AFFIRMED.**

Robert J. Phelps of Phelps & Phelps, Davenport, for appellant.

Thomas J. Miller, Attorney General, Richard J. Bennett, Assistant Attorney General, William E. Davis, County Attorney, and Joseph A. Grubisich, Assistant County Attorney, for appellee.

Considered by Sackett, P.J., Huitink, J., and Hayden, S.J.*

*Senior judge from the Iowa Court of Appeals serving on this court by order of the Iowa Supreme Court.

PER CURIAM.

Applicant-appellant Bryan Scott May appeals the district court's denial of his application for postconviction relief. We affirm.

May was convicted of second-degree sexual abuse in 1992. He appealed contending the evidence was not sufficient to support his conviction, the trial court erred in admitting hearsay evidence, and his trial counsel was not effective when he failed to voir dire a juror who knew a spectator in the courtroom. The case was transferred to this court and affirmed. *State v. May*, No. 92-1821 (Iowa App. Jan. 25, 1994).

May filed an application for postconviction relief alleging his trial counsel provided ineffective assistance. May argued, among other things, his trial counsel was not effective when he (1) failed to present witnesses who were with defendant on the night the offense allegedly occurred; (2) did not call a medical expert as a witness; and (3) failed to cross-examine the victim's mother.

The district court denied May's application. May contends the district court erred in finding his trial counsel was effective though failing to present alibi witnesses, present an expert witness, and cross-examine a State's witness.

The State contends May has waived his claims of ineffective assistance of counsel because the issues now raised were not raised on direct appeal and he has failed to show a sufficient reason for not doing so. The State further claims May has not shown how he was prejudiced by the error.

> Postconviction relief is not a means for relitigating claims that were or should have been properly presented at trial or on direct appeal. Any claim not properly raised at trial or on direct appeal may not be litigated in postconviction unless there is sufficient reason for not properly raising it previously.

Washington v. Scurr, 304 N.W.2d 231, 234-35 (Iowa 1981) (citations omitted).

A postconviction applicant cannot obtain review of such an issue unless he or she demonstrates by a preponderance of the evidence that (1) sufficient reason or cause exists for not having raised it on direct appeal; and (2) actual prejudice resulted from the claimed error. *Polly v. State*, 355 N.W.2d 849, 856 (Iowa 1984).

Defendant in his direct appeal failed to raise any of the claims that form the basis of this appeal. Defendant has failed to advance a sufficient reason why his claims were not raised on direct appeal. *See id.* We affirm.

AFFIRMED.