IN THE COURT OF APPEALS OF IOWA

No. 2-443 / 91-1125

BRUCE JACOBSON,

Appellant,

vs.

STATE OF IOWA,

Appellee.

FILED
NOV 30 1992
CLERK SUPREME COURT

Appeal from the Iowa District Court for Polk County, Ray Hanrahan, Judge.

The applicant, Bruce Jacobson, appeals from the judgment of the district court denying his application for postconviction relief. **AFFIRMED.**

John P. Messina, Des Moines, for appellant.

Bonnie J. Campbell, Attorney General; Thomas G. Fisher, Jr., Assistant Attorney General; John P. Sarcone, County Attorney; and Melodee Hanes, Assistant County Attorney, for appellee.

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

OXBERGER, C.J.

The petitioner, Bruce Jacobson, was convicted of theft in 1982. In August 1986, he filed an application for postconviction relief. He claimed he arrived late and was intoxicated for his trial.

At the postconviction hearing, trial counsel testified Jacobson's condition influenced his decision not to have Jacobson appear on the stand to testify. Jacobson maintained trial counsel should have requested a competency hearing and should not have proceeded with trial. The district court denied Jacobson's application.

Jacobson appeals.

Jacobson concedes he failed to litigate the ineffective assistance issue presented at the lower court. He contends we may review the issue because the record is adequate to resolve the issue.

Any claim not properly raised at trial or on direct appeal may not be litigated in a postconviction relief proceeding unless there is sufficient reason for not properly raising it previously. Washington v. Scurr, 304 N.W.2d 231, 234 (Iowa 1981); see also Iowa Code § 663A.8 (1991). To prevail, the applicant must establish, by a preponderance of evidence, "sufficient reason" for not having raised the issue at trial and on direct appeal and must also establish prejudice resulting from the alleged errors. Collins v. State, 477 N.W.2d 374, 376 (Iowa 1991). Ineffective assistance of appellate counsel may

273

provide "sufficient reason" to permit the issue of ineffective assistance of trial counsel to be raised for the first time in a postconviction relief proceeding. Id.; Kane v. State, 436 N.W.2d 624, 627-28 (Iowa 1989). However, a petitioner does not prove "sufficient reason" for failure to raise the issue of ineffective assistance of trial counsel when he fails to present the postconviction court the issue of ineffective assistance of appellate counsel. Id.; Collins, 477 N.W.2d at 376.

Jacobson now claims he did not raise the issue of ineffective assistance of trial counsel on direct appeal because his appellate counsel was ineffective. However, he did not raise ineffective assistance of appellate counsel in his postconviction relief application. He failed to prove any "sufficient reason" for not raising his claim. Based on our supreme court's holding in Collins, we deny Jacobson's claim. We affirm the trial court's denial of postconviction relief.

AFFIRMED.