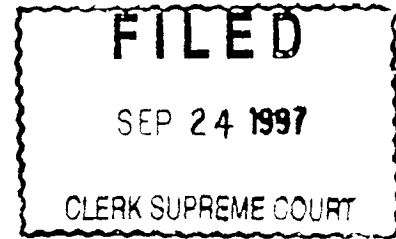


IN THE COURT OF APPEALS OF IOWA

000467

No. 7-407 / 96-1154



STATE OF IOWA,
Appellee,

vs.

LARRY JOE MAXWELL,
Appellant.

Appeal from the Iowa District Court for Woodbury County, Richard J. Vipond
and Michael Walsh, Judges

Larry Maxwell appeals the denials of his motion for a restitution hearing and
of his postconviction relief application, following guilty pleas for two counts of
forgery in violation of Iowa Code sections 715A.1(1), 715A.2(1) and 715A.2(2)(a)
(1993). **AFFIRMED.**

Martha M. McMinn, Sioux City, for appellant.

Thomas J. Miller, Attorney General, Martha E. Boesen, Assistant Attorney
General, Thomas S. Mullin, County Attorney, and Jill Pitsenbarger, Assistant County
Attorney, for appellee.

Considered by Sackett, P.J., and Streit and Vogel, JJ.

VOGEL, J.

Following guilty pleas for two counts of forgery in violation of Iowa Code sections 715A.1(1), 715A.2(1) and 715A.2(2)(a) (1993), Larry Maxwell appeals the denials of his motion for a restitution hearing and of his postconviction relief application contesting the amount of restitution owed.¹ We affirm.

Background facts and proceedings. Larry Maxwell pleaded guilty to two counts of forgery following a plea agreement with the State. Among other things, Maxwell agreed to pay court costs, attorney fees, and "make restitution to all victims of [his] criminal activities, all pursuant to Iowa Code Section 910.2 in such amounts and with such conditions as the Court shall direct." The district court imposed a sentence according to the plea agreement.

Subsequently, the district court entered a restitution order in the amount of \$6483.65. Maxwell filed a pro se motion for a restitution hearing. The district court denied the motion, and Maxwell's request for an appeal of this order was denied by the supreme court. Maxwell subsequently filed an application for postconviction relief which was denied on grounds of claim preclusion and also because claims relating to [redacted] cannot be challenged in a postconviction relief action under Iowa Code [redacted].

¹ Maxwell does not appeal the conviction or the sentence entered against him.

Restitution hearing. Maxwell argues the district court erred in denying a hearing on the amount of restitution owed. He requests this court remand to determine the correct amount of restitution owed by him. Statutory rights are implicated when challenging restitution; accordingly, our scope of review is for correction of errors at law. *State v. Alspach*, 554 N.W.2d 882, 883 (Iowa 1996) (citing *State v. Petrie*, 478 N.W.2d 620, 622 (Iowa 1991)).

We need not reach the merits of Maxwell's contentions as res judicata precludes him from challenging the district court's denial of his request for a restitution hearing. The doctrine of res judicata provides:

[A] final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action.

Iowa Coal Mining Co., v. Star Coal Mining Co., Jim Huyser v. Monroe County, 555 N.W.2d 418, 440 (Iowa 1996) (citing Black's Law Dictionary 1305 (6th ed. 1990)). The State must establish the former case involved the same parties, the same cause of action, and the same issues. *Bloom v. Steeve*, 165 N.W.2d 825, 827-28 (Iowa 1969). The State has established Judge Vipond, in his June 10, 1996 Ruling on Petition for Hearing on Restitution, denied Maxwell's June 10, 1996 request involving the same claims as his first motion dated July 10, 1995. Judge Vipond stated:

The defendant has now [on June 10, 1996] filed a new petition for hearing on restitution. The new petition seeks to assert the same

~~contentions made~~ in the original [July 10, 1995] motion. Hearing on ~~those contentions~~ should be denied for the reasons stated in [Judge Walsh's July 18, 1995] ruling

The first motion was denied by Judge Walsh because Maxwell agreed, as evidenced in a March 16, 1995 determination, that he would pay restitution "to all victims . . . in such amounts and with such conditions as the court shall direct." We are dealing with the same issues of restitution and the same parties, arising out of the same cause of action. Maxwell's petition for hearing on restitution asserts no new claim; he merely uses the postconviction relief avenue in an attempt to revive the issue.

We therefore find Maxwell is procedurally precluded from further pursuing a restitution hearing; the district court correctly denied his motion on two separate grounds: (1) res judicata; and (2) inappropriately applying for postconviction relief in an attempt to contest the amount of restitution owed. We accordingly need not address the postconviction relief claim contesting the amount of restitution owed.

AFFIRMED.