IN THE COURT OF APPEALS OF IOWA

No. 1-17 / 90-512

FILED
APR 23 1991
CLERK SUPREME COURT

RICK DEWAYNE NEBINGER, SR.,

Applicant-Appellant,

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vs.

STATE OF IOWA,

Respondent-Appellee.

Appeal from the Iowa District Court for Scott County, Margaret S. Briles, Judge.

Nebinger sought postconviction relief to challenge his 1985 convictions for first-degree murder and first-degree robbery. The district court denied postconviction relief, and Nebinger has appealed. **AFFIRMED.**

Becky Fitz Flores, Davenport, for appellant.

Bonnie J. Campbell, Attorney General, Bruce Kempkes, Assistant Attorney General, William E. Davis, County Attorney, and James Hoffman, Assistant County Attorney, for appellee.

Considered by Donielson, P.J., and Schlegel and Sackett, JJ.

PER CURIAM

Applicant-appellant Rick Dewayne Nebinger, Sr., appeals the denial of his petition for postconviction relief filed after his first-degree murder conviction was affirmed by this court on direct appeal. State v. Nebinger, 412 N.W.2d 180 (Iowa App. 1987).

Nebinger advances one issue on appeal. The issue he states is:

> The trial court decision fails to adhere to the appropriate de novo standard of review in postconviction relief proceedings that present constitutional issues, resulting in the petitioner being held to an inappropriate burden of proof.

Our review of constitutional issues is de novo, and we review the record accordingly. Iowa Rule App. P. 4. Nebinger's concern seems to be the trial court's rejection in postconviction proceeding of issues he raised on direct appeal. However, as the State points out, Nebinger is limited in postconviction proceedings by issues raised on direct appeal. Iowa Code section 663A.8 provides:

> All grounds for relief available to an applicant under this chapter must be raised in the applicant's original, supplemental or amended application. Any ground finally adjudicated, or not raised, or knowingly, voluntarily, and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent 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.

(Emphasis added.)

Section 663A.8 means what it says. See, e.g., Polly v. State, 355 N.W.2d 849, 855 (Iowa 1984); Herman v. Brewer, 193 N.W.2d 540, 543 (Iowa 1972); State v. Wetzel, 192 N.W.2d 762, 764 (Iowa 1971) (section 663A.8 "clear and unambiguous:" the relitigation "of previously adjudicated issues is barred").

Additionally, Nebinger has not produced evidence of ineffectiveness by his appellate counsel. Rather, in arguing about the issues raised on direct appeal, Nebinger assumes his counsel, who never testified at the postconviction hearing, rendered ineffective assistance. There is no basis for us to entertain this argument. See Cuevas v. State, 415 N.W.2d 630, 632 (Iowa 1987); Kellogg v. State, 288 N.W.2d 561, 566 (Iowa 1980); see also Iowa Code § 663A.8.

AFFIRMED.