

IN THE COURT OF APPEALS OF IOWA

No. 6-636 / 95-2206

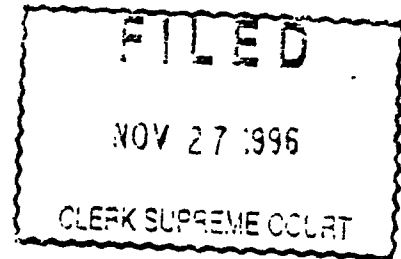
MICHAEL WAYNE REYSACK,

Applicant-Appellant,

vs.

STATE OF IOWA,

Respondent-Appellee.



Appeal from the Iowa District Court for Cerro Gordo County, Jon Stuart Scoles, Judge.

Michael Reysack appeals from the summary dismissal of his application for postconviction relief. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Annette L. Hitchcock, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Martha E. Boesen, Assistant Attorney General, and Paul Martin, County Attorney, for appellee.

Considered by Sackett, C.J., and Cady and Streit, JJ.

PER CURIAM

This is an appeal by an applicant claiming the district court should not have granted summary judgment to the State in his action for postconviction relief. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

In 1993, Michael Reysack had several criminal charges pending against him. On August 16, 1993, his attorney, Michael Short, wrote a letter to the county attorney advising that Reysack had stated it was his intent, rather than permit himself to be sentenced, to bring a weapon with him to court and do physical harm to all persons in the courtroom. The district court permitted Short to withdraw and attorney Joseph Lapointe was appointed to represent Reysack.

On October 15, 1993, Reysack pled guilty to two counts of possession of marijuana, aiding and abetting a burglary in the third degree, forgery, and three counts of forgery by credit card. The sentencing judge knew of Short's letter. The district court imposed the sentence recommended by the State and the presentence investigation report.

On January 30, 1995, Reysack filed an application for postconviction relief. He claimed he received ineffective assistance of counsel at the time of his guilty plea and sentencing. The State filed a motion for summary judgment, which was granted by the district court. Reysack now appeals.

Reysack contends summary judgment was improper in this case because there was a genuine issue of material fact concerning whether he received ineffective

assistance from Short. He claims Short's letter was untrue and prejudiced Lapointe and the sentencing judge against him. In addition, he claims he felt so intimidated by Short's letter that he felt he had to accept the plea agreement.

We find Reysack has not preserved error on his claims. He failed to file a motion in arrest of judgment or an appeal. Furthermore, he does not allege any reason in his application for postconviction relief for not doing so. Iowa Code section 822.8 generally bars applicants in postconviction actions from assigning grounds for relief which were not asserted on direct appeal from criminal conviction. *Kane v. State*, 436 N.W.2d 624, 626 (Iowa 1989).

Even if we address Reysack's claims on the merits, we find the district court properly granted summary judgment to the State. As the district court found, to the extent Short's actions were prejudicial to Reysack, Lapointe could have remedied the situation by requesting a sentencing judge who was unaware of the letter or an appeal could have been taken. Here, however, the district court specifically stated it was not considering the letter in determining an appropriate sentence. We conclude there was no evidence which would support a finding of prejudice, and therefore, Reysack's claim of ineffective assistance of counsel must fail.

We affirm the decision of the district court denying Reysack's claim for postconviction relief. Costs of this appeal are assessed to Reysack.

AFFIRMED.