

IN THE COURT OF APPEALS OF IOWA

No. 0-420 / 88-1560

HERMAN WILSON, JR.

Applicant-Appellant,

vs.

STATE OF IOWA,

Respondent-Appellee.

FILED

NOV 29 1990

CLERK SUPREME COURT

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Appeal from the Iowa District Court for Webster County,
Ronald H. Schechtman, Judge.

Wilson sought postconviction relief to challenge his 1987 conviction for second-degree burglary. The district court denied postconviction relief, and Wilson has appealed. **AFFIRMED.**

Robert M. Sherman, Fort Dodge, for appellant.

Thomas J. Miller, Attorney General, Thomas S. Tauber, Assistant Attorney General, James J. Koll, Webster County Attorney, for appellee.

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

PER CURIAM

Applicant-appellant Herman Wilson, Jr., appeals from the trial court's denial of his application for postconviction relief. Wilson contends his trial counsel was not effective in several respects. We affirm.

Following a jury trial, Wilson was convicted of second-degree burglary. He appealed his conviction on May 26, 1987. The state appellate defender was designated to represent Wilson and on August 14, 1987, the assistant appellate defender filed a motion to withdraw on the grounds that appellant's claims were frivolous. On September 28, 1987, the supreme court dismissed the appeal. Appellant received notice but did not notify the court he disagreed. Appellant had different trial and appellate counsel. Appellant has made no claim that his appellate counsel was not effective.

The State correctly argues appellant's failure to give notice of disagreement with his appellate counsel's withdrawal operates as an election to agree with counsel's decision, Iowa R. App. P. 104(g), and by not pursuing these issues on direct appeal, they cannot be considered at this time. See Iowa Code section 663A.8 (any ground waived in an earlier proceeding may not be the basis for a subsequent application for relief).

Postconviction relief is not a means for relitigating claims that were or should have been properly presented at

trial or on direct appeal. Gavin v. State, 425 N.W.2d 673, 675 (Iowa App. 1988). 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. Id.

The defendant has the burden of proving the existence of a sufficient reason for failing to raise his issues in a timely manner. Id. Ineffective assistance of appellate counsel may provide such a reason. Id. But here, having made no allegation that his appellate counsel was ineffective or incorrect in requesting leave to withdraw on the ground that Wilson's appeal had no merit, Wilson has failed to make the showing of sufficient reason which is necessary before he can be allowed to raise these issues for the first time in postconviction proceedings. We affirm.

AFFIRMED.