IN THE COURT OF APPEALS OF IOWA

No. 8-451 / 97-0626
Filed October 29, 1998

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CLERK SUPREME COURT

HOWARD D. ROUSE,
Appellant,

vs.

STATE OF IOWA,
Appellee.

Appeal from the Iowa District Court for Woodbury County, Phillip S. Dandos, Judge.

On appeal from the dismissal of his postconviction action, Howard Rouse claims the district court erred in granting the State's motion for summary judgment.

AFFIRMED.

Craig H. Lane of Craig H. Lane, P.C., Sioux City, for appellant, and Howard Rouse, Anamosa, pro se.

Thomas J. Miller, Attorney General, Richard J. Bennett, Assistant Attorney General, Thomas S. Mullin, County Attorney, and Karrie S. Kelly, Assistant County Attorney, for appellee.

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

STREIT, J.

Howard D. Rouse contends the trial court erred in dismissing his postconviction application by summary judgment. Because no genuine issue of material fact exists regarding the validity of Rouse's contentions, we affirm the trial court.

I. Background Facts and Proceedings.

Rouse was convicted in 1986 of second-degree murder. He proceeded pro se on appeal. His conviction was affirmed by this court. *State v. Rouse*, No. 86-1695 (Iowa App. Dec. 22, 1988). Rouse filed an application for postconviction relief in 1990 and filed a supplemental application in 1993. The State motioned for summary judgment in 1996. The motion was granted by the court. Rouse appeals.

In his postconviction application Rouse alleged: (1) his trial attorney did not adequately investigate his alleged mental incompetency which prevented him from giving knowing, intelligent, and voluntary statements to police; (2) physical evidence was destroyed by the prosecutor and medical examiner; (3) his trial attorney did not adequately investigate a photograph of the victim which was put into evidence; (4) his trial attorney failed to have an expert witness review a laboratory report; and (5) his trial counsel failed to adequately investigate the identity of all persons at the scene of the crime.

II. Standard of Review.

We review postconviction relief actions involving statutory questions for errors at law. *Webb v. State*, 555 N.W.2d 824, 825 (Iowa 1996); *Love v. Iowa*, 543 N.W.2d 621, 623 (Iowa App.1995); Iowa R. App. P. 4. Summary judgment is appropriate when no genuine issue of material fact exists and the moving party is entitled to a judgment as a matter of law. *Grissom v. State*, 572 N.W.2d 183, 184 (Iowa App. 1997). Our review, when the facts are not in dispute, is to determine whether the moving party was entitled to a judgment as a matter of law. *Overton v. State*, 493 N.W.2d 857, 858-59 (Iowa 1992).

III. Merits.

Rouse's first two contentions concerning his mental state and the handling of evidence were litigated and finally adjudicated in Rouse's direct appeal. An applicant is barred from relitigating in postconviction proceedings any ground which is finally adjudicated on direct appeal. *Armento v. Baughman*, 290 N.W.2d 11, 12 (Iowa 1980). The postconviction court sustained the State's motion for summary judgment on these claims based on this ground. We affirm.

The remainder of Rouse's contentions (3)-(5), pertaining to the conduct of Rouse's trial counsel, were not raised on direct appeal. Postconviction relief may not be granted on assignments not asserted in prior applications for relief in the absence of a showing of good cause. Iowa Code section 822.8 (1997). It has long been held postconviction relief is not a means for relitigating claims that were or should have

been properly presented on direct appeal. *Earnest v. State*, 508 N.W.2d 630, 632 (Iowa 1993). Thus, any claim not properly raised on direct appeal may not be litigated in postconviction unless there is a showing of "sufficient reason" or "cause" for not properly raising it previously, and of actual prejudice resulting from the alleged error. *Jones*, 479 N.W.2d at 271. Ineffective assistance of appellate counsel may provide "sufficient reason" or "cause" to permit the issue of ineffective assistance of trial counsel to be raised for the first time in a proceeding for postconviction relief. *Jones*, 479 N.W.2d at 271.

Rouse offered no explanation of why he did not raise his claims on appeal or allege what prejudice was caused him to the trial court deciding summary judgment. He did, however, by supplemental postconviction application, assert his claims were not preserved because he received ineffective assistance of appellate counsel. He claims he was forced to represent himself because his appellate counsel was prejudiced against him.

Rouse has not established by a preponderance of evidence he received ineffective assistance of appellate counsel. *See Jones v. State*, 479 N.W.2d 265, 271 (Iowa 1991). There is no evidence in the record to prove this allegation other than the bald assertion appellate counsel was prejudiced against him. Bald assertions are not enough to show "sufficient reason" for not having raised an issue on direct appeal. *See Foster v. State*, 395 N.W.2d 637, 638 (Iowa 1986). Further, Rouse has not established actual prejudice resulting from the alleged errors. His allegations directly

contradict the clear evidence on the record. *Id.* Mere allegations do not overcome the presumption the record truly reflects the facts. *Id.*

Because no genuine issue of material fact exists, summary judgment on Rouse's postconviction application is affirmed.

AFFIRMED.