FILED
NOV 3 0 1983
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

KENNETH L. BOYD,	)	
Petitioner-Appellant,	)	Filed November 30, 1983
vs.	)	
STATE OF IOWA,	)	3-304 83-25
Respondent-Appellee.	)	

Appeal from Pottawattamie District Court - Keith E. Burgett, Judge.

Petitioner appeals from the trial court's order denying his application for postconviction relief under Iowa Code ch. 663A. AFFIRMED.

Timothy I. Markel of Meldrum & Markel, Council Bluffs, for petitioner-appellant.

Thomas J. Miller, Attorney General, and Joseph P. Weeg, Assistant Attorney General, for respondent-appellee.

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

DONIELSON, P.J.

Petitioner appeals from the trial court's order denying his application for postconviction relief under Iowa Code ch. 663A. He alleges that his guilty plea to an open charge of murder was involuntary because he was under the influence of drugs at the time. We affirm.

Petitioner pleaded guilty to an open charge of murder in 1976. At a degree of guilt hearing he was found guilty of murder in the first degree. His direct appeal was dismissed pursuant to former rule 16, now Iowa R. App. P. 104. Petitioner filed a verified application for postconviction relief in November, 1980. One of the grounds for the requested relief was that: "At the time of the . . . plea of guilty, plaintiff was under the influence of drugs, particularly triacine and valium, which influence rendered his plea of guilty a nullity because it was not knowingly and intelligently made." At the hearing on the application for postconviction relief, petitioner's lawyer told the court that he wished the petition to be considered on the basis of the affidavit submitted and the court file. The court denied the application in a summary order, and this appeal followed.

Initially, we note that the record is unclear as to whether or not the State participated in the hearing below. It also appears that petitioner had not raised the guilty plea issue in his direct appeal and has not shown sufficient reason for his failure to do so. See Iowa Code § 663A.8. Both of these factors raise preliminary issues of burden of proof as to petitioner's allegation that his guilty plea was not knowingly or voluntarily made.

We need not reach these issues, however, because we believe petitioner has not sustained his primary burden of showing that his guilty plea was not knowing or voluntary. The only evidence that the trial court had on petitioner's claim of being under the influence of drugs at the time he entered his plea is found in petitioner's affidavit:

> While held in Council Bluffs city jail under the influence of drugs I was listless to all that was going on around me. I also have gaps in my recall of many of the days I was held in Council Bluffs and there are still some occasions which I'm not sure of wheather [sic] they happend [sic] or were just imagined. Some things are clear some not so clear.

These general statements do not state specifically that petitioner was unaware or "listless" at the time of the guilty plea proceeding or that the drugs, whatever they may have been, caused him to be ignorant of what was going on at that proceeding. In other words, petitioner does not point to any direct evidence indicating that his being under the influence of drugs had any impact on the knowing and voluntary nature of his guilty plea. See State v. Clark, 187 N.W.2d 717, 720 (Iowa 1971). Petitioner, therefore, has not shown that he is entitled to relief.

Because the trial court correctly decided the merits of this case, we affirm its denial of petitioner's application.

AFFIRMED.