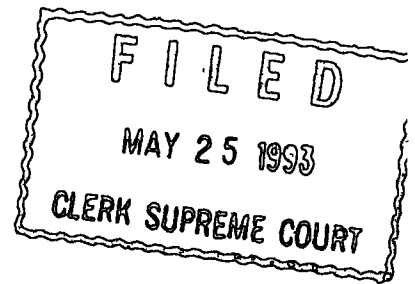


IN THE COURT OF APPEALS OF IOWA

No. 3-172 / 92-522



JEROME DALE ALLEN,

Appellant,

vs.

STATE OF IOWA,

Appellee.

Appeal from the Iowa District Court for Poweshiek County, Richard J. Vogel, Judge.

The applicant appeals the district court's denial of his application for postconviction relief from his conviction and sentence for the offense of operating without a valid license. **AFFIRMED.**

William D. Olson of Charnetski, Olson, Lacina & Pendleton, Grinnell, for appellant.

Bonnie J. Campbell, Attorney General, and Bridget A. Chambers, Assistant Attorney General, for appellee.

Considered by Oxberger, C.J., and Donielson and Habhab,
JJ.

DONIELSON, J.

On August 1, 1990, the defendant, Jerome Dale Allen, was issued a citation for driving while his license was suspended as a habitual violator. The citation alleged Allen had violated section 321.28 of the Iowa Code. Iowa Code section 321.28 (1989) is a directive to the county treasurer concerning registration laws. However, Iowa Code section 321.218 (1989) deals with the violation of driving without a valid license.

Allen made his initial appearance on August 21, 1990. The magistrate informed Allen the code section cited by the officer had been an error and the correct section was section 321.218. The magistrate then read Allen the provisions of section 321.218. The magistrate told Allen he could either enter a plea of guilty to a violation of section 321.218 or he could enter a plea of not guilty. The magistrate further informed Allen that if he entered a plea of not guilty and the State did not amend the citation, the charge would be dismissed. He advised Allen it would be necessary for him to appear at the time of trial because if the State did move to amend the citation, the trial would proceed on the charge as amended.

Allen plead not guilty and the magistrate set the trial date for September 25, 1990. Allen was verbally advised of this trial date and the magistrate wrote the date on Allen's copy of the citation. Allen was later sent a

second notice by mail which confirmed the date of the trial.

On the day of trial, Allen did not appear. The State moved to amend the citation to allege a violation of Iowa Code section 321.218 instead of section 321.28. The magistrate granted the motion. The case immediately proceeded to trial on the amended charge and the magistrate found Allen guilty as charged. The magistrate entered judgment and assessed Allen \$63 in fines and costs.

Allen did not appeal his conviction. On April 25, 1991, Allen filed an application for postconviction relief. Allen alleged the State was improperly permitted to amend the citation and he was denied due process because he received no notice of this amendment. Following a hearing, the district court denied the application.

Allen appeals. He contends the district court should have granted him postconviction relief and his conviction should be reversed. Ordinarily, our review of postconviction relief proceedings is for errors of law. *Hinkle v. State*, 290 N.W.2d 28, 30 (Iowa 1980). However, when a postconviction petitioner asserts a violation of constitutional safeguards, our review is de novo. Id.

Initially, we must examine whether Allen has properly preserved error in his application for postconviction relief. Our courts have long held postconviction relief is not a means for relitigating claims that were or should have been properly presented on direct appeal. *Carroll v.*

State, 466 N.W.2d 269, 271 (Iowa App. 1990) (citing Washington v. Scurr, 304 N.W.2d 269, 271 (Iowa App. 1990)). Any claim not properly raised at trial or on direct appeal may not be litigated in postconviction proceedings unless the defendant can establish, by a preponderance of the evidence, both "sufficient reason" for not having raised the issue at trial and on direct appeal, and actual prejudice resulting from such error. State v. Jones, 479 N.W.2d 265, 271 (Iowa 1991).

Allen contends he never received any notice of the amendment to the charge and therefore he could not have previously raised the notice issue. On our review, we find Allen had sufficient notice of the amendment and that this notice would have enabled him to raise on direct appeal the issues which he presented in his application for postconviction relief.

At the initial appearance, Allen had been advised by the magistrate that there was an error in the code section cited in the citation and the State would have the right to move to amend the citation on the date set for trial. Following the August 21, 1990, trial, judgment was entered against Allen for a violation of section 321.218. Obviously, Allen had sufficient knowledge of the facts and legal contentions of the amendment to enable him to file this application for postconviction relief.

Allen has failed to offer any explanation as to what precluded him from filing a direct appeal but allowed him

to file for postconviction relief other than his assertion that he never received any notice of the amendment. We conclude Allen has not demonstrated sufficient reason for not having raised the issues included in his application for postconviction relief on direct appeal.

Because Allen has failed to preserve his claim for postconviction relief and has not demonstrated a sufficient reason for his failure to do so, we find the district court properly denied Allen postconviction relief and decline to consider issues which should have been raised on direct appeal.

The costs of this appeal are taxed to Allen.

For the reasons stated, we affirm the judgment of the district court.

AFFIRMED.