FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

RICHARD SPENCE,	)	
Petitioner-Appellant,	)	Filed January 29, 1986
vs.	)	263
DAVID SCURR, Warden, Iowa State Penitentiary, and ATTORNEY GENERAL OF THE STATE OF IOWA,	)	5-589 85-153
Respondents-Appellees.	)	

Appeal from the Iowa District Court for Woodbury County - James P. Kelley, Judge.

Petitioner appeals the denial of his application for postconviction relief.

AFFIRMED.

Alfredo G. Parrish, Des Moines, Iowa, for petitioner-appellant.

Thomas J. Miller, Attorney General of Iowa, and Ann DiDonato, Assistant Attorney General; Patrick C. McCormick, Woodbury County Attorney, and Randy S. Hisey, Assistant County Attorney; for respondents-appellees.

Heard by Oxberger, C.J., Snell, and Hayden, JJ.

Petitioner appeals the denial of his application for postconviction relief. He asserts that: 1) his guilty plea was involuntary and unlawfully induced; 2) trial counsel was ineffective in providing him with allegedly inaccurate information concerning the guilty plea; and 3) both trial and appellate counsel were ineffective for failing to file a motion in arrest of judgment for challenging the guilty plea. We affirm.

In April 1978, Richard Spence pled guilty to the charges of rape, kidnapping, and assault with intent to commit rape. The district court was advised that a plea bargain agreement had been reached with the county attorney's office. The court made a complete statement of the plea agreement on the record. The plea agreement provided that the State and the petitioner would jointly recommend concurrent term of years sentences. The agreement further provided that the remaining charges against Spence would be dropped.

During the plea proceeding, Spence was informed that the court was not bound by the sentencing recommendations and that he could receive a life sentence. The court inquired whether any promises regarding sentencing had been made and Spence responded in the negative. The court also informed petitioner of the necessity of filing a motion in arrest of judgment in order to challenge the guilty plea.

The district court issued a life sentence for rape, concurrent sentences of up to five years for kidnapping up to twenty years for the crime of assault with intent to commit rape. Spence fired his trial counsel after sentencing.

On appeal, Spence asserted that his plea was defective. The supreme court affirmed the district court and held that petitioner's failure to file a motion in arrest of judgment foreclosed consideration of this challenge. State v. Spence,

282 N.W.2d 131, 132 (Iowa 1979). The court also held that the district court did not abuse its discretion in sentencing the petitioner.

Spence subsequently filed an application for postconviction relief asserting, in part, that he was denied due process by the supreme court's refusal to review his claim concerning the guilty plea. He also claimed his trial attorney was ineffective.

At the postconviction hearing, Spence testified that his trial attorney did not inform him of the consequences of his plea. He claimed that his trial attorney stated that the plea bargain agreement was guaranteed and that he was induced to accept a plea bargain which he did not understand.

Following the hearing, the postconviction court concluded that petitioner's challenge to the guilty plea had been finally adjudicated on appeal and could not be reconsidered. The court also determined that Spence's claims of ineffective assistance of counsel did not constitute reversible error. Spence has appealed this result.

I.

Spence claims in this appeal that his plea of guilty was unlawfully induced and involuntary. We conclude, as the trial court did, that it is unnecessary to consider the merits of this challenge. Spence is precluded from attacking the constitutionality of the plea by the supreme court's decision on direct appeal. See State v. Spence, 282 N.W.2d 131, 132 (Iowa 1979). There the court held that petitioner's failure to file a motion in arrest of judgment barred consideration of his challenge. The postconviction court was bound by this decision and appropriately declined to reconsider an issue finally determined on direct appeal.

Accordingly, we conclude that postconviction relief was properly denied on this ground.

II.

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Spence's remaining arguments concern the alleged ineffectiveness of trial and appellate counsel. As the postconviction court indicated, the claims of ineffectiveness of trial counsel were not raised on direct appeal. Thus, in order to receive postconviction relief, petitioner must demonstrate: (1) that he had a "sufficient reason" for failing to assert the grounds in the prior proceeding, and (2) that actual prejudice resulted from the failure to raise such grounds. Polly v. State, 352 N.W.2d 849, 856 (Iowa 1984). This criteria has not been satisfied.

Simply stated, the record does not reveal any reason for failing to raise the claim on direct appeal. Ineffective assistance of appellate counsel may provide a sufficient reason. However, this is not claimed by petitioner; nor would it be supported by the record.

We therefore hold that Spence was barred from raising claims of ineffectiveness of trial counsel and affirm the postconviction court in this respect.

Petitioner also argues that appellate counsel was ineffective in failing to file a motion in arrest of judgment. We find this claim to be without merit.

The standard for ineffective assistance of counsel claims is set forth in Strickland v. Washington, 466 U.S. 668, ___, 104 S. Ct. 2052, 80 L. Ed. 2d 674, 698 (1984). There the court stated the petitioner must prove that counsel failed to perform an essential duty as defined by an objective standard of reasonableness, and that there is a reasonable probability that, but for the errors, the result of the proceedings would be different. Id. Petitioner must overcome a presumption that counsel is competent. Sims v. State, 295 N.W.2d 420, 423 (Iowa 1980). While failure to preserve error may amount to ineffective assistance, such error is rarely found to rise to the degree of error as to deny a defendant his right to effective assistance of counsel. State v. Halstead, 362 N.W.2d 504,

508-09 (Iowa 1985). Further, a reasonable decision regarding strategy does not necessarily amount to ineffective assistance simply because the results sought are not obtained. State v. Newman, 326 N.W.2d 788, 795 (Iowa 1982); Sims, at 423.

Applying these principles, we conclude appellate counsel was not ineffective. Petitioner has failed to establish that counsel had a duty to file a motion in arrest of judgment or that the failure to do so resulted in prejudice. At the time of the appeal, Spence's primary complaint was with the sentence received, not with the guilty plea. The record indicates that appellate counsel made a tactical decision to concentrate on the excessiveness of the sentence imposed. This does not constitute reversible error. As with trial counsel, appellate counsel is allowed to determine the proper strategy and is not required to raise every colorable issue at the risk of burying good arguments. Jones v. Barnes, 463 U.S. 745, 752-54, 103 S. Ct. 3308, 3313, 77 L. Ed. 2d 987, 994-95 (1983).

Finding no error, we affirm.

AFFIRMED.