

IN THE COURT OF APPEALS OF IOWA

FILED

JUN 25 1985

CLERK SUPREME COURT

STEVEN MICHAEL FERRIS,)

Petitioner-Appellant,)

vs.)

STATE OF IOWA,)

Respondent-Appellee.)

Filed June 25, 1985

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5-201
84-614

Appeal from the Iowa District Court for Black Hawk County - L. D. Lybbert,
Judge.

Petitioner appeals from a denial of postconviction relief, asserting that the evidence was sufficient to establish ineffective assistance of trial counsel consisting of failure to timely advise petitioner of his right to waive jury trial.
AFFIRMED.

Thomas M. McIntee of McIntee & McIntee, Waterloo, for petitioner-appellant.

Thomas J. Miller, Attorney General, and Rebecca L. Claypool, Assistant Attorney General, for respondent-appellee.

Considered by Oxberger, C.J., and Danielson and Schlegel, JJ.

DONIELSON, J.

Petitioner appeals from a denial of postconviction relief asserting that evidence was sufficient to establish that trial counsel was ineffective in failing to timely advise him of his right to waive a jury trial. We affirm.

Steven Ferris was convicted on a charge of robbery in the second degree following a jury trial. His direct appeal was voluntarily dismissed in 1982. Application for postconviction relief was filed in 1982 and subsequently denied.

In responding to petitioner's appeal, the State asserts inter alia that a sufficient reason was not shown why the issue could not have been raised on direct appeal. We are inclined to agree.

Iowa Code section 663A.8 provides:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not raised, or knowingly, voluntarily, and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental, or amended application.

In accordance with this section, it is necessary for petitioner to show a "sufficient reason" for not raising the issue in a prior proceeding and actual prejudice. Polly v. State, 355 N.W.2d 849, 856 (Iowa 1984).

As the postconviction court indicates, Ferris has not claimed or made any showing as to why the denial of a request for a non-jury trial or trial counsel's failure to file a timely waiver of a jury trial was not raised on direct appeal. The record only shows that a direct appeal was taken and voluntarily dismissed. Because petitioner has failed to show a sufficient reason for not raising this claim on appeal, he is barred from postconviction relief.

We note parenthetically, however, that trial counsel's alleged failure to file a timely waiver of a jury trial would not constitute ineffective assistance in this

particular case. Even assuming trial counsel breached a duty, petitioner has not demonstrated that he was prejudiced by counsel's decision to try the case before a jury rather than before a judge. See Strickland v. Washington, ____ U.S. ____, ____ 104 S. Ct. 2052, 2068, 80 L. Ed. 2d 674, 698 (1984).

AFFIRMED.