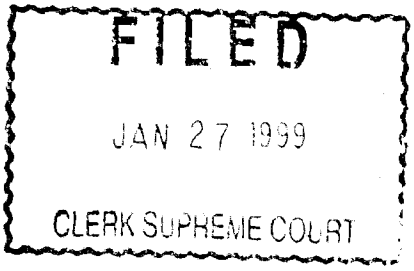
IN THE COURT OF APPEALS OF IOWA

No. 8-611 / 97-1365
Filed January 27, 1999



WENDELL HARRINGTON,

Appellant,

vs.

STATE OF IOWA,

Appellee.

Appeal from the Iowa District Court for Polk County, Jack D. Levin, Judge.

Wendell Harrington challenges the district court order denying him postconviction relief. **AFFIRMED.**

Wendell Harrington, Anamosa, pro se.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney General, John P. Sarcone, County Attorney, and Steve Foritano, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Huitink, Streit, Vogel, and Mahan, JJ. Zimmer, J., takes no part.

STREIT, P.J.

Wendell Harrington appeals the denial of his postconviction relief application, alleging trial counsel was ineffective in failing to object to a jury instruction and appellate counsel "failed to argue said issue as appellant has presented it to this court." We affirm.

Harrington was arrested and charged with exercising control over stolen property. After conviction by a jury, the court sentenced him to an indeterminate two-year term of imprisonment. On direct appeal, defendant's ineffective assistance of counsel and sufficiency of evidence claims proved unsuccessful. *See State v. Harrington*, No. 94-420 (Iowa App., filed April 10, 1995).

In his direct appeal, Harrington raised an ineffective assistance of trial counsel claim based on jury instruction 21,[1] arguing key words in the instruction were prejudicial. In this PCR appeal, he raises a claim the instruction was improper and highly prejudicial as an impermissible comment on the evidence. The supreme court on direct appeal determined Harrington suffered no prejudice from jury instruction 21. The district court in the PCR proceeding found that although the instruction was

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[1] Jury instruction 21 read:

If the State has proved each of the following facts, then you may conclude that the Defendant knew or believed the property had been stolen:

1. The property found in the defendant's possession was stolen property,
2. The property was recently stolen.

improperly submitted, the defendant failed to prove the requisite prejudice due to the overwhelming evidence.

Grounds not raised on direct appeal may not be raised in a postconviction relief proceeding without showing good cause for not raising it on direct appeal. Iowa Code § 822.8; *Collins v. State*, 477 N.W.2d 374, 376 (Iowa 1991). Harrington's only explanation of why *this* claim was not raised on appeal is his statement:

> Appellant on both direct appeal, as well as postconviction relief raised the issue of Jury Instruction No. 21, each time Appellant conferred with Counsel as to the proper way to argue said issues, and each time Counsel failed to argue said issue as Appellant has presented it to this Court.

Harrington has not properly raised this issue or demonstrated good cause for not raising it on direct appeal. Therefore we do not address it in this appeal from the denial of his postconviction relief application. Even if Harrington had preserved this issue for our review we would affirm, concluding the determination by the supreme court on direct appeal that giving or not giving instruction 21 was not sufficient to generate prejudice under the standards of *Strickland v. Washington* is dispositive, no matter how Harrington wants to present it.

AFFIRMED.