

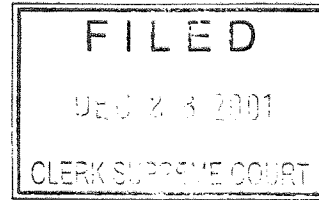
IN THE COURT OF APPEALS OF IOWA

No. 1-817 / 00-0633
Filed December 28, 2001

JODI A. DEVOSS,
Plaintiff-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.



Appeal from the Iowa District Court for Scott County, David E. Schoenthaler, Judge.

Jodi DeVoss appeals a district court order denying her application for postconviction relief. **AFFIRMED.**

Thomas H. Preacher and Patrick Kelly, Bettendorf, for appellant.

Thomas J. Miller, Attorney General, and Cristen C. Odell, Assistant Attorney General, for appellee.

Considered by Huitink, P.J., and Zimmer and Vaitheswaran, JJ.

HUITINK, P.J.

Jodi DeVoss was convicted of first-degree robbery in violation of Iowa Code section 711.2 (1999). On direct appeal, DeVoss's claims that there was insufficient evidence to support her conviction and that the trial court erred in denying her motion for continuance were resolved against her. This appeal follows the denial of her subsequent petition for postconviction relief. Here, DeVoss argues she was denied effective assistance of trial counsel based on counsel's failure to call her as a witness or to attempt to sever her trial from that of her codefendants. She also argues she was denied the right to a fair trial due to prosecutorial misconduct. Finally, in the context of the postconviction proceeding, DeVoss contends the district court erred in not allowing her to call the victim to testify to the prosecutor's alleged misconduct.

Generally, a claim not raised on direct appeal cannot be raised in a postconviction relief proceeding. *Ledezma v. State*, 626 N.W.2d 134, 141 (Iowa 2001). Only where the applicant demonstrates sufficient cause for her failure to challenge the alleged errors in the trial court, and actual prejudice resulting from these errors, will we address them in a postconviction proceeding. *Polly v. State*, 355 N.W.2d 849, 856 (Iowa 1984). DeVoss asserts no reasons for her failure to present ineffective assistance of trial counsel or prosecutorial misconduct claims on direct appeal; thus, we decline to address them, as they are not preserved for review. See *Kane v. State*, 436 N.W.2d 624, 627 (Iowa 1989) (defendant ordinarily may not claim in postconviction proceeding that trial court erred on issues not properly presented for review on direct appeal); *Waterbury v. State*, 387 N.W.2d 309, 310 (Iowa 1986) (postconviction proceeding not avenue for litigating issues not properly preserved for review on direct appeal). Any error by

the district court at the postconviction hearing in not allowing the victim to be subpoenaed is accordingly without prejudice.

We affirm the district court in its entirety.

AFFIRMED.