

IN THE COURT OF APPEALS OF IOWA

No. 8-254 / 96-1133

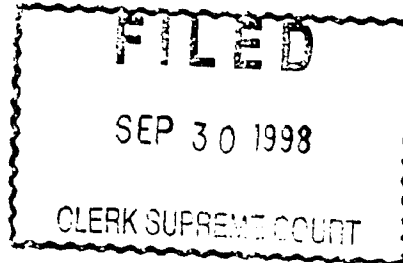
JERRY WAYNE KLEISS,

Applicant-Appellant,

vs.

STATE OF IOWA,

Respondent-Appellee.



Appeal from the Iowa District Court for Marion County, James W. Brown,
Judge.

Jerry Kleiss appeals from the denial of his postconviction relief applications.

AFFIRMED.

Robert W. Conrad of the Conrad Law Firm, Knoxville, for appellant.

Thomas J. Miller, Attorney General, Robert P. Ewald, Assistant Attorney
General, and Terry E. Rachels, County Attorney, for appellee.

Considered by Sackett, P.J., and Huitink and Mahan, JJ.

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PER CURIAM.

This is an appeal by applicant-appellant Jerry Wayne Kleiss claiming his application for postconviction relief should not have been dismissed. Kleiss claims he received ineffective assistance because his defense counsel did not explore whether he was mentally competent to enter a guilty plea. We affirm.

Kleiss committed a series of burglaries of tools from implement dealers. He entered into one plea agreement which covered charges in three counties. He entered a guilty plea in Marion County to a charge of burglary in the second degree. He pled guilty to theft in the first degree in Louisa County. He entered a plea of guilty to possession of burglar's tools and to being a habitual offender in Lee County.

In 1991, Kleiss filed a pro se application for postconviction relief. In 1993, he filed a second application. In these applications he claimed he received ineffective assistance due to his counsel's failure to include all the terms of his plea agreement in the record. He claimed the omitted parts of the plea agreement were essential to his acceptance of the plea agreement. He asserted the State violated the terms of the plea agreement, the plea agreement should be set aside, and he should be granted a trial. The applications were consolidated and dismissed without a hearing.

On appeal, we reversed and remanded for a hearing on the issues of whether all the terms of the plea agreement were included in the record and whether the State violated the terms of the plea agreement. *Kleiss v. State*, No. 94-327 (Iowa App. Feb. 28, 1995).

After a hearing, the district court concluded Kleiss had not established there were additional terms of the plea agreement which were not included in the record. The court concluded Kleiss did not show he received ineffective assistance of counsel. Kleiss's application for postconviction relief was dismissed. Kleiss appealed.

On this appeal, Kleiss raises a new issue. He claims there is a possibility he was not mentally competent to enter a guilty plea. He asserts he was not able to raise this issue previously and should be permitted to raise it now. He does not argue any issues which were previously raised in his postconviction action.

The issue of Kleiss's mental competence is being raised for the first time in this appeal. Kleiss has failed to preserve this issue for review. On appeal, we should not address issues, even of constitutional magnitude, if error has not been preserved on the issue in the postconviction court. *Patchette v. State*, 374 N.W.2d 397, 404 (Iowa 1985). An issue that has not been raised on direct appeal or in an application for postconviction relief may not be raised for the first time on appeal. *See Luke v. State*, 465 N.W.2d 898, 900 n.1 (Iowa App. 1990). A party's failure to preserve error bars our review. *Harper v. State*, 397 N.W.2d 740, 742 (Iowa 1986).

We affirm the decision of the district court denying Kleiss's application for postconviction relief. Costs of this appeal are assessed to Kleiss.

AFFIRMED.