IN THE COURT OF APPEALS OF IOWA

No. 3-503 / 92-1268

FILED
DEC 29 1993
CLERK SUPREME COURT

JOHN F. SYKES,

Appellant,

vs.

STATE OF IOWA,

Appellee.

Appeal from the Iowa District Court for Black Hawk County, George L. Stigler, Judge.

Sykes appeals the district court's denial of his application for postconviction relief. **AFFIRMED.**

Paul T. Shinkle, Cedar Falls, for appellant.

Bonnie J. Campbell, Attorney General; Sheryl A. Soich, Assistant Attorney General; Thomas J. Ferguson, County Attorney, and Thomas N. Bower, Assistant County Attorney, for appellee.

Considered by Donielson, P.J., and Schlegel and Hayden, JJ.

000628

DONIELSON, P.J.

The court of appeals affirmed John Sykes' conviction on two counts of sexual abuse in the second degree on August 23, 1989. Sykes was represented by an assistant state appellate defender in that appeal and did not raise the issue of ineffective assistance of trial counsel.

Sykes filed an application for postconviction relief. An amended application alleged that Sykes had been denied effective assistance of counsel during his criminal trial because counsel failed to object to the striking of all African-Americans from the jury panel. The matter was heard by the court on July 31, 1992.

The district court denied Sykes' application for postconviction relief. It concluded the issue could have been raised on direct appeal; counsel's representation was within the range of competence; and even if the two women had been on the jury, the result of the trial would not have been different because the evidence against Sykes was overwhelming.

Sykes now appeals, arguing that the trial court erred in denying his application. The State contends Sykes failed to preserve error since the issue was not raised on appeal and Sykes has not argued that appellate counsel was ineffective. Sykes responds that he could not have raised the issue on direct appeal because there was no record on which to base the argument at that time.

000829

Postconviction relief proceedings under Iowa Code chapter 663A (1991) (now chapter 822) "are civil actions at law and ordinarily reviewed on error." Kane v. State, 436 N.W.2d 624, 626 (Iowa 1989); Iowa R. App. P. 4.

Section 663A.8 prevents applicants from raising grounds for relief which were not raised on direct appeal unless "sufficient reason" is shown. Iowa Code § 663A.8 (1991); Kane, 436 N.W.2d at 626-27; Washington v. Scurr, 304 N.W.2d 231, 234-35 (Iowa 1981). In some instances, failure to preserve error "may be so egregious" that it provides sufficient reason. Id. at 235; see State v. Steltzer, 288 N.W.2d 557, 560 (Iowa 1980). We have no such instance here. Appellant asserts the claim of ineffective assistance of counsel was not raised on direct appeal because "it was highly unlikely a reversal would occur, [and] there was absolutely no indication in the record." An inadequate record is not sufficient reason not to raise the issue on direct appeal. This court preserves claims of ineffective assistance of trial counsel for postconviction relief proceedings when the trial record is inadequate to permit us to resolve the claim on direct appeal. State v. Koenighain, 356 N.W.2d 237, 238 (Iowa App. 1984); see State v. Mulder, 313 N.W.2d 885, 890 (Iowa 1981); State v. Nebinger, 412 N.W.2d 180, 191-92 (Iowa App. 1987).

The district court correctly concluded appellant could have raised the issue of ineffective assistance of trial counsel on direct appeal. Because appellant failed to

000630

raise his claim of ineffective assistance of counsel on direct appeal, we decline to reach the merits of the claim in this postconviction proceeding. Accordingly, we affirm the decision of the district court denying appellant's application for postconviction relief.

AFFIRMED.