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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

JOHN EDWARD THOMPSON,	)	
Applicant-Appellant,	)	Filed November 30, 1987
vs.	)	460
STATE OF IOWA,	)	7-404 86-1638
Respondent-Appellee.	)	

Appeal from the Iowa District Court for Black Hawk County (No. 65969) - Joseph C. Keefe, Judge.

Applicant appeals from the district court's denial of postconviction relief.

AFFIRMED.

Steven J. Rapp, Waterloo, for applicant-appellant.

Thomas J. Miller, Attorney General; Richard J. Bennett, Assistant Attorney General; and James Metcalf and Scott Lemke, Assistant County Attorneys, for respondent-appellee.

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

HAYDEN, J.

Applicant, John Edward Thompson, appeals the district court's denial of his application for postconviction relief from his conviction of one count of first degree robbery and two counts of assault. In his application, Thompson challenges his guilty pleas to these charges. He asserts he pleaded guilty because of misinformation from his trial counsel and this denied him effective assistance of counsel. The state asserts Thompson waived his claim by failure to file a motion in arrest of judgment, and by failure to respond to his appellate counsel's application to withdraw on the ground his appeal was frivolous. We affirm.

Before we can reach the merits of Thompson's assertions, he must establish by a preponderance of the evidence "sufficient reason" for failing to file a motion in arrest of judgment in the trial court. Iowa Code §663A.8 (1985); Wenman v. State, 327 N.W.2d 216, 217 (Iowa 1982). We note that even issues of a constitutional magnitude will not be addressed in a postconviction action if they were not raised first in the trial court. Fryer v. State, 325 N.W.2d 400, 405 (Iowa 1982).

Thompson contends he had no time to file a motion in arrest of judgment because he was sentenced immediately. He acknowledges the trial court mentioned his right to file such a motion, but he contends he did not understand the meaning of the motion until he arrived at the correctional facility in Anamosa.

The record in this case, however, belies Thompson's contentions. The transcript of the plea and sentencing hearing held on November 26, 1984 reveals the following:

> THE COURT: You have a right to a delay in time for sentencing, and also to have a pre-sentence report prepared by our probation

people before sentence is passed. And you also have a right to file what's called a Motion in Arrest of Judgment. And if you do not file that Motion in Arrest of Judgment, you very largely give up for the future any basis to challenge these guilty pleas. And that's what you have to give up if you proceed to immediate sentence. And have you discussed that with Mr. Wegman, the matter of immediate sentence?

THE DEFENDANT: Yes.

THE COURT: It is your desire to go ahead and be sentenced today and dispose of the matter?

THE DEFENDANT: Yes, sir.

THE COURT: And, Mr. Wegman, is he waiving his right to file a Motion in Arrest of Judgment?

MR. WEGMAN [Thompson's trial counsel]: Yes, he is waiving his right of a Motion in Arrest of Judgment and to waive any additional time between the plea and sentencing, and to waive the having of a pre-sentence report before he is sentenced.

You wish to waive all of that?

THE DEFENDANT: Yes.

* * *

THE COURT: I don't have anything further to say. The reason for the sentence obviously is the mandatory nature of the sentence under Counts II and III, and the nature of the offense itself under Count I.

You do have a right to appeal this to the Supreme Court of Iowa even though you plead guilty to all three counts. If you are to take an appeal, you must serve legal notice on the County Attorney and Clerk of Court within 60 days from today or you give up that right. If you decide to appeal, counsel and records will be provided for you.

The next day, November 27, the following colloquy ensued:

THE COURT: For the record, yesterday Mr. Thompson was in court and entered pleas of guilty to all three Counts of the Information. The first was Robbery in the First Degree, and Count II and Count III each charged the offense of Assault While Participating in a Felony. And it occurred to me last evening that I had neglected on Counts II and III to inform Mr. Thompson at any length of what the State would have to prove if he continued with a not guilty plea and those cases went to trial.

> Assault While Participating in a Felony is an assault or physical attack on an individual while you are participating in a or involved in committing a felony, and in this case a felony was the robbery. And so that's what the State would have to prove, that you physically attacked or assaulted an individual in each case and you did that while you were, you did that while you were involved in a robbery being committed against them. Do you want to talk a little about it?
>
> MR. WEGMAN: No, we talked about it. Thank you.
>
> THE COURT: The Supreme Court requires that you be aware of those things to know what the State would have to prove before your guilty plea could be accepted. And now that you know what it is the State would have to prove on those Counts, do you reaffirm your guilty pleas or do you —
>
> THE DEFENDANT: No, I completely understand everything and am sticking with what we already went through yesterday.
>
> THE COURT: So you are not asking to withdraw your guilty pleas on Counts II and III then?
>
> THE DEFENDANT: No, sir.

On November 26, Thompson clearly stated he desired to be sentenced immediately and explicitly waived his right to a motion in arrest of judgment after the trial court carefully explained the adverse consequences of a waiver. On November 27, Thompson affirmed his intention to plead guilty.

Under these facts, we conclude Thompson has failed to show by a preponderance of the evidence "sufficient reason" for failing to file a motion in arrest of judgment in the trial court. As such, we do not reach the merits of Thompson's claim his trial counsel was ineffective. Since we have determined Thompson waived his claim of ineffective assistance of trial counsel, we further conclude his appellate counsel was not ineffective for failing to raise the issue.

AFFIRMED.