FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 9-545 / 89-280

247

LEONARD A. RAYLS,

Appellant,

vs.

STATE OF IOWA,

Appellee.

Appeal from the Iowa District Court for Story County, Carl E. Peterson, Judge.

Leonard A. Rayls appeals from a district court ruling denying his application for postconviction relief. **AFFIRMED.**

Lawrence E. Jahn of Smith, Nutty, Sharp, Benson & Jahn, Ames, for appellant.

Thomas J. Miller, Attorney General, Julie A. Halligan, Assistant Attorney General, and Mary E. Richards, Story County Attorney, for appellee.

Considered by Oxberger, C.J., and Donielson and Habhab, JJ.

OXBERGER, C.J. 248

Petitioner Leonard A. Rayls (Rayls) appeals from a district court ruling denying his application for postconviction relief. Rayls contends his trial attorney rendered ineffective assistance by failing to call certain alibi witnesses and by failing to consult adequately with him about defense strategy. We affirm.

Petitioner was convicted of robbery in the first degree in 1985. His direct appeal was dismissed as frivolous by the Iowa Supreme Court pursuant to Iowa R. App. P. 104.

Rayls later filed the present application for postconviction relief. The district court denied postconviction relief, and Rayls has appealed.

Rayls contends his attorney in the 1985 criminal trial rendered ineffective assistance by failing to consult with Rayls about defense strategy, by failing to obtain from Rayls the names of possible alibi witnesses, and by failing to call certain alibi witnesses to testify.

In his application for postconviction relief, Rayls indicates that he filed a timely notice of direct appeal on December 5, 1985. Rayls further states:

> The grounds for the appeal were, generally, the credibility of the alleged victim's identification of the Applicant versus the credibility of the Applicant's alibi that he was in Sioux City. The appeal did not raise the issue of two alibi witnesses who were available but not called.

The State asserts that Rayls' current postconviction relief action is barred pursuant to Iowa Code section 663A.8 (1987). We agree. Section 663A.8 provides:

> Any ground finally adjudicated or not raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding applicant has taken to secure relief, may not be the basis for a subsequent application [for postconviction relief] unless the court finds a ground for relief asserted which for sufficient reason was not asserted . . . .

As noted, Rayls seeks postconviction relief on the basis of ineffective assistance of counsel due to his trial counsel's failure to call two available alibi witnesses. This issue was not raised on direct appeal and cannot be raised in a postconviction relief proceeding unless Rayls "establishes by a preponderance of the evidence 'sufficient reason' for not having raised the . . . issue on his direct appeal." Hinkle v. State, 290 N.W.2d 28, 31 (Iowa 1980). Rayls must also show by a preponderance of the evidence actual prejudice resulting from the alleged errors. Polly v. State, 355 N.W.2d 849, 856 (Iowa 1984).

Rayls does not allege nor seek to establish sufficient reason for not having raised the issue of effectiveness of trial counsel on direct appeal. "[I]neffective assistance of appellate counsel may provide the 'sufficient reason' necessary to allow a petitioner to raise for the first time in postconviction the ineffective assistance of trial counsel." Gavin v. State, 425 N.W.2d 673, 675 (Iowa App.

1988)(citing State v. White, 337 N.W.2d 517, 520 (Iowa 1983)); see also Hinkle, 290 N.W.2d at 31. Rayls, however, does not claim ineffective assistance of appellate counsel. Therefore, we find Rayls' postconviction relief action is barred pursuant to Iowa Code section 663.A.8. Consequently, we affirm Rayls' conviction of first-degree robbery.

AFFIRMED.