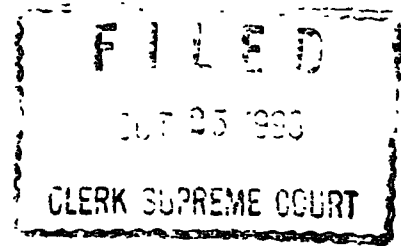


IN THE COURT OF APPEALS OF IOWA

No 6-368 / 95-0395



RICKY EARNEST PEEPLES,
Appellant,

vs.

STATE OF IOWA,
Appellee.

Appeal from the Iowa District Court for Black Hawk County, Robert E. Mahan,
Judge.

Ricky Peeples appeals the district court's denial of his postconviction relief
application. **AFFIRMED.**

Janet K. Hong, Cedar Rapids, for appellant.

Thomas J. Miller, attorney General, Thomas S. Tauber, Assistant Attorney
General, Thomas J. Ferguson, County Attorney, and Shawn Wehde, Assistant County
Attorney, for appellee.

Heard by Sacket, C.J., and Huitink and Streit, JJ.

HUTTINK, J.

Ricky Earnest Peeples appeals the denial of his claim for postconviction relief. We affirm.

Peeples was charged by trial information with attempted murder and first degree burglary. He waived his right to a speedy trial and his right to a jury trial. He relied on a defense of intoxication at his bench trial held in August of 1991. Peeples was convicted on both counts. He was also found in possession of a firearm during the incident and was therefore subject to the enhanced sentence required by Iowa Code Section 902.7. Peeples was sentenced to twenty-five years on each count, to be served concurrently, and was sentenced to the mandatory five-year minimum for use of a firearm.

Peeples appealed his conviction and sentence. We affirmed but preserved the issue of ineffective assistance of counsel for postconviction relief. *State v. Peeples*, No. 91-1457 (Iowa App. Feb. 2, 1993). His subsequent Application for Further Review was denied by the Iowa Supreme Court. *State v. Peeples*, No. 91-1457 (Iowa Apr. 2, 1993).

Peeples filed an Application for postconviction relief in July of 1993 alleging ineffective assistance of counsel. After a hearing in January of 1995, the district court denied the application.

On appeal, Peeples raises four separate allegations of ineffective assistance of counsel. First, he argues that trial counsel failed to conduct an independent investigation and instead relied on the State's investigation. Next, he contends that trial counsel failed to properly advise him of the consequences of waiving his rights to jury trial and speedy trial. He then makes a general claim criticizing counsel's presentation at trial. Finally, he argues that trial counsel failed to adequately present witnesses and evidence supporting Peeples' defense of intoxication. Overall, Peeples contends, trial counsel's deficient performance pre-trial and during the trial resulted in substantial prejudice.

In order to assert a claim of ineffective assistance of trial counsel in a post-conviction proceeding, an applicant . . . ordinarily must show that his claim was preserved for review by being made on direct appeal. *LeGrand v. State*, 540 N.W.2d 667, 668-9 (Iowa App. 1995), *quoting Collins v. State*, 477 N.W.2d 374, 376 (Iowa 1991). However, a claim of ineffective assistance of counsel may be made in a postconviction proceeding, even if not made on direct appeal, if the applicant establishes by a preponderance of the evidence "sufficient reason" or "cause" for not having raised the issue on direct appeal. *Id.*; *see also* Iowa Code § 822.8 (1995). Ineffective assistance of appellate counsel may provide sufficient reason or cause to permit the issue of ineffective assistance of trial counsel to be raised for the first time in a proceeding for postconviction relief. *Collins*, 477 N.W.2d at 376.

We find that Peeples has not preserved error on any of his claims. On direct appeal, Peeples raised only the waiver issues and trial counsel's failure to file a motion to suppress or otherwise object to evidence seized by police from Peeples' apartment. We ordered these claims preserved at that time. We cannot preserve ineffective assistance claims that are general in nature, but rather, we can only preserve the specific claims before us at that time. *Dunbar v. State*, 515 N.W.2d 12, 15 (Iowa 1994). Peeples has not alleged that his appellate counsel was ineffective and therefore he had cause for failing to raise all his issues on direct appeal. *See Collins*, 477 N.W.2d at 376; *see also LeGrand*, 540 N.W.2d at 668. Peeples has also failed to show other reasons for not raising his claims concerning defense counsel's inadequate investigation, performance at trial, and presentation of his intoxication defense in his direct appeal. *Id.*

While the postconviction court did not rely on Peeples' failure to preserve error in denying his application, we will affirm on appeal "where any proper basis appears for the district court's ruling, even though it is not the one upon which the court based its ruling." *Collins*, 477 N.W. 2d at 376.

Peeples' waiver claims were not addressed by the district court. The record does not include any indication Peeples sought by appropriate post-trial motion to secure a ruling on these issues. *See Iowa R. Civ. P. 179(b)*. His failure to obtain such a ruling

precludes our consideration of the waiver issues on appeal. See Iowa Code § 822.8 (1995); *Jasper v. State*, 477 N.W.2d 852, 857 & n. 2 (Iowa 1991).

In his reply brief, Peebles appears to argue, without citing any statutory or caselaw authority, that general ineffective assistance claims are preserved for review, and we are permitted to consider the totality of trial counsel's performance. We disagree. See *Collins*, 477 N.W.2d at 377; see also Iowa Code § 822.8 (1995) ("All grounds for relief available to an applicant under this chapter must be raised in the applicant's original, supplemental or amended application."). A postconviction proceeding is not an alternative avenue for litigating issues that were not properly preserved for review on direct appeal. *Collins*, 477 N.W.2d at 377. Peebles will not be permitted to raise new allegations of ineffective assistance of counsel that were not considered on direct appeal or by the postconviction court. Accordingly, we affirm the district court's decision in its entirety.

AFFIRMED.