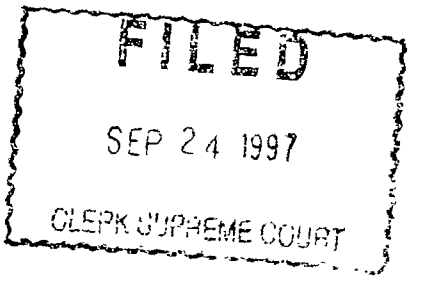
IN THE COURT OF APPEALS OF IOWA

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No. 7-406 / 96-1114
Filed September 24, 1997



MICHAEL BRANT,
Appellant,

vs.

STATE OF IOWA,
Appellee.

Appeal from the Iowa District Court for Black Hawk County, August F. Honsell, Judge.

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

James T. Peters, Independence, 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.

Considered by Sackett, P.J., and Streit and Vogel, JJ.

STREIT, J.

Defendant, Michael Brant, contends his trial counsel was ineffective because he did not file motions to suppress evidence obtained from searches of Brant's person and vehicle. Brant contends the searches were unlawful. He raised his ineffective assistance claim in postconviction relief hearings, but not on direct appeal. He made no showing of why his claim was not raised on direct appeal. Consequently, his claim was not preserved for appellate review and is barred.

I. Background Facts and Proceedings.

In September, 1991, Brant had his car searched by a deputy after it was towed from a county blacktop road. The deputy discovered shell casings and a pistol in the car. Brant was charged with terrorism and possession of a firearm.

A month later, a citizen informant told an officer a specific car would be traveling from Waverly to Waterloo to deliver drugs. Brant was observed by the officers coming into Waterloo in a vehicle matching the informant's description. Brant was arrested and he and his vehicle were searched. Officers found a vial in his pants pocket and drugs in his vehicle. Brant was charged with possession of a controlled substance with intent to deliver and failure to affix a drug tax stamp.

Brant entered a plea of guilty to assault using a dangerous weapon, possession of a firearm by a felon, possession of a controlled substance with intent to deliver, and failure to affix a drug tax stamp. He was sentenced to a maximum of two years in prison for the weapon and firearm conviction and a maximum of ten years in prison

and $1000 fine for the drug conviction. The court followed the State's recommendation that Brant's sentences run concurrently.

Brant filed an application for postconviction relief alleging his counsel provided ineffective assistance by failing to file motions to suppress. The postconviction court denied the motions. Brant appeals.

II. Scope of Review.

Postconviction relief review is generally for errors of law. *Marbrier v. State*, 519 N.W.2d 84,85 (Iowa 1994). If a constitutional issue is raised, however, the appellate court reviews the postconviction court's ruling "in light of the totality of the circumstances and the record upon which the postconviction court's ruling was made." This is the functional equivalent of de novo review. *Giles v. State*, 511 N.W.2d 622, 627 (Iowa 1994); *Hinkle v. State*, 290 N.W.2d 28, 30 (Iowa 1980).

III. Preservation of Error for Appellate Review.

Postconviction proceedings are not a way to litigate issues not properly preserved for appellate review. *Washington v. Scurr*, 304 N.W.2d 231, 235 (Iowa 1981). To assert a claim of ineffective assistance of counsel by postconviction proceeding it must be shown the claim was preserved for review by being made on direct appeal. *LeGrand v. State*, 540 N.W.2d 667, 668 (Iowa App. 1995) (citations omitted). A claim of ineffective assistance of trial counsel may be made in a postconviction proceeding, however, even if not made on direct appeal, if defendant

establishes a "sufficient reason" or "cause" for not having raised the issue on direct appeal. *Id.* The reason must be proven by preponderance of the evidence. *Id.*

Brant did not raise his ineffective assistance of counsel claim on direct appeal. He has made no attempt to show sufficient reason or cause for his failure to do so. Consequently, his claim of ineffective assistance of counsel is barred. *See LeGrand*, 540 N.W.2d at 669; *Collins v. State*, 447 N.W.2d 374, 376 (Iowa 1991); *Washington*, 304 N.W.2d at 235. Ineffective assistance of appellate counsel may provide sufficient reason or cause to permit the issue of ineffective assistance of trial counsel for postconviction relief. *Id.* We conclude there is an inadequate record to decide whether Brant's first appellate counsel was ineffective. We preserve the issue of whether his first appellate counsel was ineffective for further proceedings.

AFFIRMED.