

IN THE COURT OF APPEALS OF IOWA

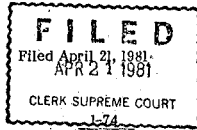
GARY LEE BELL,

Plaintiff-Appellant,

vs.

STATE OF IOWA,

Defendant-Appellee.



65287

Appeal from Black Hawk District Court - L. John Degnan and Roger F. Peterson,
Judges.

Defendant appeals from trial court's order denying his application for postconviction relief following that court's order revoking his probation and subjecting him to a ten-year sentence for breaking and entering in violation of section 708.8, The Code 1977. He urges that the court erred in revoking his probation for failure to maintain employment and that such action constitutes cruel and unusual punishment.
AFFIRMED.

Stanford J. Patterson of the Patterson Law Firm, Waterloo, Iowa, for plaintiff-appellant.

Thomas J. Miller, Attorney General of Iowa; Lona Hansen, Assistant Attorney General; and David H. Correll, Black Hawk County Attorney; for defendant-appellee.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Defendant appeals from trial court's order denying his application for postconviction relief following that court's order revoking his probation and subjecting him to a ten-year sentence for breaking and entering in violation of section 708.8, The Code 1977. He claims that the court erred in revoking his probation for failure to maintain employment and that such action constitutes cruel and unusual punishment. We affirm.

On March 10, 1978, defendant was convicted of breaking and entering. His ten-year sentence was suspended and he was put on probation. He entered into a probation agreement on July 27, 1978 wherein he promised in part to "secure and maintain employment as approved by [his] Probation Officer." A violation report was filed with the court in February, 1980, which stated that "Mr. Bell's progress has been less than satisfactory. Mr. Bell's low-motivational level appears unalterable. He seems to attempt to 'skate through with little or no effort.'" The report concluded by recommending defendant's incarceration to serve the ten-year sentence; the court so ordered on April 17, 1980.

Defendant then filed a paper captioned "Motion to Vacate Judgment" based on allegedly fraudulent statements made during his revocation hearing. The court's order of May 23, 1980, treated this motion as a request for postconviction relief and denied defendant's request. Defendant responded by filing a motion to reconsider the May 23rd order, alleging for the first time that revocation of his probation for not maintaining regular employment is cruel and unusual punishment in violation of the United States and Iowa constitutions. This motion was overruled; defendant brought this appeal.

The lower court treated defendant's "motion to vacate judgment" as a request for postconviction relief under chapter 663A, The Code. Neither defendant nor the State challenges this procedure which is clearly permissible. State v. Mulqueen, 188 N.W.2d 360, 361 (Iowa 1971).

Section 663A.8, The Code, describes in part the procedure required in an application for postconviction relief:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. 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 the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental, or amended application." (emphasis added).

The issues defendant now argues were not presented to the trial court in his original application for postconviction relief, nor did he file any supplemental or amended application. He instead raised these claims for the first time in a motion filed subsequent to the court's order denying his request for postconviction relief. Defendant provides no sufficient reason; indeed, no reason at all for not presenting these issues in his original application. Therefore, under section 663A.8, these claims may not be made the basis for granting relief. See, e.g., Redding v. State, 274 N.W.2d 315, 317 (Iowa 1979). We affirm the trial court's actions.

AFFIRMED.