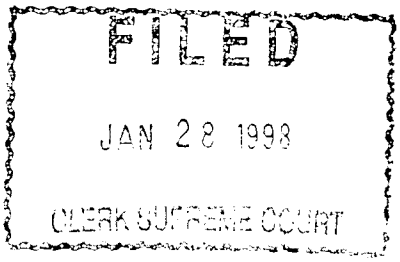
IN THE COURT OF APPEALS OF IOWA 000309



No. 7-703 / 97-0564
Filed January 28, 1998

JAMES ARTHUR SMITH,
Appellant,

vs.

STATE OF IOWA,
Appellee.

Appeal from the Iowa District Court for Polk County, George Bergeson, Judge.

On appeal from the denial of his application for postconviction relief, the appellant argues: (1) the district court erred in not reversing the restitution award assessed against him; and (2) there was insufficient evidence to convict him of going armed with intent. **AFFIRMED.**

Patrick W. O'Bryan, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney General, John P. Sarcone, County Attorney, and Steve Foritano, Assistant County Attorney, for appellee.

Considered by Sackett, P.J., and Huitink and Mahan, JJ.

HUITINK, J.

Following a loud argument in the early hours of August 10, 1991, defendant James Smith pulled a gun and shot John Ewing in the head. A jury found defendant guilty of attempted murder and going armed with intent. His appellate counsel, after reviewing the record, moved to withdraw pursuant to Iowa Rule of Appellate Procedure 104. Defendant responded, but the supreme court granted the motion and dismissed the appeal in July 1993. In July 1994, the State moved to amend the restitution portion of defendant's sentence to add restitution to the State Crime Victim Assistance Program. Defendant resisted, but the court granted the State's motion. Defendant filed a *pro se* application for postconviction relief claiming, among other issues, relief from the amended restitution order and that there was insufficient evidence to support his conviction for going armed with intent. This appeal follows the district court's denial of postconviction relief. We affirm by memorandum opinion pursuant to Iowa Supreme Court rule 9.

The defendant first argues the court erred in not addressing his restitution claim. Iowa Code section 822.2 prohibits raising restitution claims in postconviction relief proceedings. Claims related to restitution must be resolved on direct appeal or in proceedings under chapter 910. *Earnest v. State*, 508 N.W.2d 630, 633 (Iowa 1993). The district court did not err.

The defendant also argues there was insufficient evidence to support his conviction for going armed with intent. Normally, questions of the sufficiency of

evidence are decided on direct appeal. The defendant contested the dismissal of his direct appeal upon his appellate counsel's withdrawal pursuant to Iowa Rule of Appellate Procedure 104. Because his direct appeal was dismissed, the defendant was unable to raise this issue. Therefore, his first opportunity to argue the sufficiency of the evidence is in his postconviction proceeding.

We review postconviction proceedings on error. *Bader v. State*, 559 N.W.2d 1, 2 (Iowa 1997). If the claim is insufficient evidence, we will affirm if substantial evidence supports the jury's verdict. *State v. Bush*, 518 N.W.2d 778, 779 (Iowa 1994). Substantial evidence means such evidence as could convince a rational trier of fact the defendant is guilty of the crime charged beyond a reasonable doubt. *State v. Taft*, 506 N.W.2d 757, 762 (Iowa 1993). Substantial evidence does not, however, denote some elevated quantity of proof. *State v. Anderson*, 517 N.W.2d 208, 211 (Iowa 1994). Rather, the relevant question in our review of the case "is whether, after viewing all the evidence in the light most favorable to the prosecution, any rational trier of facts could have found the essential elements of the crime beyond a reasonable doubt." *Id.* The defendant's argument is that he did not "go" anywhere. The record contains testimony of the defendant's movement in his yard to support the jury's verdict. We conclude it is not necessary for a defendant to go after or chase a victim to meet the element of "going" in the charge. *See State v. Ray*, 516 N.W.2d 863, 865 (Iowa 1994). We affirm the district court's denial of postconviction relief on this issue.

Finally, the defendant argues the jury was not instructed properly. We decline to address this issue because the defendant did not preserve error. As a general rule, issues not presented in the trial court may not be raised for the first time on appeal. *State v. Damme*, 522 N.W.2d 321, 323 (Iowa App. 1994). Even if the defendant had preserved error concerning the jury instructions, his argument is without merit since the allegedly omitted instruction is contained in others given to the jury without objection.

AFFIRMED.