# IN THE COURT OF APPEALS OF IOWA

No. 5-485 / 94-1721

**GREGORY PAUL CLUNEY,**

Applicant-Appellant,

**vs.**

**STATE OF IOWA,**

Respondent-Appellee.

FILED
OCT 31 1995
CLERK SUPREME COURT

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Appeal from the Iowa District Court for Des Moines County, Harlan W. Bainter, Judge.

Gregory Cluney appeals from the denial of his application for postconviction relief. **AFFIRMED.**

Margaret E. Haessler of Hoth, Ellerhoff and Haessler Law Offices, Burlington, for appellant.

Thomas J. Miller, Attorney General, Angelina M. Smith, Assistant Attorney General, Patrick C. Jackson, County Attorney, and Ronald E. Robertson, Assistant County Attorney, for appellee.

Heard by Hayden, P.J., and Habhab and Huitink, JJ.

**PER CURIAM.**

Gregory Cluney pleaded guilty to possession of marijuana with intent to deliver. The trial court erroneously stated a mandatory minimum sentence was applicable. This erroneous statement was not included in the Judgment Entry. Cluney was sentenced to a term not to exceed fifteen years due to an habitual offender enhancement.

On direct appeal, a claim of ineffective assistance of counsel was raised. The claim was based upon the contention there was ineffective assistance of counsel since there was a failure to challenge the adequacy of the guilty plea proceeding by filing a motion in arrest of judgment. This claim was found to be without merit on direct appeal, and the conviction was affirmed.

Cluney then filed this application for postconviction relief. He alleged his guilty plea should be set aside because trial counsel was ineffective and the trial court was prejudiced against him. Following a hearing, the postconviction court denied the application. The court addressed the merits of Cluney's application even though the court was doubtful the ineffectiveness claim could be revisited.

Cluney appeals.

Issues not properly raised and preserved in prior proceedings may not serve as a basis for postconviction relief unless there is sufficient reason for not raising it previously. *See* Iowa Code § 822.8 (1993).

> Postconviction relief is not a means for relitigating claims that were or should have been properly presented at trial or on direct appeal. Any claim not properly raised at trial or on direct appeal may not be litigated in postconviction unless there is a sufficient reason for not raising it previously.

*Washington v. Scurr*, 304 N.W.2d 231, 234 (Iowa 1981) (citation omitted). To be entitled to postconviction review of alleged errors not properly preserved below, the applicant must establish by a preponderance of the evidence: (1) sufficient cause for failure to properly preserve the claims, and (2) actual prejudice resulting from the alleged errors. *Polly v. State*, 355 N.W.2d 849, 856 (Iowa 1984).

On appeal, Cluney does not provide a clear and concise argument for why the claims were not raised on direct appeal. At most, Cluney can be found to argue the record was insufficient at the time of direct appeal. We find Cluney has failed to provide sufficient cause for the failure to raise the present claims on direct appeal. There is every justification on our part to decline to consider the claims since they were not properly preserved or previously raised. However, we have reviewed each of Cluney's complaints advanced to us on appeal. We find each of those complaints to be without merit and, accordingly, affirm the ruling of the district court denying postconviction relief and adopt by reference the trial court's reasoning. As to those matters raised for the first time on appeal that were not covered by the trial court's ruling, we likewise find those contentions to be without merit.

**AFFIRMED.**