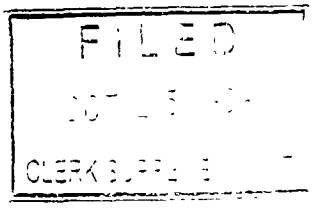
IN THE COURT OF APPEALS OF IOWA

No. 1999-177 (9-401) / 98-1033
Filed October 15, 1999



MATTHEW FISHER,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Hardin County, Dale E. Ruigh, Judge.

Applicant appeals the denial of his postconviction relief action contending his trial counsel was ineffective for failing to challenge the jurisdiction of the adult court.

AFFIRMED.

Linda Del Gallo, State Appellate Defender, and Patricia Reynolds, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Richard J. Bennett, Assistant Attorney General, and Richard N. Dunn, County Attorney, for appellee.

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

STREIT, P.J.

Matthew Fisher seeks postconviction relief due to ineffective assistance of trial counsel. Fisher failed to raise this issue on direct appeal and makes no attempt to show cause or prejudice for his failure. The issue is not preserved for review. The district court is affirmed.

I. Background Facts & Proceedings.

On August 9, 1996, a petition was filed in the Hardin County Court, Juvenile Division, charging fifteen-year-old Matthew Fisher with two counts of burglary in the third degree, one count of theft in the second degree, and one count of criminal mischief. On that same day, the Hardin County Attorney filed an application for waiver of juvenile court jurisdiction. The waiver hearing was eventually set for October 4, 1996, after originally being set for September 20, 1996. Iowa Rule of Juvenile Procedure 4.4 requires such a hearing be held within thirty days "unless good cause to the contrary is shown." The hearing date was in excess of the prescribed thirty days. At the hearing, Fisher consented to the wavier. In return, the State dismissed one of the burglary charges, reduced the theft charge to operating a motor vehicle without the owner's consent, and dismissed the criminal mischief charge. The State also agreed to recommend the sentences run concurrent with some additional adult sentences pending in Polk County.

On October 15, 1996, Fisher pled guilty and was sentenced in Polk County. On October 21, he pled guilty and was sentenced in Hardin County. The court

ordered the Hardin County sentences to run concurrently with those previously announced in Polk County. Fisher did not directly appeal his Hardin County convictions.

Fisher later filed a postconviction relief action arguing his trial counsel was ineffective for failing to object to the untimely waiver hearing. He also claimed his attorney was ineffective in failing to disclose to him the rule violation. The court denied Fisher's application on the merits.

II. Preservation of Error.

"In order to assert a claim of ineffective assistance of trial counsel in a postconviction proceeding, an applicant . . . ordinarily must show that his claim was preserved for review by being made on direct appeal." *Collins v. State*, 477 N.W.2d 374, 376 (Iowa 1991). A claim of ineffective assistance of counsel may be raised for the first time in postconviction proceedings if: (1) a sufficient reason or cause for the failure to directly appeal is demonstrated by a preponderance of the evidence, and (2) the applicant establishes prejudice as a result of the error. *Id.*; *LeGrand v. State*, 540 N.W.2d 667, 668 (Iowa App. 1995)

Fisher's brief is completely devoid of any reference to sufficient cause. Likewise, there is no mention of resulting prejudice. His brief erroneously claims error was preserved by appealing from the district court's postconviction ruling. "While the postconviction court did not rely on this basis in denying [the] application, 'we will affirm on appeal, as we do here, where any proper basis appears from the

district court's ruling, even though it is not the one upon which the court based its ruling.'" *LeGrand*, 540 N.W.2d at 669 (*quoting Collins*, 477 N.W.2d at 376).

The facts surrounding the appellate review of this case virtually mimic those in *LeGrand v. State*. *Id.* We see no reason to diverge from established precedential authority. Fisher made no attempt to preserve this error for our review. The district court is affirmed.

AFFIRMED.