IN THE COURT OF APPEALS OF IOWA

No. 0-491 / 99-1602
Filed November 20, 2000

JOHN SCHNEIDER,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

FILED
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CLERK SUPREME COURT

Appeal from the Iowa District Court for Tama County, Lynne E. Brady, Judge.

John Schneider appeals the dismissal of his application for postconviction relief. **AFFIRMED.**

Frank Burnette of Burnette & Kelley, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Sheryl A. Soich, Assistant Attorney General, and Brent D. Heeren, County Attorney, for appellee.

Heard by Streit, P.J., and Vogel and Miller, JJ.

STREIT, P.J.

John Schneider appeals the dismissal of his application for postconviction relief. He claims evidence gathered since his direct appeal supports his contention he should have a new sentencing hearing. We affirm.

I. Background Facts & Proceedings.

Schneider was charged with three counts of third-degree sexual abuse, one count of lascivious acts with a child, and one count of indecent contact with a child after he engaged in sexual contact with two teenagers. Schneider pled guilty to the two latter counts in exchange for the State's agreement to recommend deferred judgment for each count. Schneider withdrew his guilty pleas after the district court refused to follow the State's recommendation. The State then filed a misdemeanor trial information to replace the felonies. The new information charged Schneider with two counts of indecent contact with a child and three counts of lascivious conduct with a minor. Schneider pled guilty to all five counts. The district court, relying in part on the presentence report prepared for the case initially brought against Schneider, imposed the maximum sentence of incarceration on all counts and ordered the sentences served consecutively. This court affirmed Schneider's convictions and sentences on his direct appeal. *State v. Schneider*, No. 8-293 / 97-1472, slip op. at 6 (Iowa App. July 31, 1998).

Schneider unsuccessfully filed for postconviction relief. He appeals, claiming the postconviction court erroneously dismissed his application given the evidence he presented suggesting neither he nor the State intended the sentencing court to consider the presentence report. This evidence was

gathered after we decided his direct appeal. Schneider also claims the sentencing court's consideration of the report violated his statutory and constitutional rights given this evidence.

II. Schneider Is Not Entitled to Postconviction Relief.

We do not reach the merits of Schneider's claims. In his first appeal, Schneider argued his statutory and constitutional rights[1] were violated when the sentencing court—without notice to Schneider and in contravention of his plea agreement with the State—relied on the presentence report prepared for the case initially brought against him. We found Schneider had not provided any record of a plea agreement concerning the five misdemeanors and thus failed to preserve error on his claim the purported agreement precluded the sentencing court's use of the report. *Schneider*, slip op. at 4. More significantly, we also found Schneider was not prejudiced by the sentencing court's use of the report regardless of the statutory and constitutional rights implicated in the case. *Id.* at 5-6. Specifically, we stated the following:

> Even if we agreed Schneider was not properly notified of the court's intended use of the presentence report, the record fails to disclose, and he has not identified, what, if any, information the court relied upon that was not available from other sources or readily apparent to the court.

Id.

"Any ground finally adjudicated . . . in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to

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[1] Schneider argued the sentencing court violated section 901.4, the statutory provision governing the use and distribution of presentence reports. Iowa Code § 901.4 (1997). He also argues the court violated his due process rights under the federal and Iowa Constitutions. His present appeal involves the same statutory and constitutional rights.

secure relief, may not be the basis for a subsequent application." Iowa Code § 822.8 (1997). Accordingly, Schneider's present claim the sentencing court's use of the report violated his statutory and constitutional rights is barred by our previous decision adjudicating that issue. *See id.*; *Jones v. Scurr*, 316 N.W.2d 905, 911 (Iowa 1982). The additional "undisputed and stipulated facts" gathered since Schneider's first appeal suggesting neither he nor the State intended the sentencing court to consider the report are of no consequence: These facts would not change our prior adjudication that the presence of the report did not dictate the outcome of Schneider's sentencing.

Because we find Schneider's claim regarding the alleged violation of his statutory and constitutional rights is barred by our prior adjudication of that issue, we do not address Schneider's other claim raised in this appeal. That claim challenges the postconviction court's analysis of the merits of Schneider's application for postconviction relief—we affirm the court without reaching the merits.

AFFIRMED.