FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 9-644 / 88-1790

240

HERBERT O. SPELLER, JR.

Appellant,

vs.

STATE OF IOWA,

Appellee.

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

Appellant appeals from the trial court's dismissal of his application for postconviction relief. **AFFIRMED.**

Raymond E. Rogers, State Appellate Defender, and Shari Barron, Assistant Appellate Defender, for the appellant.

Thomas J. Miller, Attorney General; Bruce Kempkes, Assistant Attorney General; and Denver D. Dillard, Linn County Attorney; for the appellee.

Considered by Schlegel, P.J., and Hayden and Sackett, JJ.

PER CURIAM 241

Appellant was convicted of first-degree robbery in 1986. This court, in an unreported opinion, affirmed the conviction in 1987. On February 3, 1988, he filed his application for postconviction relief. This was a pro se application in district court.

Appellant, a black man, alleged in his application: 1) the trial judge erred in refusing to allow the jurors to view a photographic array, as they had requested during their deliberations; 2) the prosecution systematically excluded blacks from the venire panel; and 3) his defense counsel rendered ineffective assistance for failing to a) secure alibi witnesses, b) object to the jury selection process, and c) place the photographic array in front of the jury. The State moved to dismiss these claims summarily on the ground appellant failed to prove a sufficient reason for not raising them earlier.

The trial court heard argument on the State's motion and entertained evidence, which included conflicting testimony between appellant and his defense counsel, on the merits of his postconviction claims. The trial court dismissed appellant's postconviction application. The trial court determined he had not raised the jury selection, photographic array, or ineffectiveness issues on direct appeal. Appellant appeals; we affirm.

Our review is on assigned error only. Iowa R. App. P. 4.

Appellant argues he had a sufficient reason to excuse his failure to raise his claims earlier. He did not assert any reason in his application for postconviction relief and he made no supporting record of it at the hearing on the State's motion to dismiss. He made no mention of his appellate counsel's election to forego argument on these issues. A court, on postconviction relief, will not consider a claim being raised for the first time unless there is a sufficient reason for failing to raise it previously. The applicant bears the burden of showing a sufficient reason. Washington v. Scurr, 304 N.W.2d 231, 235 (Iowa 1981).

Based upon the record before us, we hold appellant has failed to support his "sufficient reason" argument before the trial court. We affirm the trial court in dismissing appellant's application for postconviction relief.

AFFIRMED.