IN THE COURT OF APPEALS OF IOWA

No. 7-053 / 95-0638

**CHARLES E. ROBINSON,**

Applicant-Appellant,

**vs.**

**STATE OF IOWA,**

Respondent-Appellee.

FILED
MAR 28 1997
CLERK SUPREME COURT

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Appeal from the Iowa District Court for Polk County, Joel D. Novak, Judge.

Applicant appeals the decision of the district court denying his application for postconviction relief. **AFFIRMED.**

Susan R. Stockdale of Roehrick, Hulting, Blumberg, Kirlin & Krull, P.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Mary Tabor, Assistant Attorney General, John P. Sarcone, County Attorney, and Steve Foritano, Assistant County Attorney, for appellee.

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

**PER CURIAM**

Charles Robinson appeals the decision of the district court denying his application for postconviction relief. Robinson claimed he received ineffective assistance of counsel at his criminal trial. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

On January 16, 1987, Robinson went to the home of Joe Coon in Des Moines to discuss Coon's debt for the purchase of cocaine. Mario Burkhalter was visiting Coon at his home. Robinson shot Coon and Burkhalter. Coon died as a result of his injuries, while Burkhalter survived. At the criminal trial, Robinson presented a defense of self-defense. He was convicted of murder in the first degree and attempted murder. His convictions were affirmed in an unpublished opinion. *State v. Robinson*, No. 87-1105 (Iowa App. July 27, 1988).

On July 1, 1991, Robinson filed an application for postconviction relief. He claimed he received ineffective assistance of trial counsel due to counsel's failure: 1) to subpoena the medical examiner, Dr. Thomas Bennett; and 2) to conduct an independent investigation. The district court found Robinson's claims were without merit. Robinson appealed.

In order to assert a claim of ineffective assistance of trial counsel in a postconviction proceeding, an applicant must show that his claim was preserved for review by being made on direct appeal. *State v. Collins*, 477 N.W.2d 374, 376 (Iowa

1991). However, an applicant may raise the issue of ineffective assistance of trial counsel for the first time in a proceeding for postconviction relief where he or she alleges the failure to previously raise such issue is due to ineffective assistance of appellate counsel. *Jones v. State*, 479 N.W.2d 265, 271 (Iowa 1991).

In the present case, Robinson did not raise a claim of ineffective assistance of trial counsel in his direct appeal. He also failed to raise any argument in his original brief in his postconviction appeal regarding the effectiveness of appellate counsel in his direct appeal. He does raise this argument in his reply brief. An appellant, however, may not raise an argument for the first time in a reply brief. *See State v. Schultz*, 245 N.W.2d 316, 318 (Iowa 1976). We conclude Robinson has failed to preserve error on his claims of ineffective assistance of trial counsel due to his failure to provide a sufficient reason for not raising his claims of ineffective assistance of counsel in his direct appeal.

We affirm the decision of the district court denying Robinson's application for postconviction relief. Costs of this appeal are assessed to Robinson.

**AFFIRMED.**