

IN THE COURT OF APPEALS OF IOWA

No. 0-541 / 09-0933
Filed August 25, 2010

RANDY P. DOSS,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Scott County, Hobart Darbyshire, Judge.

Randy Doss appeals the district court's denial of his application for postconviction relief. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and E. Frank Rivera, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Elisabeth Reynoldson, Assistant Attorney General, Michael J. Walton, County Attorney, and Jerald Feuerbach, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Doyle and Mansfield, JJ. Tabor, J., takes no part.

VOGEL, P.J.

Randy Doss appeals the district court's denial of his application for postconviction relief.¹ We review postconviction relief proceedings on error, but when the applicant asserts claims of a constitutional nature, including claims of ineffective assistance of counsel, our review is de novo. *Ledezma v. State*, 626 N.W.2d 134, 141 (Iowa 2001).

In his amended application for postconviction relief, Doss asserted his trial counsel was ineffective for, among other reasons, "failing to advise [him] of the mandatory special sentence of lifetime parole pursuant to Iowa Code section 903B.1;" failing to ensure that the trial court informed him of the mandatory special sentence; and failing to file a motion in arrest of judgment. However, on appeal Doss changed his claim, and questioned "whether [his] plea was knowingly and voluntarily given when the court did not advise him during the guilty plea of the special sentence provision of lifetime parole," pursuant to Iowa Code section 903B.1 (2005). He makes no assertion of ineffective assistance of counsel, but only that the district court erred in its omissions from the plea colloquy, as not complying with Iowa Rule of Criminal Procedure 2.8(2)(b). Because he has substituted this new claim for what was litigated in the postconviction court, any error stemming from the postconviction ruling has been waived. See *State v. Rutledge*, 600 N.W.2d 324, 325 (Iowa 1999) ("Nothing is more basic in the law of appeal and error than the axiom that a party cannot sing a song to us that was not first sung in trial court.").

¹ Doss was charged with two counts of sexual abuse in the third degree, one a forcible felony. Iowa Code § 709.4(2)(b) and 709.4(2)(c)(4). In exchange for a guilty plea to one count of sexual abuse in the third degree, the State dismissed the forcible felony count, as well as one count for harboring a runaway in violation of Iowa Code section 710.8.

Even if Doss had not waived error, he failed to show he was prejudiced by any breach of duty of his trial counsel. A defendant receives ineffective assistance of counsel only when counsel fails in an essential duty and prejudice results. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984). We agree with the postconviction court's conclusion that Doss did not demonstrate he would have chosen to go to trial rather than take a favorable plea, had his counsel informed him of the consequences of Iowa Code section 903B.1 on his sentence.

AFFIRMED.