

**IN THE COURT OF APPEALS OF IOWA**

No. 0-838 / 09-1441  
Filed December 8, 2010

**GADET KANG,**  
Applicant-Appellant,

**vs.**

**STATE OF IOWA,**  
Respondent-Appellee.

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

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

Jeffery A. Wright of Carr & Wright, P.L.C., Des Moines, for appellant.

Gadet Kang, Anamosa, appellant pro se.

Thomas J. Miller, Attorney General, Elisabeth S. Reynoldson, Assistant Attorney General, John P. Sarcone, County Attorney, and Nan Horvat, Assistant County Attorney, for appellee State.

Considered by Sackett, C.J., and Vogel and Vaitheswaran, JJ. Tabor, J., takes no part.

**VAITHESWARAN, J.**

Gadet Kang had an altercation with Ryan Meeker. Meeker's car was subsequently burglarized.

A jury found Kang guilty of first-degree robbery and third-degree burglary. On direct appeal, this court determined there was sufficient evidence to support the jury's findings of guilt. See *State v. Kang*, No. 06-2115 (Iowa Ct. App. Oct. 24, 2007).

Kang filed an application for postconviction relief, raising several grounds for reversal. At a hearing on his application, Kang added claims that his trial attorney was ineffective in failing to (1) aggressively challenge the sufficiency of the evidence, and (2) object to the admission of a car antenna in his possession when he was arrested. The district court denied all of Kang's claims for relief. On appeal, Kang only pursues the two claims he added at the hearing.

As noted, Kang's challenge to the sufficiency of the evidence supporting the jury's findings of guilt was raised and decided on direct appeal. This claim cannot be relitigated in a postconviction relief action. See *Wycoff v. State*, 382 N.W.2d 462, 465 (Iowa 1986) ("Issues that have been raised, litigated, and adjudicated on direct appeal cannot be relitigated in a postconviction proceeding."); *Holmes v. State*, 775 N.W.2d 733, 735 (Iowa Ct. App. 2009) ("Our decision on direct appeal is . . . final as to all issues decided therein, and is binding upon both the postconviction court and this court in subsequent appeals.").

Turning to Kang's second claim concerning the admission of a car antenna, this court summarized the significance of this evidence as follows:

When the police located Kang, he attempted to flee. Kang was carrying an automobile antenna at the time he was arrested. A search of his person produced a proof of insurance card for Meeker's car. Under the State's theory, Kang used the antenna to break into Meeker's car and took Meeker's proof of insurance card from the glove box.

*State v. Kang*, No. 06-2115 (Iowa Ct. App. Oct. 24, 2007).

Kang asserts his trial attorney should have objected to the admission of the antenna because, in his view, the State introduced it to demonstrate that the antenna had been "used in numerous other car break ins." He contends the State contravened its own pre-trial agreement not to introduce evidence of prior bad acts.

To prevail, Kang must show trial counsel breached an essential duty and prejudice resulted. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984). The claim may be resolved on either ground. *Id.* at 697, 104 S. Ct. at 2069, 80 L. Ed. 2d at 699. Our review is de novo. *Everett v. State*, 789 N.W.2d 151, 155 (Iowa 2010).

We discern no breach of an essential duty because, contrary to Kang's assertion, his trial attorney did object to the admission of the antenna on the ground that it violated the State's agreement, and his objection was sustained. Although the antenna was ultimately admitted, it was not admitted as evidence of prior bad acts but as evidence of the tool Kang likely used to break into Meeker's vehicle. As the district court stated,

The State's theory was that Kang was able to gain entry into Meeker's motor vehicle by using the broken car antennae to break out the car window. It was not used as evidence of other break-ins which was the subject matter of the motion in limine. It was used by the State to show what Kang had in his possession at the time of

the arrest that supported other State evidence that Meeker's car window was broken out as a result of inward force.

Because Kang did not breach an essential duty, the district court appropriately denied this ineffective-assistance-of-counsel claim.

We affirm the denial of Kang's postconviction relief application.

**AFFIRMED.**