IN THE COURT OF APPEALS OF IOWA

No. 1-146 / 10-0258
Filed April 27, 2011

LEONARD WAYNE MOORE,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Scott County, Nancy S. Tabor, Judge.

An applicant appeals from the district court's dismissal of his second application for postconviction relief. **AFFIRMED.**

Lori Kieffer-Garrison, Rock Island, Illinois, for appellant.

Leonard Wayne Moore, Anamosa, pro se.

Thomas J. Miller, Attorney General, John Lundquist, Assistant Attorney General, and Michael J. Walton, County Attorney, for appellee State.

Considered by Vogel, P.J., Doyle, J., and Mahan, S.J.* Tabor, J., takes no part.

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

MAHAN, S.J.

Leonard Moore pleaded guilty to two counts of second-degree sexual abuse in violation of Iowa Code section 709.3 (1993) and was sentenced to two twenty-five year prison terms to be served consecutively. In July 2005, Moore filed an application for postconviction relief challenging the parole review practices and procedures, namely alleging he had been improperly denied parole because the Iowa Board of Parole had not granted him an in-person interview. The district court denied his application, finding his claim was without merit and that he failed to exhaust his administrative remedies. Our court affirmed. *Moore v. State*, No. 07-1216 (Iowa Ct. App. Oct. 29, 2008).

In December 2009, Moore filed a second application for postconviction relief, asserting his first application for postconviction relief was improperly dismissed and essentially challenging the same parole review practices and procedures. The State moved for summary judgment, which Moore resisted. The district court granted the State's motion and Moore appeals. We generally review postconviction proceedings for errors at law, but review ineffective-assistance-of-counsel claims de novo. *Collins v. State*, 588 N.W.2d 399, 401 (Iowa 1998).

Moore first asserts that the court did not follow the procedure in Iowa Code section 822.6 paragraph two (2009). Section 822.6 sets forth two methods for disposition of postconviction relief applications without a trial on the merits—paragraph two provides for dismissal on the court's initiative, and paragraph three provides for dismissal on the motion of either party. *Manning v. State*, 654 N.W.2d 555, 559 (Iowa 2002). The method described in the second paragraph

of section 822.6 is not applicable because Moore's claim was not dismissed on the court's own initiative. This claim is without merit.

Moore next asserts his postconviction counsel was ineffective for failing to introduce into evidence his parole file showing he was not granted a yearly interview and arguing that he did not need to exhaust all administrative remedies. In the first postconviction relief proceeding, it was determined Moore was not entitled to an annual interview and was required to exhaust all administrative remedies. Moore cannot raise the same issues in a successive postconviction relief application. Iowa Code § 822.8 ("Any ground finally adjudicated . . . in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application."); *Holmes v. State*, 775 N.W.2d 733, 735 (Iowa Ct. App. 2009) ("This provision of the [section 822.8] is clear and unambiguous . . . Relitigation of previously adjudicated issues is barred."); *see also State v. Dudley*, 766 N.W.2d 606, 620 (Iowa 2009) (explaining that counsel had no duty to raise a meritless issue). Thus, Moore cannot prevail on his ineffective assistance of counsel claim.

Finally, Moore asserts pro se that he should be able to discharge one of his twenty-five year sentences. The district court did not rule on this argument and therefore, it is not preserved. *See, e.g.*, *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002) ("It is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before we will decide them on appeal."). Regardless, we find this claim is without merit. *See* Iowa Code § 901.8 ("[I]f consecutive sentences are specified in the order of commitment, the several terms shall be construed as one continuous term of

imprisonment."); *Thompson v. State*, 524 N.W.2d 160, 163 (Iowa 1994) ("We conclude the district court correctly determined section 901.8 requires that consecutive sentences be treated as one sentence for disciplinary detention purposes."). We affirm.

AFFIRMED.