

IN THE COURT OF APPEALS OF IOWA

No. 1-199 / 10-0845
Filed May 11, 2011

JAMES ANTHONY MURRAY JR.,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Artis Reis, Judge.

James Murray appeals the summary dismissal of his second application for postconviction relief. **AFFIRMED.**

Angela L. Campbell of Dickey & Campbell Law Firm, PLC, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Thomas W. Andrews, Assistant Attorney General, John P. Sarcone, County Attorney, and Michael T. Hunter, Assistant County Attorney, for appellee State.

Considered by Vaitheswaran, P.J., and Eisenhauer and Danilson, JJ. Tabor, J., takes no part.

DANILSON, J.

James Anthony Murray Jr. appeals the dismissal of his second application for postconviction relief (PCR). Because the ineffective-assistance-of-counsel issue was raised in Murray's original PCR and Murray did not have sufficient reason for asserting other claims in the second PCR, we affirm.

I. Background Facts and Proceedings.

On August 16, 2004, in exchange for an agreement on sentencing (terms to be served consecutively for indeterminate term of sixteen years) and the State's promise to amend a trial information (originally charging attempted murder, second-degree sexual abuse, felon in possession of a firearm, and two counts of assault with a dangerous weapon), Murray stipulated to a trial on the minutes on reduced charges (willful injury causing bodily harm, assault with intent to commit sexual abuse, felon in possession of a firearm, and two counts of assault with a dangerous weapon) and agreed to immediate sentencing.

At sentencing, the district court informed Murray:

You will have to register as a sex offender. And all of these matters are going to be contained within a written order finding your guilt based on the stipulation to the minutes of testimony and the sentencing. So before you leave here today, I am going to want you to review all of this with [your counsel]. And if you have any questions, ask him and he can help answer your questions.

The court's "Order re: Finding of Guilt on Stipulation and Immediate Sentencing" provided in part:

IT IS FURTHER ORDERED that defendant shall register as a sex offender within five days of this order and keep his registration current and correct as provided in Iowa Code Chapter 692A. Further, defendant is advised that the offense of conviction is a sexually predatory offense within the meaning of Chapter 901A of the Iowa Code. This conviction will be used to enhance any future

convictions for any sexually predatory offense as described in Iowa Code section 901A.2.

On October 21, 2005, Murray filed a notice of appeal, which was dismissed as untimely. Procedendo issued on April 24, 2006.

Murray filed an application for PCR on December 12, 2005, claiming trial counsel was ineffective in failing to inform him that his conviction would result in a required registration as a sex offender and was misleading in the extent to which his stipulations would affect his case. Murray was appointed counsel, and a hearing was held. On November 17, 2006, the district court rejected Murray's claim of ineffective assistance of counsel and dismissed the petition. Murray's appeal from the PCR dismissal was dismissed as frivolous. Procedendo issued on February 1, 2008.

On November 6, 2009, Murray filed this second PCR application. Counsel filed an amended and substituted application, claiming the conviction or sentence violated the federal or state constitution (not further specified) and asserting as facts supporting the application:

Count III, Assault With Intent to Commit Sexual Abuse, also requires as a provision of sentencing that Mr. Murray register as a sex offender. At no time during the State's record of the agreement or the Court's colloquy with Mr. Murray about the maximum or minimum penalties for the charges was Mr. Murray ever advised about the requirement that he register as a sex offender.

He also asserted he "was not provided a copy of the transcript until September 11, 2009." Murray's second PCR application specifically stated,

The Applicant would request the court take judicial notice of the pleadings and documents in the court file for this case as well as the original criminal case as well as any transcript of any hearing or the trial in the original criminal matter.

The State moved to dismiss this PCR application because: (1) the action was time barred pursuant to Iowa Code section 822.3 (2009); (2) having failed to raise the issue on direct appeal it was procedurally defaulted, see Iowa Code § 822.2; (3) section 822.8 or principles of res judicata prohibited the matter; and (4) the claim was without merit as Murray was informed by the sentencing court of the sex offender registry requirement. Murray filed nothing in response.

After a hearing, and “having reviewed the file and heard and considered the arguments of the parties,” the district court summarily dismissed Murray’s second PCR application, concluding the issue now raised (1) should have been raised by motion in arrest of judgment or direct appeal, (2) was barred by section 822.8, which prohibits the re-litigation of issues already adjudicated in an original PCR application; and (3) Murray was informed of the consequences of his plea.

Murray now appeals.

II. Standard of Review.

The standard of review on appeal from the denial of postconviction relief is for errors at law. However, when there is an alleged denial of constitutional rights, . . . we make our own evaluation of the totality of the circumstances in a de novo review.

Everett v. State, 789 N.W.2d 151, 155 (Iowa 2010) (citations omitted).

III. Discussion.

A. Summary disposition proper. Murray first complains the district court erred in considering matters outside the pleadings in ruling on the motion to dismiss. This claim is without merit: Murray’s application specifically requested the district court “take judicial notice of the pleadings and documents in the court

file for this case as well as the original criminal case as well as any transcript of any hearing or the trial in the original criminal matter.”

Moreover, motions for summary disposition of PCR applications are specifically provided. See Iowa Code § 822.6. (“The court may grant a motion by either party for summary disposition of the application, when it appears from the pleadings, depositions, answers to interrogatories, and admissions and agreements of fact, together with any affidavits submitted, that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.”); *State v. Dryer*, 342 N.W.2d 881, 883 (Iowa Ct. App. 1983) (“Summary disposition is proper in situations where petitioner’s allegations are directly contradicted by the record, unless petitioner has raised a legitimate question concerning the credibility of that record.”).

B. Issue barred by Iowa Code section 822.8. Murray next contends the court erred in finding Murray was barred under section 822.8. That section provides:

All grounds for relief available to an applicant under this chapter must be raised in the applicant’s original, supplemental or amended application. Any ground finally adjudicated or not raised, or knowingly, voluntarily, and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental, or amended application.

Iowa Code § 822.8.

Murray claims he should have been given further opportunity to show “sufficient reason” why the issue was not asserted in his original PCR application.

We disagree. His only justification for having failed to raise his claim earlier was that he asked for copies of transcripts in September 2005, but did not receive them until September 2011. The transcript from his first PCR hearing affirmatively shows he received and reviewed the original transcripts at least by September 2006.¹

C. Murray's ineffective-assistance-of-counsel claim is precluded by his earlier PCR action. Murray argues the district court erred in finding his plea was knowing and voluntary—he continues to assert he was denied effective assistance of counsel because he was not advised by counsel that he would have to register as a sex offender.² Murray asserted an ineffective-assistance claim in his first PCR action and may not re-litigate it here. See *id.* (“Any ground finally adjudicated or not raised, or knowingly, voluntarily, and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application”); *Jones v. Scurr*, 316 N.W.2d 905, 907 (Iowa 1982).

For all these reasons, we agree with the district court that no genuine issue of material fact exists and we affirm the dismissal of Murray's second application for postconviction relief.

AFFIRMED.

¹ At the hearing on his original PCR, which occurred on September 2006, Murray states, “My attorney sent me a copy of the transcript and I went through it” The transcript from the 2004 proceedings was introduced as an exhibit in the first PCR action.

² In any event, Murray cannot prove the prejudice arm of an ineffectiveness claim. See *State v. Fountain*, 786 N.W.2d 260, 265-66 (Iowa 2010). Even if we assume counsel did not inform Murray of the need to register as a sex offender, the trial court did.