

**IN THE COURT OF APPEALS OF IOWA**

No. 1-275 / 10-1463  
Filed June 15, 2011

**DAVID WIRES,**  
Applicant-Appellant,

**vs.**

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

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Appeal from the Iowa District Court for Marshall County, Carl D. Baker,  
Judge.

A postconviction relief applicant claims that his trial attorney was ineffective for failing to ensure that the district court informed him of the elements of the crime with which he was charged during the plea hearing. **AFFIRMED.**

Patrick L. Wilson of Wilson Law Office, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Kyle P. Hanson, Assistant Attorney General, Jennifer Miller, County Attorney, and Paul Crawford, Assistant County Attorney, for appellee State.

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

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

**VAITHESWARAN, J.**

David Wires pleaded guilty to assault with intent to commit sexual abuse. After his direct appeal was dismissed as frivolous, Wires filed a postconviction relief application, alleging that his trial attorney was ineffective in several respects and that his plea lacked a factual basis.<sup>1</sup> The district court denied the application following an evidentiary hearing.

Wires now asserts that the trial judge “failed to inform him of the elements of the charge of Assault with Intent to Commit Sexual Abuse” and that his trial attorney was ineffective in failing to challenge this claimed omission. This issue was neither raised nor decided by the district court. Accordingly, it was not preserved for our review. See *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.”).

Seemingly acknowledging this omission, Wires contends his present challenge is essentially a challenge to the factual basis underlying the guilty plea, an issue that was raised and decided. Case law does not support his contention. The claimed failure of the district court to inform Wires of the nature of the crime is a separate issue which needed to be separately raised and decided. See *State v. Yarborough*, 536 N.W.2d 493, 496 (Iowa Ct. App. 1995) (explaining that factual basis for the plea was not an issue, before proceeding to the district court’s claimed failure to address defendant personally concerning the specific

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<sup>1</sup> Wires first filed a pro se application which was later amended by his attorney. We refer to the amended application.

elements of the offense); *State v. Barbee*, 370 N.W.2d 603, 606 (Iowa Ct. App. 1985) (addressing the claimed failure of the trial court to inform Barbee of the nature of the charges separately from the claimed failure to establish a factual basis for the plea). As it was not, we have nothing to review.

We affirm the district court's denial of Wires's application for postconviction relief.

**AFFIRMED.**