

IN THE COURT OF APPEALS OF IOWA

No. 16-1448
Filed July 6, 2017

ALVIN LEE GAINES,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Linn County, Stephen B. Jackson Jr. (motion to dismiss) and Ian K. Thornhill (trial), Judges.

Appeal from the denial of an application for postconviction relief.

AFFIRMED.

Webb L. Wassmer of Wassmer Law Office, PLC, Marion, for appellant.

Thomas J. Miller, Attorney General, and Kevin Cmelik, Assistant Attorney General, for appellee State.

Considered by Vogel, P.J., and Doyle and McDonald, JJ.

MCDONALD, Judge.

Alvin Gaines was convicted of attempted murder, willful injury, and going armed with intent. This court affirmed his convictions and sentences on direct appeal. See *State v. Gaines*, No. 07-0987, 2008 WL 2520829, at *5 (Iowa Ct. App. June 25, 2008). Gaines filed an application for postconviction relief, which was denied. The denial of Gaines's application for postconviction relief was affirmed by this court. See *Gaines v. State*, No. 10-0129, 2010 WL 5394733, at *1 (Iowa Ct. App. Dec. 22, 2010).

This case arises out of a subsequent application for postconviction relief. In the application, Gaines claimed his sentences are illegal because the convictions and sentences should merge and/or he cannot be subjected to consecutive sentences when the convictions are grounded in a single act. The postconviction-relief court granted summary dismissal of Gaines's claims. On review for errors at law, we conclude the claims are without merit. See *State v. Love*, 858 N.W.2d 721, 723 (Iowa 2015); *Castro v. State*, 795 N.W.2d 789, 792 (Iowa 2011). These claims, or materially indistinguishable permutations of these claims, were resolved in Gaines's prior proceedings. It is well-settled multiple convictions and sentences may arise from the same offense conduct, and this court previously reached this conclusion on direct appeal. See *Gaines*, 2008 WL 2520829, at *5. Merger applies when multiple offenses are charged and at least one offense is a lesser-included offense of another. Iowa Code § 701.9 (2005). This court previously determined none of Gaines's sentenced offenses was a lesser-included offense of another. See *Gaines*, 2008 WL 2520829, at *5. The merger rule is inapplicable here.

We affirm the denial of Gaines's application for postconviction relief without further opinion. See Iowa Ct. R. 21.26(1)(a) and (e).

AFFIRMED.