

IN THE COURT OF APPEALS OF IOWA

No. 2-263 / 11-1039
Filed May 23, 2012

MICHAEL JEFFERSON,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

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

Michael Jefferson appeals the denial of his application for postconviction
relief. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Robert P. Ranschau,
Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney
General, Michael J. Walton, County Attorney, and Julie A. Walton, Assistant
County Attorney, for appellee State.

Considered by Eisenhauer, C.J., and Danilson and Bower, JJ. Tabor, J.
takes no part.

DANILSON, J.

Michael Jefferson appeals from the denial of his application for postconviction relief, contending he received ineffective assistance of counsel in pleading guilty to third-degree sexual abuse. We review claims of ineffective assistance of counsel de novo. *Ledezma v. State*, 626 N.W.2d 134, 141 (Iowa 2001). Because Jefferson has failed to establish his ineffectiveness claim, we affirm.

Jefferson was originally charged with second-degree sexual abuse grounded upon allegations he and another man engaged in sex acts with a minor who was being held against her will in a hotel. Jefferson entered into an agreement with the State in which he would plead to a reduced charge of third-degree sexual abuse and provide truthful testimony at the trial of the other man involved. In exchange, the State agreed it would file no further charges and would make no recommendation at sentencing. At the plea proceeding, twenty-one-year-old Jefferson admitted he had oral sex with a fourteen-year-old girl.

Jefferson twice filed motions in arrest of judgment claiming, among other things, he pleaded guilty because he felt threatened the State might amend the charges to include a charge of first-degree kidnapping and trial counsel had not adequately explained the length of time he would have to register as a sex offender. Each of these motions was denied.

On direct appeal, this court found a factual basis supported his plea and that the plea was knowing and voluntary. *See State v. Jefferson*, No. 07-1730, 2008 WL 4531454, at *2-3 (Iowa Ct. App. Oct. 1, 2008). The case was remanded for resentencing, however, upon the State's concession of a breach of

the plea agreement in commenting upon the sentence recommended in the presentence investigation report. *Id.* at *3. Jefferson's remaining claims of ineffective assistance of counsel were preserved for possible postconviction proceedings. *Id.* at *4.

In July 2009, Jefferson filed an application for postconviction relief, contending his guilty plea was not fully informed and his trial counsel was ineffective in failing to investigate. At the hearing on his application, Jefferson testified he pled guilty out of fear the State would file a first-degree kidnapping charge, his original counsel did not "really investigate my case," counsel did not inform him that a special sentence of lifetime parole would be imposed, and he was not adequately informed concerning the requirement he register as a sex offender. He stated he would never have signed "a plea for lifetime parole." The district court denied the application for postconviction relief, and Jefferson now appeals.

We rejected on direct appeal Jefferson's complaints (1) he pled out of fear of the addition of kidnapping charge, (2) he was not informed of the special sentence, and (3) he was not adequately informed concerning the sex offender registry. *See Jefferson*, 2008 WL 4531454, at 3-4. "Issues that have been raised, litigated, and adjudicated on direct appeal cannot be relitigated in a postconviction proceeding." *Wycoff v. State*, 382 N.W.2d 462, 465 (Iowa 1986).

As to Jefferson's claim that counsel did not adequately investigate, it was his burden to prove (1) counsel's performance was deficient and (2) prejudice resulted. *See Ledezma*, 626 N.W.2d at 142. To establish the requisite prejudice, "the applicant must demonstrate 'that there is a reasonable probability that, but

for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 143 (citation omitted). Jefferson offered no evidence other than his bald statements that his plea counsel failed to investigate. In his pro se application he states, "[H]ad I been informed of the state witness testimony could have been suppressed, I would have insisted on going to trial." But nothing in this record indicates what testimony might have been suppressed or on what grounds.

On appeal, Jefferson also argues that even though the court informed Jefferson the court would be required to impose the special life sentence, Jefferson should have been informed by his attorney prior to the hearing so he had more time to contemplate whether to enter the plea. However, the colloquy during plea proceedings gives no suggestion Jefferson was hesitant or wanting additional time to contemplate his actions after being informed of the special sentence. Furthermore, the sentencing hearing was held almost eleven months after the guilty plea proceeding, and in that intervening period, Jefferson filed two motions in arrest of judgment, neither of which raised the claim Jefferson now raises. Under these facts, we agree with the district court there is no merit to Jefferson's contentions.

Jefferson has failed to sustain his burden, and the district court properly denied his application for relief. We therefore affirm.

AFFIRMED.