

IN THE COURT OF APPEALS OF IOWA

No. 2-532 / 10-0350
Filed July 25, 2012

ANDREW GUY THORP,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Fayette County, Margaret L. Lingreen, Judge.

Andrew Thorp appeals from the denial of his application for postconviction relief. **AFFIRMED.**

Andrew C. Abbott of Abbott Law Office, P.C., Waterloo, for appellant.

Thomas J. Miller, Attorney General, Thomas W. Andrews, Assistant Attorney General, and W. Wayne Saur, County Attorney, for appellee State.

Considered by Eisenhauer, C.J., and Potterfield and Mullins, JJ. Tabor, J., takes no part.

POTTERFIELD, J.

On December 18, 2006, Andrew Thorp pleaded guilty to sexual abuse in the third degree. The trial court informed him that in order to convict him, the State must prove that on October 17, 2006, Thorp performed a sex act on another person and the act was done by force or against the will of the other—specifically, that he forced a female to contact his penis with her mouth. He admitted committing the crime as charged. The court informed Thorp of the maximum sentence of incarceration and the additional special sentence: after serving his sentence and being discharged,

you are placed under Iowa law as a sex offender, on a special sentence for the rest of your life where you are under the supervision of the Director of the Department of Corrections as though you were on parole. And if you violate the terms of that, you could go back to prison.

The court was also informed of the defendant's history of mental illness and inquired about the medication he was on and what effects it had.

The court accepted the plea, finding Thorp's plea was entered voluntarily. The court informed Thorp that to challenge the legality of the guilty plea, he had to file a motion in arrest of judgment. Thorp specifically waived a presentence investigation and any delay in sentencing. The court stated, "Because I have agreed to follow the plea bargain—And I believe it would benefit Mr. Thorp to get out of the county jail and into state custody where more programs are available to him, I will grant his request." The court entered judgment, imposed sentence in accordance with the plea agreement, and provided that Thorp receive substance abuse and mental health services as part of his treatment plan.

Thorp's direct appeal was dismissed as frivolous.

In February 2010, a hearing was held on Thorp's application for postconviction relief, as amended by counsel. The district court addressed each of Thorp's claims, entered its findings of fact and conclusions of law, and denied relief.

Thorp now appeals from the denial of his application for postconviction relief contending (1) he was denied due process in not being personally present at the postconviction hearing; (2) the postconviction court failed to "properly weigh the gravity" of his mental health in finding his plea voluntary; and (3) he was denied effective assistance of trial, appellate, and postconviction counsel in failing to address "possible" constitutional arguments regarding his special sentence.

We generally review an appeal from the denial of a postconviction relief application for errors of law. *Ledezma v. State*, 626 N.W.2d 134, 141 (Iowa 2001). However, we review constitutional claims such as ineffective-assistance-of-counsel de novo. *Id.*

Thorp did not raise his due process claim in the district court and thus did not preserve it for review.¹ See *State v. Mitchell*, 757 N.W.2d 431, 435 (Iowa 2008) ("Issues not raised before the district court, including constitutional issues, cannot be raised for the first time on appeal." (citation omitted)).

We adopt as our own the district court's findings and conclusions regarding the knowing and intelligent nature of his plea as Thorp has failed to

¹ In any event, postconviction proceedings are civil in nature, and Thorp has provided no authority to support his contention he had a constitutional right to be personally present. See *Webb v. State*, 555 N.W.2d 824, 825 (Iowa 1996) ("An inmate does not have a constitutional right to be present at a civil trial.")

establish the record is inaccurate. See generally *Arnold v. State*, 540 N.W.2d 243, 246–47 (Iowa 1995) (noting that when a postconviction applicant’s assertions concerning the knowing and intelligent nature of a guilty plea are directly contradicted by the record, “the applicant bears a special burden to establish that the record is inaccurate”).

Finally, we do not address Thorp’s present claim that postconviction counsel was ineffective in asserting unspecified constitutional challenges to his special sentence, nor do we reach undeveloped claims that postconviction counsel was otherwise ineffective. See *State v. White*, 337 N.W.2d 517, 519 (Iowa 1983) (explaining prior holding in *Washington v. Scurr*, 304 N.W.2d 231, 234–35 (Iowa 1981), that postconviction relief is not a means for relitigating claims that should have been presented earlier or for litigating issues not properly preserved for review).

We have considered all issues presented and with respect to the issues properly presented and decided by the district court, we approve of the district court’s reasoning and conclusions and affirm without further discussion, as it would add little to augment or clarify existing case law. See Iowa Ct. R. 21.29(1)(d), (e).

AFFIRMED.