

IN THE COURT OF APPEALS OF IOWA

No. 3-1083 / 12-0446
Filed December 18, 2013

RICHARD W. BROWN,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Scott County, Mark J. Smith,
Judge.

Richard Brown appeals from the dismissal of his application for
postconviction relief. **AFFIRMED.**

Lauren M. Phelps, Davenport, for appellant.

Thomas J. Miller, Attorney General, Katie Ann Hlavka Fiala, Assistant
Attorney General, Michael J. Walton, County Attorney, and Kimberly Shepard,
Assistant County Attorney, for appellant.

Considered by Danilson, C.J., and Vaitheswaran and Potterfield, JJ.

DANILSON, C.J.

Richard Brown appeals from the denial of his application for postconviction relief. Because postconviction counsel was not ineffective and Brown seeks to re-litigate issues already decided, the court did not err in denying the application for postconviction relief.

“Generally, an appeal from a denial of an application for postconviction relief is reviewed for correction of errors at law. However, when the applicant asserts claims of a constitutional nature, our review is de novo. Thus, we review claims of ineffective assistance of counsel de novo.” *Lamasters v. State*, 821 N.W.2d 856, 862 (Iowa 2012) (citations and internal quotation marks omitted).

Our review of this record establishes the following. Based on an incident on January 7, 2009, Richard Brown was charged with first-degree robbery and assault while participating in a felony as a habitual offender. During the May 20, 2009 hearing on Brown’s motion to suppress, one of the arresting police officers was questioned about the varying times and addresses found on the police reports. The motion to suppress was denied.

In September 2009, Brown filed a pro se motion to dismiss, complaining about the discrepancies in the police officers’ reports and the arresting officer’s testimony. The district court denied the motion to dismiss, explaining:

Because these [police] reports are not evidence, the Court finds no basis for a dismissal of either the case or the reports to which defendant now objects. In fact, the discrepancies about which the defendant complains can be used by the defendant to challenge the credibility of the witness and to question the general accuracy of the information collected within the report.

On December 2, 2009, Brown pled guilty to second-degree robbery and assault while participating in a felony. The State agreed not to seek a habitual offender sentencing enhancement. At the plea hearing, Brown stated, “I went into the Kwik Shop with the intent to steal something and turned it into a robbery because I assaulted him with a stapler.” Brown did not file a motion in arrest of judgment. His direct appeal was dismissed as frivolous on June 21, 2010.

On July 8, 2010, Brown filed an application for postconviction relief asserting the arresting police officer committed perjury, thereby denying him of due process. After a February 9, 2012 hearing, the court denied the application for postconviction relief.

Brown now appeals. His appellate counsel argues postconviction trial counsel was ineffective in failing to adequately prosecute this postconviction action, and the postconviction court erred in granting summary judgment to the State. In a pro se supplemental brief, Brown argues his plea should be set aside because the arresting police officer provided conflicting statements and the county attorney knowingly permitted the police officer to submit those conflicting statements.

The standards for summary judgment in postconviction relief actions are analogous to summary judgment in civil proceedings. Under these standards, summary judgment is proper when the record reveals only a conflict over the legal consequences of undisputed facts. The moving party is required to affirmatively establish that the undisputed facts support judgment under the controlling law.

Castro v. State, 795 N.W.2d 789, 793 (Iowa 2011) (citations omitted).

Here, the State proved that Brown's pro se claims were previously litigated. Brown's direct appeal was dismissed as frivolous. "A post-conviction proceeding is not intended as a vehicle for relitigation, on the same factual basis, of issues previously adjudicated, and the principle of res judicata bars additional litigation on this point." *Holmes v. State*, 775 N.W.2d 733, 735 (Iowa Ct. App. 2009).

As for Brown's claim that postconviction counsel was ineffective, the State met its burden to establish it was entitled to summary judgment because Brown had not even asserted the necessary prejudice to support such a claim. See *Castro*, 795 N.W.2d at 794 ("The burden to prove the prejudice element ultimately requires a postconviction relief applicant who has entered a plea of guilty to establish a reasonable probability of a different outcome (stand for trial instead of pleading guilty) if the breach had not occurred."). Even if we assume postconviction counsel breached a duty, Brown has not shown how competent counsel would have changed the outcome, and in absence of prejudice his claim fails. *Rivers v. State*, 615 N.W.2d 688, 690 (Iowa 2000).

The postconviction court did not err in denying Brown's application for postconviction relief. We affirm.

AFFIRMED.