

IN THE COURT OF APPEALS OF IOWA

No. 3-301 / 12-1189
Filed April 24, 2013

ROBERT VANCE,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Black Hawk County, Todd A. Geer,
Judge.

Robert Vance appeals from the district court's denial of his application for
postconviction relief. **AFFIRMED.**

Scott J. Nelson, Dubuque, for appellant.

Thomas J. Miller, Attorney General, Darrel Mullins, Assistant Attorney
General, Thomas J. Ferguson, County Attorney, and Kimberly Griffith, Assistant
County Attorney, for appellee State.

Considered by Doyle, P.J., and Danilson and Mullins, JJ. Bower, J., takes
no part.

DOYLE, P.J.

After an October 2008 jury trial, Robert Vance was convicted of possession of pseudoephedrine and possession of anhydrous ammonia with the intent to manufacture methamphetamine and driving while barred. See *State v. Vance*, 790 N.W.2d 775, 778-80 (Iowa 2010). On appeal, this court affirmed Vance's convictions, and we preserved for possible postconviction relief proceedings his claim he received ineffective assistance of counsel because his attorney failed to challenge the search of his car in a motion to suppress. See *State v. Vance*, No. 08-1762, 2009 WL 3379154, at *3-4 (Iowa Ct. App. Oct. 21, 2009). On further review from this court, our supreme court affirmed the decision of this court and the judgment of the district court. *Vance*, 790 N.W.2d at 790.

Thereafter, Vance filed an application for postconviction relief (PCR).¹ In his application, he alleged, among other things, that his trial counsel was ineffective in failing to challenge the warrantless search of his car in a motion to suppress. After a hearing, the district court rejected his claims and dismissed his application.

Vance now appeals the dismissal of his PCR application, asserting only that his PCR counsel was ineffective in failing to develop an adequate record for the PCR proceeding. Vance observes in his appellate brief that "[t]he [PCR] file and hearing transcripts are sparse, at best," and there is "no more information now than when the case was on direct appeal." We agree with this assessment.

¹ For "preservation of error" Vance states: "Notice of Appeal." "While this is a common statement in briefs, it is erroneous, for the notice of appeal had nothing to do with error preservation." Thomas A. Mayes & Anuradha Vaitheswaran, *Error Preservation in Civil Appeals in Iowa: Perspectives on Present Practice*, 55 Drake L. Rev. 39, 48 (Fall 2006).

Because the record on this appeal is inadequate to address Vance's claim, we preserve his ineffective-assistance-of-PCR-counsel claim for possible future PCR proceedings. See *State v. Johnson*, 784 N.W.2d 192, 198 (Iowa 2010) (holding a claim of ineffective assistance of counsel must be preserved for PCR proceedings if it cannot be addressed on appeal because of an inadequate record, regardless of the court's view of the potential viability of the claim).

AFFIRMED.

Danilson, J., concurs; Mullins, J., concurs specially.

MULLINS, J. (concur specially)

I write separately to make clear that I concur only because I feel compelled to do so by *State v. Vance*, 790 N.W.2d 775, 778-80 (Iowa 2010).