

IN THE COURT OF APPEALS OF IOWA

No. 6-130 / 05-0656
Filed May 24, 2006

LEROY DEAN HAINES,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Webster County, Kurt L. Wilke,
Judge.

Leroy Haines appeals from the denial of his application for postconviction
relief. **AFFIRMED.**

Darren D. Driscoll of Johnson, Erb, Bice, Kramer, Good & Mulholland,
P.C., Fort Dodge, for appellant.

Thomas J. Miller, Attorney General, Kristin Guddall, Assistant Attorney
General, Timothy N. Schott, County Attorney, and Ricki Osborn, Assistant
County Attorney, for appellee.

Considered by Zimmer, P.J., and Miller and Hecht, JJ.

HECHT, J.

On February 2, 2001, Leroy Haines was convicted of two counts of second-degree sexual abuse and sentenced to consecutive twenty-five year indeterminate terms of incarceration. These convictions were affirmed by a panel of this court on direct appeal. *State v. Haines*, No. 01-1236 (Iowa Ct. App. Nov. 15, 2002).

Haines subsequently filed an application for postconviction relief challenging his sentence and alleging he received ineffective assistance from counsel who represented him at the time of the plea negotiations and sentencing. In particular, Haines alleged (1) his sentences were illegal because the sentencing order failed to indicate they were subject to the eighty-five percent rule,¹ and (2) counsel was ineffective for failing to adequately explain the ramifications of his insanity plea.² Following a hearing, the district court denied Haines' petition.

In this appeal, Haines maintains for the first time that the postconviction court erred in failing to conclude counsel provided ineffective assistance in misinforming Haines of the period of incarceration to which he would be sentenced upon conviction of the two class "B" felony charges. In particular, Haines contends counsel failed to inform him that if convicted he would be sentenced pursuant to the eighty-five percent mandatory minimum rule.

¹ See Iowa Code sections 902.12(3) and 903A.2 (2001).

² Haines generally claimed his defense counsel failed to provide a timely explanation that reliance upon the insanity defense at trial would be inconsistent with a denial of involvement in the incidents that led to the charge. Moreover, Haines asserted in the postconviction proceeding that if he would have known reliance on the insanity defense would come at the cost of foregoing his denial of involvement in the acts alleged in the information, he would have pled guilty to a lesser charge and avoided the sentence that was ultimately imposed.

We conclude Haines has not preserved this issue for our review. It was not specifically raised in his application for postconviction relief, nor was it specifically addressed in the postconviction court's ruling. Haines failed to file a motion pursuant to Iowa Rule of Civil Procedure 1.904(2) asking the court to enlarge or amend its findings. Such a motion is necessary to preserve error when the trial court fails to resolve an issue, claim, defense, or other theory properly submitted to it for adjudication. *Lawrence v. Grinde*, 534 N.W.2d 414, 418 (Iowa 1995). Issues must ordinarily be both raised and decided by the district court before we will decide them on appeal. *Metz v. Amoco Oil Co.*, 581 N.W.2d 597, 600 (Iowa 1998). We therefore affirm the denial of Haines' postconviction relief application.

AFFIRMED.