

IN THE COURT OF APPEALS OF IOWA

No. 6-639 / 06-0156
Filed September 7, 2006

TODD ANTHONY MCGEE,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Warren County, John Lloyd, Judge.

Todd Anthony McGee appeals from the district court's denial of his application for postconviction relief. **AFFIRMED.**

Todd Miler of Miler Law Firm, West Des Moines, for appellant.

Thomas J. Miller, Attorney General, Robert Ewald, Assistant Attorney General, Gary Kendell, County Attorney, and Douglas Eichholz, Assistant County Attorney, for appellee State.

Considered by Huitink, P.J., and Mahan and Zimmer, JJ.

ZIMMER, J.

Todd Anthony McGee appeals from the district court's denial of his application for postconviction relief. He contends his trial counsel was ineffective for failing to object to testimony he claims was improper opinion testimony regarding his guilt. We affirm.

I. Background Facts & Proceedings

On August 5, 2002, McGee was charged with two counts of delivering less than five grams of methamphetamine in violation of Iowa Code section 124.401(1)(c)(6) (2001). A jury found McGee guilty of both counts. McGee appealed from the judgment and sentence entered by the district court. We affirmed his conviction as charged in Count I and reversed his conviction as charged in Count II on direct appeal. *State v. McGee*, No. 03-0394 (Iowa Ct. App. Mar. 10, 2004).

After his appeal was denied in part, McGee filed an application for postconviction relief. McGee and his postconviction attorney contended his trial counsel was ineffective for failing to: (1) raise the defense of entrapment with respect to Count I, (2) object to allowing the jury to separate and go home during deliberations, (3) object to jury misconduct arising from a juror's research of the meaning of entrapment, (4) understand and advise McGee he would be required to testify if he gave notice of an affirmative defense, and (5) understand and advise him of the elements of the offense with which he was charged. Following a hearing, the postconviction court addressed and rejected each of McGee's claims in a ruling filed January 3, 2006. McGee has appealed from the postconviction court's ruling.

II. Discussion

In his brief on appeal, McGee has not challenged any of the rulings the postconviction court made in rejecting his application for postconviction relief. Instead, McGee argues his original trial attorney was ineffective for allowing the State to offer testimony by a deputy sheriff that McGee claims was improper opinion testimony regarding his guilt.

The State contends McGee failed to preserve error on this claim. Upon review of the record, we agree. The claim McGee raises for the first time in this appeal was never presented to and ruled on by the postconviction court. McGee could have raised this issue in his postconviction relief proceeding, but he did not do so. Under Iowa Code section 822.8 (2005), “[a]ll grounds for relief available to an applicant under this chapter must be raised in the applicant's original, supplemental or amended application.” Because the district court did not have an opportunity to consider the issue McGee has raised on appeal, there is nothing for our court to review. *See Meier v. Senecaut*, 641 N.W.2d 532, 539 (Iowa 2002) (holding that an issue not ruled on by the district court is not preserved for appellate review).

We recognize that McGee could have sought to preserve his appellate claim by raising the issue as one of ineffective assistance of postconviction counsel for failing to raise the issue involving the deputy's testimony in his postconviction proceedings. *See Schertz v. State*, 380 N.W.2d 404, 412 (Iowa 1985) (stating that the right to effective assistance of counsel applies to appeals and postconviction actions as well as at trial). However, McGee does not claim his postconviction counsel was ineffective, and he has failed to offer any reasons

why the ineffective assistance claim he attempts to raise in this appeal was not asserted or was inadequately raised in his application for postconviction relief.

III. Conclusion

Because McGee has failed to preserve error on his ineffective assistance of trial counsel claim, we decline to consider it on appeal. We affirm the district court's denial of McGee's application for postconviction relief.

AFFIRMED.