

IN THE COURT OF APPEALS OF IOWA

No. 7-131 / 06-0240
Filed May 9, 2007

MERRILL HOWARD,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Scott County, J. Hobart Darbyshire,
Judge.

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

Mark Neary of Neary Law Office, Muscatine, for appellant.

Merrill Howard, Pro Se, Anamosa, for appellant.

Thomas J. Miller, Attorney General, Darrel Mullins, Assistant Attorney
General, and William E. Davis, County Attorney, for appellee State.

Considered by Vogel, P.J., and Vaitheswaran and Eisenhauer, JJ.

VAITHESWARAN, J.

Merrill Howard pled guilty to second-degree murder in connection with a shooting in Davenport, Iowa. He subsequently filed an application for postconviction relief. Following a hearing, the district court denied the application.

On appeal, Howard asserts trial counsel was ineffective in failing to (1) file a motion to suppress his confession, (2) stay in regular contact with him, and (3) file a motion in arrest of judgment or an appeal of the judgment and sentence imposed following the court's acceptance of his guilty plea.

We conclude the first claim does not survive Howard's entry of his guilty plea even when raised under the guise of an ineffective-assistance-of-counsel claim. *Speed v. State*, 616 N.W.2d 158, 159 (Iowa 2000).

We reach the same conclusion with respect to Howard's second claim concerning the contacts with his attorney. See *State v. Yodprasit*, 564 N.W.2d 383, 387 (Iowa 1997). Howard's claim that his attorney "didn't really talk" to him was not an objection or defense intrinsic to the plea. *Speed*, 616 N.W.2d at 159. Therefore, it was waived. *Id.*

Turning to Howard's third claim, we agree with the State that trial counsel had no duty to take futile actions. *State v. Rice*, 543 N.W.2d 884, 888 (Iowa 1996). As Howard's guilty plea resulted in a waiver of the substantive challenges he raised, there was no basis for filing a motion in arrest of judgment or a notice of appeal from the judgment and sentence.

We affirm the district court's dismissal of Howard's postconviction relief application.

AFFIRMED.