

IN THE COURT OF APPEALS OF IOWA

No. 7-636 / 06-0293
Filed October 12, 2007

DAVID ALLEN ROCKWELL,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Robert A. Hutchison,
Judge.

A postconviction relief applicant appeals from the district court's order
denying the application. **AFFIRMED.**

Tara Elcock, Des Moines, and Richard Phelps, Mingo, for appellant.

Thomas J. Miller, Attorney General, Karen Doland, Assistant Attorney
General, John P. Sarcone, County Attorney, and Michael Hunter, Assistant
County Attorney, for appellee.

Considered by Huitink, P.J., and Vogel and Baker, JJ.

VOGEL, J.

David Rockwell appeals the district court's dismissal of his application for postconviction relief. Rockwell asserts (1) that his trial counsel was ineffective for failing to secure a particular blood sample¹ and (2) that on direct appeal the court of appeals erred in finding sufficient evidence to support his conviction. These claims are not properly before this court. On direct appeal, Rockwell raised the identical ineffective assistance of counsel and sufficiency of the evidence claims. *State v. Rockwell*, No. 00-1118 (Iowa Ct. App. 2001). This court resolved Rockwell's ineffective assistance of counsel claim on the merits, deciding that Rockwell was unable to establish he was prejudiced due to the overwhelming amount of evidence that supported his conviction. *Id.* Additionally, we held sufficient evidence supported his conviction. *Id.* "Issues that have been raised, litigated, and adjudicated on direct appeal cannot be relitigated in a postconviction proceeding." *Wycoff v. State*, 382 N.W.2d 462, 465 (Iowa 1986). Rockwell cannot reassert these claims that were decided adversely to him on direct appeal. Iowa Code § 822.8 (2007).

Rockwell also contends that the postconviction court erred in finding that newly discovered evidence was insufficient to grant a new trial. We apply an

¹ Rockwell further stated "trial counsel failed to argue whether the administration of four units of blood would have an effect of raising a person's BAC level. The state did not have to put on evidence that blood in general, and the blood used for Mr. Rockwell in particular was tested for BAC levels." The postconviction court ruled that "any blood transfusion given to Rockwell had to dilute his blood alcohol level, not increase it." On our review, we conclude the mere inference Rockwell would have the court draw from his transfusion theory is insufficient to establish a breach of duty or resulting prejudice. See *Dunbar v. State*, 515 N.W.2d 12, 15 (Iowa 1994) (requiring a defendant to state the specific ways in which counsel's performance was inadequate and identify how competent representation would have changed the outcome; refusing to preserve claims of a general nature).

abuse of discretion standard when reviewing a postconviction court's ruling on a motion for a new trial based upon newly discovered evidence. *State v. Smith*, 573 N.W.2d 14, 17 (Iowa 1997). The postconviction court stated: "The Court gives little if any credibility to Porter's testimony. . . . Porter's testimony is all too convenient six years later on behalf of a fellow inmate." We defer to the postconviction court's credibility findings and find no abuse of discretion in denying Rockwell's request for a new trial. See *Wycoff*, 382 N.W.2d at 468 (deferring to the postconviction court's credibility findings); *Carroll v. State*, 466 N.W.2d 269, 273 (Iowa Ct. App. 1990) ("We believe the trial court was in a superior position to judge the credibility of the witnesses."). Therefore, we affirm.

AFFIRMED.