

IN THE COURT OF APPEALS OF IOWA

No. 8-520 / 07-1343
Filed October 1, 2008

MARK ANTONIO WILDER,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Black Hawk County, George L. Stigler, Judge.

Applicant appeals from the dismissal of his postconviction relief action.

AFFIRMED.

John Audlehelm of Audlehelm Law Office, Des Moines, for appellant.

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

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

PER CURIAM

Mark Antonio Wilder appeals from the district court's dismissal of his postconviction relief application. Through appellate counsel, he now claims ineffective assistance of postconviction counsel in two particulars: (1) failing to investigate and argue triable issues of fact that were present on the record; and (2) failing to engage in basic investigative and procedural duties. Wilder has also raised a variety of additional claims in a pro se brief.¹ We review claims of ineffective assistance of counsel asserted in an application for postconviction relief de novo. *Ledezma v. State*, 626 N.W.2d 134, 141 (Iowa 2001).

After a hearing on the State's motion to dismiss, the district court ruled:

The petitioner's Application for Post-Conviction Relief is nothing but a restatement of a disagreement to take with the ruling of the Iowa Court of Appeals. Each point advanced by the petitioner has been ruled on adversely to the petitioner by the Iowa Court of Appeals in its filing of June 12, 2006. One new claim that petitioner did not understand the significance of his waiver of right to trial by jury and that his attorney did not advise him of that until the morning of the July 22, 2003, trial is patently and demonstrably untrue in that defendant on June 25, 2003, filed a written waiver of right to trial by jury in which he acknowledged the rights and stated he understood that he was giving up those rights. His claim to the contrary in the application is demonstrably untrue.

On appeal, the State's position is that Wilder is simply attempting "to file a second postconviction action under the label of appellate briefing, attempting to raise a new slate of issues, and seeking to pursue them through gateway claims of ineffective assistance of postconviction counsel." We agree. Each claim Wilder now makes could have been raised in his postconviction application. See

¹ We initially reject Wilder's claim that the court was not empowered to entertain the State's self-styled "motion to dismiss." Iowa Code section 822.6 provides for summary disposition when there is not genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Such was the case here.

Iowa Code § 822.8 (2007). Asserting ineffective assistance of postconviction counsel will not save his new claims, as Wilder does not show what his counsel should have done and how such actions would have likely changed the outcome of the proceeding. 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). He cannot demonstrate any breach of duty or resulting prejudice. *Strickland v. Washington*, 466 U.S. 668, 690, 104 S. Ct. 2052, 2066, 80 L. Ed. 2d 674, 695 (1984).

Whether expressly addressed in this opinion, we have considered and found meritless all of the claims made in counsel's brief and in Wilder's pro se brief. We therefore affirm.

AFFIRMED.