

**IN THE COURT OF APPEALS OF IOWA**

No. 9-180 / 07-1684  
Filed March 26, 2009

**TROY A. HARTSON,**  
Applicant-Appellant,

**vs.**

**STATE OF IOWA,**  
Respondent-Appellee.

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Appeal from the Iowa District Court for Linn County, Nancy A. Baumgartner, Judge.

Troy Hartson appeals from the denial of his application for postconviction relief. **AFFIRMED.**

Fred Stiefel, Victor, and David Nadler, Cedar Rapids, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney General, Harold L. Denton, County Attorney, and Todd D. Tripp, Assistant County Attorney, for appellee State.

Considered by Mahan, P.J., and Miller and Doyle, JJ.

**DOYLE, J.**

Troy Hartson appeals from the denial of his application for postconviction relief. We affirm.

***I. Background Facts and Proceedings.***

On December 23, 2004, the State charged Hartson by trial information with second-degree sexual abuse (Count One). His counsel subsequently raised the issue of Hartson's competency to stand trial, and the district court found Hartson competent. The State then amended the trial information to add a charge of lascivious acts involving a second child victim (Count Two). Hartson waived his right to jury trial, and the court found him guilty on both counts, based on a stipulated record. He was sentenced to twenty-five years on Count One and five years on Count Two, with the sentences to run concurrently.

On direct appeal Hartson challenged the district court's ruling finding him competent to stand trial. This court held that the evidence supported the determination that Hartson was competent to stand trial and affirmed the district court.

On October 18, 2006, Hartson filed a pro se application for postconviction relief, claiming: (1) the conviction or sentence was in violation of the Constitution of the United States or the Constitution or laws of Iowa; (2) there exists evidence of material facts, not previously presented and heard, that require vacation of the conviction or sentence; (3) coerced confession; (4) he was prevented from examining the victim at trial; (5) trial counsel was ineffective in raising the above issues; and (6) appellate counsel was ineffective in raising the above issues. Hartson's counsel later amended the application to challenge trial counsel's

failure to move to suppress Hartson's confessions, failure to challenge his jury trial waiver, and failure to challenge the denial of his request to represent himself. The district court held an evidentiary hearing on July 12, 2007, hearing testimony from Hartson and his trial counsel. The court thereafter denied relief, finding no breaches of duty on counsel's part and no prejudice on any ground.

Hartson appeals, asserting the trial information was defective because it failed to allege a specific act against him. He claims "[i]t is impossible to determine which incident [of a large number of incidents] the trial court found had been proven beyond a reasonable doubt" and that the "trial court convicted [him] without determining what specific act [he] did." He sums up by stating he "has been convicted, but it is impossible to determine of what incident he has been convicted of. [He] was charged in Count One with multiple incidents, and has been convicted of one, but which one?"

Hartson admits in his brief on appeal that he did not raise this issue at the trial court level, either at the criminal trial or at his postconviction relief trial. Although claims of ineffective assistance of counsel may be raised for the first time in postconviction relief proceedings, Hartson cannot bypass the trial court and raise a new issue for the first time on appeal. See *DeVoss v. State*, 648 N.W.2d 56, 63 (Iowa 2002). We cannot consider a substantive or procedural issue for the first time on appeal. *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002). Since the only ground argued on appeal was raised for the first time on appeal, we must deny Hartson's postconviction appeal.

All other issues raised in Hartson's postconviction relief petition were not presented or argued in this appeal and are therefore waived. Iowa R. App. P. 6.903(2)(g)(3).

**AFFIRMED.**