

**IN THE COURT OF APPEALS OF IOWA**

No. 9-235 / 08-1313  
Filed May 6, 2009

**LUIS GOMEZ-RODRIGUEZ,**  
Applicant-Appellant,

**vs.**

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

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Appeal from the Iowa District Court for Muscatine County, Patrick J. Madden, Judge.

Applicant appeals the district court's order dismissing his application for postconviction relief upon the State's motion for summary disposition.

**AFFIRMED.**

Douglas Johnston, Muscatine, for appellant.

Thomas J. Miller, Attorney General, Thomas Tauber, Assistant Attorney General, Gary Allison, Muscatine County Attorney, and Alan Ostergren, Assistant County Attorney, for appellee State.

Considered by Sackett, C.J., and Potterfield and Mansfield, JJ.

**MANSFIELD, J.**

Luis Gomez-Rodriguez appeals from a district court order summarily dismissing his application for postconviction relief. We affirm.

***I. Procedural History***

Gomez-Rodriguez was convicted of two counts of first-degree murder and one count of interference with official acts for shooting and killing Maria Rivero and Julio Sarol in Muscatine on February 23, 2005. On direct appeal, Gomez-Rodriguez argued ineffective assistance of counsel due to his trial counsel's failure to argue the defense of imperfect self-defense. *State v. Gomez-Rodriguez*, No. 06-0527 (Iowa Ct. App. June 13, 2007). We affirmed Gomez-Rodriguez's convictions holding:

Gomez-Rodriguez has failed to establish either a breach of duty or prejudice. His trial counsel's conduct fell well within the range of competent professional assistance. Upon careful review of the record, we find no reason to believe the outcome of the case would have been different if his trial counsel had argued the defense of imperfect self-defense.

*Id.* Following our opinion, Gomez-Rodriguez sought further review from the supreme court, but his application was denied.

Gomez-Rodriguez then filed an application for postconviction relief. On June 27, 2008, Gomez-Rodriguez amended his application to reassert that he was denied effective assistance of counsel when his trial counsel failed to argue the defense of an imperfect self-defense. The State moved for summary disposition under Iowa Code section 822.6 (2007), arguing the issue of whether trial counsel was ineffective had been considered and adjudicated against

Gomez-Rodriguez; therefore, the principle of *res judicata* barred additional litigation.

After a hearing on August 7, 2008, the district court granted the State's motion and dismissed Gomez-Rodriguez's application, finding his claim was "identical to that which was rejected by the Court of Appeals." Gomez-Rodriguez appeals.

## ***II. Discussion***

Iowa Code section 822.8 provides in pertinent part:

Any ground finally adjudicated . . . that resulted in the conviction or sentence, . . . may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental, or amended application.

This provision of the statute is clear and unambiguous; "[r]elitigation of previously adjudicated issues is barred." *State v. Wetzel*, 192 N.W.2d 762, 764 (Iowa 1971). "A post-conviction proceeding is not intended as a vehicle for relitigation, on the same factual basis, of issues previously adjudicated, and the principle of *res judicata* bars additional litigation on this point." *Id.* (quoting *People v. West*, 252 N.E.2d 529, 530 (Ill. 1969)).

It is clear Gomez-Rodriguez's application for postconviction relief raises the same issue that was decided adversely to him on direct appeal. As a result, his claim of ineffective assistance of counsel for failure to present a defense based on the doctrine of imperfect self-defense is barred.

Gomez-Rodriguez also contends in his brief that he should have been permitted to expand the record this time around, in order to support his ineffective assistance claim. He is arguing that the trial record is inadequate to

resolve his claim of ineffective assistance of counsel. But again, this contradicts our finding on direct appeal. See *State v. Gomez-Rodriguez*, No. 06-0527 (Iowa Ct. App. June 13, 2007). In effect, Gomez-Rodriguez is arguing that this court erred when it resolved his ineffective assistance claim earlier based upon the trial record. Under the Iowa Rules of Appellate Procedure, Gomez-Rodriguez's remedy was to seek further review from the supreme court. Iowa R. App. P. 6.1103. He did so, and the supreme court denied review. Gomez-Rodriguez's arguments, however styled, remain an effort to relitigate that which has already been litigated.

For the above-stated reasons, we conclude the district court did not err in granting the State's motion for summary disposition and dismissing Gomez-Rodriguez's postconviction relief application. Therefore, we affirm.

**AFFIRMED.**