

IN THE COURT OF APPEALS OF IOWA

No. 1-894 / 10-1566
Filed December 21, 2011

TERRENCE ROBY,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Black Hawk County, Stephen C. Clarke, Judge.

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

Fred Stiefel, Victor, for appellant.

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

Considered by Vogel, P.J., and Potterfield and Doyle, JJ. Tabor, J., takes no part.

POTTERFIELD, J.

Terrence Roby was charged with three counts arising from events on September 5, 2006: (I) conspiracy to deliver more than fifty grams of cocaine base, a special class “B” felony; (II) possession of more than ten grams of cocaine base with the intent to deliver, a special class “B” felony; and (III) possession of cocaine with the intent to deliver, a class “C” felony. On March 9, 2007, Roby pleaded guilty to the class “C” charge (count III) and received an indeterminate ten-year prison sentence in accordance with a plea agreement on count III. At a later postconviction hearing, Roby’s trial counsel explained to the court that the State planned to hold the other two counts open while it evaluated Roby’s cooperation with law enforcement. On January 31, 2008, Roby pleaded guilty to one of the class “B” felonies (count II) pursuant to a second plea agreement whereby the State agreed to dismiss the other class “B” felony charge (count I). Roby received a twenty-five year sentence to be served concurrently with the ten-year sentence he had started serving on count III.

After Roby’s direct appeal from the judgment and sentence on count II was dismissed, he filed an application for postconviction relief on August 24, 2009. In his application, he asserted his 2008 guilty plea was involuntary because his trial counsel had led him to believe he would receive a sentence of no more than ten years on all charges if he entered a plea of guilty to count III. He also asserted he did not understand the consequences of his plea.

Because Roby had not filed a motion in arrest of judgment, the district court considered Roby’s claims in an ineffective-assistance-of-counsel context. The district court carefully reviewed the guilty plea proceedings on counts II and

III. After an evidentiary hearing, the district court denied Roby's application for postconviction relief. The court found nothing in the record supported Roby's claims that either guilty plea was involuntary or uninformed.

Roby now appeals, asserting his trial counsel was ineffective for: (1) allowing him to plead guilty to count III without a clear and complete statement on the record of the contents of a plea agreement applicable to his plea on count III; and (2) failing at Roby's second guilty plea proceeding on count II to object to the State's breach of the earlier plea agreement by failing to follow up with Roby to allow him to cooperate with law enforcement.

We find the issues Roby now raises on appeal are not preserved for our review. The ineffective-assistance claims Roby raises on appeal are different than the issues presented in his application for postconviction relief and decided by the district court. Because these issues were not raised before or decided by the district court, there is nothing for our review, and we cannot decide the issues on appeal. See *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002) ("It is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before we will decide them on appeal.").

We therefore affirm the judgment of the postconviction trial court.

AFFIRMED.