

IN THE COURT OF APPEALS OF IOWA

No. 6-948 / 05-1759
Filed January 18, 2007

JASON HIVELEY,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Hancock County, John S. Mackey,
Judge.

Jason Hiveley appeals the dismissal of his application for postconviction
relief. **AFFIRMED.**

David A. Kuehner of Laird & Luhring, Waverly, for appellant.

Jason Hiveley, Fort Madison, pro se.

Thomas J. Miller, Attorney General, Richard J. Bennett, Assistant Attorney
General, and Karen Kaufman Salic, County Attorney.

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

VAITHESWARAN, J.

The State charged Jason Hiveley with first-degree murder and first-degree robbery. A jury found him guilty as charged. The district court sentenced him to life-imprisonment on the murder count and twenty-five years on the robbery count. In a written sentencing order, the court announced that the sentences would be served consecutively, “[f]or the reasons stated on the record.” Those reasons included the “unspeakable” nature of the crime, the need to “pay the consequences,” and the “nightmare to the community.” Our court affirmed the judgment and sentences and preserved certain ineffective-assistance-of-counsel claims for postconviction relief. *State v. Hiveley*, No. 02-1520 (Iowa Ct. App. Nov. 26, 2003).

Hiveley filed a postconviction relief application. He did not take issue with the sentencing court’s decision to impose consecutive sentences. Following a hearing, the postconviction court rejected all Hiveley’s claims. In dicta, the court stated that trial and appellate counsel breached an essential duty in failing to raise the sentencing judge’s purported failure to state reasons for imposing consecutive sentences.

On appeal, Hiveley focuses on this aspect of the postconviction court’s ruling. He concedes he “did not specifically urge in his application that defense counsel was ineffective for failing to raise this argument,” but contends we may nevertheless address the issue because the postconviction court did. We assume without deciding that we may do so and we proceed to the merits.

On our review of the sentencing record, we are convinced the court gave sufficient, albeit terse reasons for imposing consecutive sentences. See *State v.*

Johnson, 445 N.W.2d 337, 343 (Iowa 1989). Accordingly, we conclude neither trial nor appellate counsel was ineffective in failing to raise this issue.

We affirm the dismissal of Hiveley's postconviction relief application.

AFFIRMED.