IN THE COURT OF APPEALS OF IOWA

No. 9-267 / 08-0640
Filed May 6, 2009

DAVID LEE HANSE,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Humboldt County, Kurt L. Wilke, Judge.

David Hanse appeals from the denial of his application for postconviction relief. **AFFIRMED.**

Duane M. Huffer of Huffer Law P.L.C., Story City, for appellant.

Thomas J. Miller, Attorney General, Bridget A. Chambers and Robert J. Glaser, Assistant Attorneys General, Jennifer A. Benson, Humboldt County Attorney, for appellee State.

Considered by Vaitheswaran, P.J., and Potterfield and Doyle, JJ.

DOYLE, J.

David Hanse appeals the denial of his application for postconviction relief. He claims the district court erred in finding (1) there was sufficient specific evidence for a multiple-acts conviction of child endangerment; (2) Hanse was not prejudiced by the withholding of evidence; and (3) his trial counsel and appellate counsel were not ineffective. Because we find Hanse has failed to preserve these issues for appellate review, we affirm the district court.

At the postconviction relief hearing, the assistant attorney general who originally prosecuted Hanse stated: "This was a very unique case and it's one that I will never forget because this is the most horrendous case of abuse I have ever seen." Upon our review of the record, we must agree with her characterization of the case.

In 2003 Hanse was charged in three counts with sexual abuse in the second degree in violation of Iowa Code section 709.3(2) (2001), multiple acts of child endangerment in violation of sections 726.6 and 726.6A, and child endangerment in violation of section 726.6(1)(a). A jury convicted Hanse on all three counts. He was sentenced to an indeterminate twenty-five-year term of imprisonment on the first count, a fifty-year indeterminate term on the second count, and a two-year indeterminate term on the third count, with the terms to be served consecutively. This court affirmed his convictions on direct appeal. *See State v. Hanse*, No. 04-0943 (Iowa Ct. App. June 29, 2005).

On October 24, 2005, Hanse filed a pro se application for postconviction relief. His appointed counsel subsequently filed an amended application. Hanse alleged in his application that he was denied a fair trial because (1) evidence of

subsequent sexual abuse inflicted by others on the victim that may have caused serious injury to the victim was not presented to the jury; (2) the prosecutor spoke with a potential juror outside the presence of Hanse and his attorney; (3) DNA evidence that was exculpatory was not presented to the jury; and (4) Hanse's computer that did not contain pornographic pictures of the victim as alleged was not presented to the jury. Hearing was held March 12, 2008. After addressing all four issues presented to it, the district court denied postconviction relief in its March 20, 2008 order. Hanse appeals.

I. Insufficient Evidence & Ineffective Assistance of Counsel Claims.

On appeal Hanse claims insufficient evidence was presented at his trial to prove beyond a reasonable doubt that he committed at least three separate acts to support a multiple-acts conviction of child endangerment under Iowa Code section 726.6A. He also claims his trial and appellate counsel were ineffective in failing to raise the issue of an allegedly improper jury instruction. The State contends Hanse failed to preserve error on these claims. Upon our review of the record, we agree.

The claims Hanse raises for the first time in this appeal were never presented to or ruled upon by the postconviction court. Under Iowa Code section 822.8 (2005), "[a]ll grounds for relief available to an applicant under this chapter must be raised in the applicant's original, supplemental or amended application." Because the district court did not have an opportunity to consider these issues that Hanse now raises on appeal, there is nothing for our court to review. *Meier v. Senecaut*, 641 N.W.2d 532, 539 (Iowa 2002) (holding that an issue not ruled on by the district court is not preserved for appellate review).

In his reply brief, Hanse vaguely refers to some "newly gathered evidence brought to light in the postconviction hearing." An appellant may not raise an argument for the first time in a reply brief. *State v. Schultz*, 245 N.W.2d 316, 318-19 (Iowa 1976).

II. *Brady* Claim.

Hanse claims he is entitled to a new trial, contending the State failed to disclose allegedly exculpatory material as required by *Brady v. Maryland*, 373 U.S. 83, 87, 83 S. Ct. 1194, 1196-97, 10 L. Ed. 2d 215, 218 (1963). He mades only an oblique reference to a *Brady* claim in his amended application for postconviction relief. In his explanation of grounds and facts he stated:

> The child endangerment offense that Hanse was convicted of required the Jury to find a serious Injury. The state relied upon Post Traumatic Stress as the injury. It has been learned that the alleged victims of this case were sexually abused in their adoptive home. This evidence needs to be heard by the fact finder, since any Post Traumatic Distress could be a result of the abuse in the adoptive home. Counsel was ineffective for not discovering this fact or pursuing it. *The prosecutor knew of this exculpatory evidenced and did not fully disclose it.*

(Emphasis added.)

Hanse urged that his counsel was ineffective in failing to pursue and present at trial evidence of the subsequent sexual abuse (an issue not raised in this appeal). At best, any *Brady* argument was by implication. The court ruled on the subsequent sexual abuse evidence issue as one of ineffective assistance of counsel, concluding Hanse could not show that "but for" his counsel's failure to alert the jury to the subsequent abuse the result would have been different. In the court's opinion "it clearly would not." The court made no *Brady* violation

finding. Hanse made no application to expand the court's findings. The State argues Hanse failed to preserve error on this claim. We agree.

"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." *Meier*, 641 N.W.2d at 537. As this issue was not decided, we have nothing to review. *See Stammeyer v. Divison of Narcotics Enforcement*, 721 N.W.2d 541, 548 (Iowa 2006) ("If the court does not rule on an issue and neither party files a motion requesting the district court to do so, there is nothing before us to review."). Even issues implicating constitutional rights must be presented to and ruled upon by the district court in order to preserve error for appeal. *In re K.C.*, 660 N.W.2d 29, 38 (Iowa 2003). Because the district court made no ruling on the *Brady* issue, an issue Hanse now raises on appeal, we have nothing to review.

III. Conclusion.

Because no issues were preserved for appellate review, we affirm the district court.

AFFIRMED.