

**United States Court of Appeals
FOR THE EIGHTH CIRCUIT**

No. 00-2655

Arthur Elvin Killinger,

Appellant,

v.

State of Iowa,

Appellee.

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Appeal from the United States
District Court for the Northern
District of Iowa.

[UNPUBLISHED]

Submitted: March 15, 2001

Filed: March 21, 2001

Before RICHARD S. ARNOLD, FAGG, and MORRIS SHEPPARD ARNOLD,
Circuit Judges.

PER CURIAM.

After a baby died during an arson, Arthur Elvin Killinger was convicted of first-degree murder in violation of Iowa's felony-murder statute. Killinger filed this habeas action arguing the trial court erroneously instructed the jury on the element of malice aforethought required for first-degree murder. Killinger did not object to the instruction at trial or raise the issue on direct appeal or in his state postconviction petition. The

district court* denied relief, concluding the issue is procedurally defaulted. The district court rejected Killinger's attempts to excuse the default with ineffective assistance of state-court counsel, and actual innocence. The district court granted a certificate of appealability on the procedural default issue, and Killinger appeals. Having carefully reviewed the record, we agree with the district court's thorough analysis and affirm for the reasons stated by the district court. See 8th Cir. R. 47B.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

*The Honorable Michael J. Melloy, United States District Judge for the Northern District of Iowa.