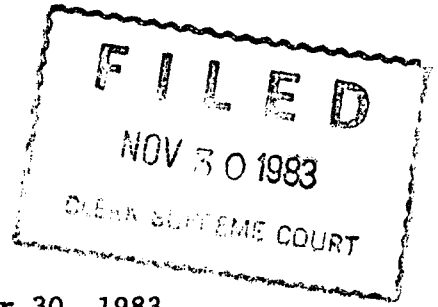


IN THE COURT OF APPEALS OF IOWA



LANE SCOTT WOLFE,)

Petitioner-Appellant)

vs.)

STATE OF IOWA,)

Respondent-Appellee.)

Filed November 30, 1983

3-264
2-68974

Appeal from Polk District Court - C. Edwin Moore, Judge.

Petitioner appeals from the trial court's denial of postconviction relief.

AFFIRMED.

Mark C. Smith, West Des Moines, Iowa, for the petitioner-appellant.

Thomas J. Miller, Attorney General, and Roxann Ryan, Assistant Attorney General, for the respondent-appellee.

Heard by Donielson, P.J., Schlegel and Sackett, JJ.

SACKETT, J.

Petitioner appeals from the trial court's denial of postconviction relief alleging ineffective assistance of counsel. We affirm the trial court's denial of postconviction relief.

In 1980 the petitioner, Lane Wolfe, was convicted of murder in the second degree following a trial to a jury in the district court for Polk County. Wolfe appealed his conviction directly alleging, among other things, ineffective assistance of counsel. This court affirmed his conviction but declined to consider the ineffective assistance of counsel claim on direct appeal. We stated then that our holding would not prejudice Wolfe's right to raise the ineffective assistance claim by way of a postconviction relief application.

Wolfe filed an application for postconviction relief pursuant to chapter 663A. A hearing was held on the application. The requested relief was denied after a finding by the court that Wolfe had not proven ineffective assistance of counsel. Wolfe now appeals that court's denial of postconviction relief, alleging: (1) ineffective assistance of counsel with respect to jury instructions; (2) ineffective assistance of counsel with respect to closing argument; and (3) the test applied to determine effectiveness of trial counsel fails to protect the constitutional rights of a criminal defendant.

I.

Wolfe first argues that his trial counsel, Rick Olson, ineffectively represented him at trial by failing to alert the court to deficiencies, omissions, and errors of law in the jury instructions.

Ineffective assistance of counsel would be a violation of a basic constitutional safeguard. State v. Lemburg, 257 N. W. 2d 39, 45 (Iowa 1977). Consequently, we make our own evaluation of the claim under the totality of the circumstances. Id. at 46. In reviewing an attorney's performance, the defendant

has the burden to establish by a preponderance of the evidence a claim of ineffective assistance of counsel. Snethen v. State, 308 N.W. 2d 11, 14 (Iowa 1981). We presume that counsel is competent. Henderson v. Scurr, 313 N.W. 2d 522, 524 (Iowa 1981). The test is whether, under the entire record and totality of the circumstances, counsel's performance was within the range of normal competency. Id. We note that "effective" assistance of counsel does not mean successful assistance. Miscalculated trial tactics, mistake, carelessness, or inexperience do not necessarily amount to ineffective assistance of counsel. Parsons v. Brewer, 202 N.W. 2d 49, 54 (Iowa 1972). Furthermore where, as here, the claim of ineffective assistance of counsel is premised on the failure of counsel to take some action, the petitioner must demonstrate that (1) counsel failed to perform an essential duty, and (2) prejudice resulted. Snethen v. State, 308 N.W. 2d at 14.

Applying these standards to the instant case, we agree with the postconviction court that Wolfe has failed to meet his burden of proving ineffective assistance of trial defense counsel. Mr. Olson's performance with respect to the instructions to be given to the jury was well within the range of normal competency. Olson submitted several requested instructions including instructions regarding mistake of fact, accident, and self-defense. Olson objected to the language of several of the charging instructions. Olson also requested that the court exclude the interrogatory included in the proposed instructions. Finally, Olson requested an instruction regarding the lesser included offense of simple assault. While Olson could conceivably have done more, petitioner has not established that Olson failed to perform an essential duty, or that prejudice resulted. Because we find that Wolfe failed to prove ineffective assistance with respect to the jury instructions, we must reject Wolfe's application for relief.

II.

Wolfe argues that Mr. Olson's closing argument was "merely a cursory and superficial summary of the trial proceedings." The basis for this contention is

that trial counsel's closing argument was not long enough.

We recognize that the Iowa courts consider closing arguments to be important and have found incompetency of counsel where an attorney failed to give any closing argument. State v. Henderson, 311 N.W. 2d 61,64 (Iowa 1981). We do not, however, find any authority dictating the appropriate length of a closing argument. Nor do we, as an appellate court, intend to dictate the acceptable length of a closing argument. We note that a lengthy closing argument is not necessarily an effective closing argument. Wolfe's bare contention that Mr. Olson did not argue long enough, without more, does not provide a basis for a claim of ineffective assistance of counsel. Because Wolfe's argument regarding the alleged brevity of counsel's closing argument lacks merit, we must deny the requested relief.

III.

Wolfe finally asks that this court adopt a more stringent test when considering claims of ineffective assistance of counsel. This we refuse to do.

The Iowa Supreme Court and the United State Supreme Court have repeatedly upheld and applied the "range of normal competency" standard of review set out above. See, e.g., McMann v. Richardson, 397 U.S. 759, 770-71, 90 S. Ct. 1441, 1448-49, 25 L. Ed. 2d 763, 773 (1970); State v. Newman, 326 N.W. 2d 788, 795 (Iowa 1982). We refuse to tamper with the accepted test.

IV.

Appellate courts frequently encounter violations of the appellate rules where the parties have printed virtually the entire transcript in the appendix. See State v. Oppelt, 329 N.W. 2d 17, 21 (Iowa 1983), and Stone v. City of Wilton, 331 N.W. 2d 398, 405 (Iowa 1983). The parties to this action, in sharp contrast, have strictly adhered to the appellate rules and have included in their appendix only those portions of the record which are relevant to the issues raised in this appeal.

We commend them and hope that our recognition of their compliance will encourage other attorneys to make an effort to follow their example. See Fischer v. State, 337 N.W. 2d 212, 216 (Iowa 1983).

Because we find Wolfe's arguments to lack merit, we affirm the trial court's denial of postconviction relief.

AFFIRMED.