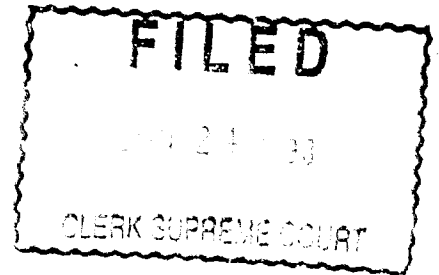


IN THE COURT OF APPEALS OF IOWA

No. 8-193 / 97-440



LINDA J. HOOK,
Appellant,

vs.

STATE OF IOWA,
Appellee.

Appeal from the Iowa District Court for Scott County, John A. Nahra, Judge.

Applicant appeals the district court decision which denied her application for postconviction relief from a murder conviction. **AFFIRMED.**

Kent A. Simmons, Davenport, for appellant.

Thomas J. Miller, Attorney General, Sheryl A. Soich, Assistant Attorney General, William E. Davis, County Attorney, and Realff Ottesen, Assistant County Attorney, for appellee.

Considered by Cady, C.J., and Vogel and Mahan, JJ.

VOGEL, J.

On November 3, 1990, Linda Hook (Hook) went to the home of her former husband, Steven Hook, and shot him. Steven died from his injuries. Hook presented a defense of insanity or diminished responsibility. Hook's expert, Dr. Vernon Varner, testified Hook suffered from depression and had a brief reactive psychotic episode at the time of the shooting where she was not in control of her actions. Hook was very quiet when arrested and unemotional. She remained silent after being informed of her rights. Dr. Varner believed Hook's behavior after her arrest tended to show her detachment from reality.

The State presented the testimony of Dr. Michael Taylor, who found Hook had depression, but was not psychotic. A jury found Hook guilty of murder in the first degree. We affirmed on appeal. *State v. Hook*, No. 91-1350 (Iowa App. Dec. 29, 1992).

Hook filed an application for postconviction relief, claiming she received ineffective assistance because her counsel failed to object to testimony she invoked her constitutional right to remain silent. Hook's counsel testified he did not object because he needed all the facts surrounding Hook's arrest to support Dr. Varner's psychiatric opinion. The district court denied the application for postconviction relief. Hook appealed.

Hook contends her trial counsel could have demonstrated her state of mind at the time of the arrest without eliciting testimony she invoked her constitutional right to remain silent. Hook asserts her invocation of her right to remain silent was not probative on the issue of her sanity and the admission of this evidence was prejudicial.

Our review of an allegation of ineffective assistance of counsel is de novo. *Cox v. State*, 554 N.W.2d 712, 714 (Iowa App. 1996). To establish a claim of ineffective assistance of counsel, an applicant must show (1) the attorney failed to perform an essential duty and (2) prejudice resulted to the extent it denied defendant a fair trial. *Bettis v. State*, 547 N.W.2d 635, 637 (Iowa App. 1996). Improvident trial strategy, miscalculated tactics, or mistakes in judgment do not necessarily amount to ineffective assistance. *State v. Kone*, 557 N.W.2d 97, 102 (Iowa App. 1996).

We find Hook's trial counsel's strategy was reasonable. Hook did not deny she shot Steven, but claimed she lacked the requisite mental intent. Hook's expert believed her actions at the time of her arrest, including remaining quiet, could indicate that she was "in the middle of the psychosis". Hook's defense counsel reasonably decided not to object to testimony concerning Hook's response to questions at the time of her arrest, as he testified that the whole picture of Hook's behavior, including her decision to remain silent after being informed of her rights, was significant in showing her mental state.

We affirm the decision of the district court denying Hook's application for postconviction relief. Costs of this appeal are assessed to Hook.

AFFIRMED.