IN THE COURT OF APPEALS OF IOWA

No. 8-517 / 97-0233

WILLIAM JAMES MOORE,

Applicant-Appellant

vs.

STATE OF IOWA,

Respondent-Appellee.

FILED
NOV 30 1998
CLERK SUPREME COURT

Appeal from the Iowa District Court for Washington County, Dan Morrison, Judge.

The applicant appeals from the district court order denying his application for postconviction relief. **AFFIRMED.**

Sally Heckman Peck, Iowa City, for appellant.

Thomas J. Miller, Attorney General, Martha E. Boesen, Assistant Attorney General, and Barbara Edmondson, County Attorney, for appellee.

Considered by Sackett, C.J., and Huitink, Streit, Vogel, and Mahan, JJ.

PER CURIAM

On appeal, the applicant, William Moore, claims the district court erred in denying his application for postconviction relief. Moore was convicted in September 1991 of first-degree burglary and second-degree arson. He appealed the conviction claiming the district court erred in overruling objections and also claimed ineffective assistance of trial counsel. We affirmed his conviction, but preserved the issue of ineffective counsel for postconviction relief.

Moore's first postconviction application was dismissed for want of prosecution, and the district court denied his second application. Moore now appeals. He argues there was ineffective assistance of counsel during the trial, specifically in the questioning of witnesses and the failure to retain a metallurgy expert.

Moore's conviction was in connection with a fire that destroyed Shane Manley's car in May 1991. Police officer Lyle Hansen questioned Brian Knerr, who was with Moore during the time of the fire. Knerr first told Hansen he did not know who started the fire, but then told Hansen he saw Moore start the fire. It is unclear why Knerr changed his story, but in sworn statements he maintained he did not know who started the fire. At trial, Moore's trial attorney questioned Hanson about Knerr's statements. This allowed the county attorney to ask about Knerr's admission Moore started the fire. This questioning, and the fact Moore's trial attorney failed to retain an expert, form the basis of Moore's claims of ineffective assistance of counsel.

Ordinarily, we review postconviction relief proceedings for errors of law. *Hinkle v. State*, 290 N.W.2d 28, 30 (Iowa 1980). However, when a postconviction

petitioner asserts violation of constitutional safeguards, such as ineffective assistance of counsel, the evaluation is based on the totality of the circumstances. *Id.* The burden is on the defendant to prove by a preponderance of the evidence that (1) counsel failed to perform an essential duty and (2) prejudice resulted. *Id.* at 131-32. Moore is not entitled to perfect representation, but only to that which is within the range of normal competency. *Cuevas v. State*, 415 N.W.2d 630, 632 (Iowa 1987).

Moore first claims his trial attorney should not have questioned Hansen. Moore's trial attorney testified he was attempting to plant a seed of doubt in the jurors' minds as to who may have started the fire. He further testified his questioning was an attempt to show the jury Hansen did not follow up on leads and may have pressured Knerr into making the statements. Even though these strategies were ultimately unsuccessful, we cannot find they showed ineffective assistance of counsel. "Improvident trial strategy, miscalculated tactics, mistakes, carelessness, or inexperience do not necessarily amount of ineffective assistance of counsel." *State v. Aldape*, 307 N.W.2d 32, 42 (Iowa 1981) (quoting *Parsons v. Brewer*, 202 N.W.2d 49, 54 (Iowa 1972)).

Furthermore, Moore has failed to show had his trial attorney not asked the challenged questions it was reasonably probable the outcome of the trial would have been different. *Strickland v. Washington*, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 692-93 (1984).

The police found matches in Moore's car, his trunk smelled of gasoline, and a gas can was found in his garage. Moore was jealous of the relationship between his girlfriend and Manley. Several witnesses testified Moore allegedly threatened Manley. At trial, James Pratt testified Moore had told him at a party the night after the fire how he and a friend started the fire. Weeks before the fire, Moore showed friends how he could break into cars in a manner similar to the way used to break into Manley's car.

We next address Moore's claim his trial attorney should have retained a metallurgy expert to testify as to how the doors of the car were opened. Moore has failed to show that such expert testimony, even if available and obtained, would have changed the result of the trial.

We affirm the district court's denial of postconviction relief.

AFFIRMED.