FILED
FEB 28 1995
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 5-007 / 93-1691

JAMES STEVEN CORDER,

Applicant-Appellant,

vs.

STATE OF IOWA,

Respondent-Appellee.

Appeal from the Iowa District Court for Jackson County, James R. Havercamp and David J. Sohr, Judges.

James Corder appeals denial of his application for postconviction relief. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Patricia Reynolds Lapointe, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Thomas S. Tauber, Assistant Attorney General, and Phillip Tabor, County Attorney, for appellee.

Considered by Donielson, C.J., and Sackett and Habhab, JJ.

DONIELSON, C.J.

James Corder was convicted in 1988 of murder in the first degree and arson in the second degree. He appeals from the denial of his application for postconviction relief. We affirm the district court's denial of his application.

I. STANDARD OF REVIEW

To prevail on his claim of ineffective assistance of counsel, Corder must ultimately show his attorney's performance fell outside a normal range of competency, and the deficient performance so prejudiced him as to give rise to the reasonable probability that, but for counsel's errors, the result of the proceeding would have been different. Dunbar v. State, 515 N.W.2d 12, 15 (Iowa 1994). When complaining about the adequacy of an attorney's representation, it is not enough to simply claim counsel should have done a better job. Id. The applicant must state the specific ways in which counsel's performance was inadequate and identify how competent representation probably would have changed the outcome. Id.

Representation is presumed competent and a defendant has the burden to prove by a preponderance of the evidence his counsel was ineffective. Id. Our review of the alleged denial of Corder's constitutional right to effective counsel is de novo. Kane v. State, 436 N.W.2d 624, 626 (Iowa 1989).

II. SUFFICIENCY OF THE EVIDENCE

Corder contends his appellate and postconviction relief counsel were ineffective in failing to challenge the sufficiency of the evidence to support the convictions.[1] This argument was not raised in his original and amended postconviction relief applications and was not considered by the district court during the course of the postconviction proceedings.

All grounds for postconviction relief available to an applicant must be raised in the original, supplemental, or amended application. Iowa Code § 822.8 (1995); Jasper v. State, 477 N.W.2d 852, 857 (Iowa 1991). The normal rules of error preservation apply to actions for postconviction relief. Williams v. State, 421 N.W.2d 890, 893 (Iowa 1988). Appellate challenges are limited to those issues raised by the applicant in his application in the postconviction court. See, e.g., Williams, 421 N.W.2d at 893; Jasper, 477 N.W.2d at 857; Schertz v. State, 380 N.W.2d 404, 412 (Iowa 1985); Snethen v. State, 308 N.W.2d 11, 16-17 (Iowa 1981).

Postconviction applications are required to be "all-inclusive." Iowa Code § 822.8 (1995). Corder and his postconviction counsel were aware at the time he filed his

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1. Corder was represented by the same attorney at trial and on direct appeal. He was represented by a different attorney at the postconviction trial level, and is represented by a third attorney in his appeal from the denial of his application for postconviction relief.

application that his appellate counsel had not challenged the sufficiency of the evidence, but he did not raise the issue in his application and it has not been preserved for appellate review.

Corder attempts to circumvent the issue of error preservation by alleging the ineffectiveness of his postconviction relief counsel. The State claims Corder should not be allowed to raise on appeal a new issue which would otherwise be time-barred if he were compelled to file another postconviction action. We agree.

Corder's claim of ineffective assistance of postconviction counsel is predicated on his underlying sufficiency of the evidence claim. Corder was aware of this issue when he filed his timely application for postconviction relief but opted not to pursue the issue. To now allow consideration of this new claim on appeal would be contrary to a policy recently set forth by our supreme court. See Wilkins v. State, 522 N.W.2d 822, 824 (Iowa 1994) (ineffective assistance of counsel will not except claim from the time bar when underlying claim could otherwise have been timely raised). Corder's sufficiency of the evidence claim has not been adequately raised and preserved for appellate review.

III. OBJECTION TO TESTIMONY

Corder contends his trial counsel was ineffective for failing to object to testimony which purportedly exceeded

the scope of the direct examination and for not properly objecting to the improper impeachment of a witness on a collateral matter. We find Corder's counsel violated no duty with respect to this testimony. The ability of witness Heister to identify LaSasso and place her at the convenience store on the night of the murder was central to Corder's theory of defense. The State had the right to challenge the accuracy of Heister's memory and credibility, and defense counsel had no duty to object to the cross-examination or impeachment testimony.

IV. FAILURE TO INVESTIGATE

Corder claims his trial counsel was ineffective in: failing to hire an independent fire expert; failing to obtain fingerprints from a smoke alarm battery and the back door of the Corder home; failing to obtain hair samples from LaSasso; and failing to investigate and obtain the cash register receipt which allegedly showed LaSasso's purchase at the convenience store on the night of the murder.

In Origer v. State, 495 N.W.2d 132, 136 (Iowa App. 1992), we held defense counsel has a duty to make reasonable investigations or to make a reasonable decision that a particular investigation is unnecessary. Origer was a case in which defense counsel's failure to investigate was clearly prejudicial. In Origer defense counsel failed to investigate the statement of an individual who had

purportedly admitted to committing the murders for which the defendant was charged. Furthermore, defense counsel's failure to investigate resulted in the jury being informed of prior unrelated murders likely to have been committed by the defendant. See id. at 136-37.

Corder cannot demonstrate similar prejudice from a lack of investigation by his counsel. There is no evidence an independent fire investigator could have given testimony favorable to Corder. Nor is there evidence there were actually fingerprints to be found on the smoke alarm battery or back door. The case against Corder was convincing and his attempt to implicate LaSasso was weak. Corder fails to demonstrate prejudice due to an alleged failure to investigate.

V. PLEA AGREEMENT

Corder contends his trial counsel was ineffective in failing to pursue the possibility of an Alford plea agreement on his behalf. The State had indicated an interest in accepting a plea of guilty to second degree murder. Trial counsel had conveyed this offer to Corder, and Corder had repeatedly rejected the offer because he denied committing the arson and murder.

There is nothing in the record to indicate the State would have allowed an Alford plea to be entered, and, more importantly, there is nothing in the record to indicate Corder would have acquiesced to entering such a plea. We

find his defense counsel violated no duty with respect to the plea agreement. He adequately informed Corder of the plea offer and its possible sentencing consequences.

VI. IMPROPER REMARK BY WITNESS

Corder contends his previous counsel were ineffective in failing to challenge a statement made by a witness who had worked with the victim. The witness had been questioned about the relationship between the victim and the defendant.

> Q. Did you ever observe any kind of an argument between Marcia and Jim? A. No.
> Q. Did you ever see anything at the store to indicate any kind or problems between Marcia and Jim when you worked when they were working? A. When they were both working?
> Q. Right. Did you ever see anything leading you to believe there was any problem between the two of them? A. Nothing serious, if anything. I mean as a typical teenager he might have rolled his eyes when she wanted him to do something, but I never thought anything of it.
> Q. Other than that type of thing, it was typical teenager type stuff? A. So I thought.

Corder contends the witness's last response was a "subtle but powerful phrase" which made it clear it was her "sad but undeniable conclusion that Jim Corder had murdered his stepmother." Corder argues the "jury would have likely reached a different result but for this simple yet damning response given by someone so well acquainted with the family."

We believe Corder reads far too much into the witness's last statement. Her testimony conveys her belief that any

problems between the victim and Corder were typical of a teenager/parent relationship. The arguably reflective nature of the witness's last statement did not rise to the level of objectionable or inadmissible testimony. Counsel had no duty to challenge it and Corder's ineffective assistance claim is without merit.

AFFIRMED.