IN THE COURT OF APPEALS OF IOWA

No. 8-081 / 97-0391

000415

ROSWELL WILLIAM WIXOM, SR.,

Applicant-Appellant,

vs.

STATE OF IOWA,

Respondent-Appellee.

FILED
SEP 27 1998
COURT OF APPEALS

Appeal from the Iowa District Court for Des Moines County, John G. Linn, Judge.

Roswell Wixom appeals from the denial of his application for postconviction relief. **AFFIRMED.**

Alan N. Waples of Wittkamp & Waples, Burlington, for appellant.

Thomas J. Miller, Attorney General, Karen Doland, Assistant Attorney General, Patrick C. Jackson, County Attorney, and Ronald E. Robertson, Assistant County Attorney, for appellee.

Considered by Sackett, P.J., and Vogel and Mahan, JJ.

MAHAN, J.

Roswell Wixom appeals the decision of the district court which denied his application for postconviction relief. Wixom claimed he received ineffective assistance of trial counsel. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

In 1993, Wixom was convicted of two counts of robbery in the first degree in violation of Iowa Code section 711.2, and two counts of false imprisonment in violation of section 710.7. Wixom forced his way into the home of Mildred and Robert Tucker, mother and son. Wixom beat the victims, then bound them with duct tape. He had sexual contact with each of the victims and took several items from the home. Wixom's convictions were upheld on appeal. *State v. Wixom,* No. 93-1426 (Iowa July 5, 1994).

Wixom filed an application for postconviction relief claiming he received ineffective assistance of trial counsel. The district court determined Wixom failed to prove his counsel was ineffective. Wixom now appeals.

I. To establish a claim of ineffective assistance of counsel, Wixom must show (1) his attorney failed to perform an essential duty; and (2) prejudice resulted to the extent it deprived him a fair trial. *Bettis v. State,* 547 N.W.2d 635, 637 (Iowa App. 1996). Representation by counsel is presumed competent, and Wixom has the burden to prove by a preponderance of the evidence that counsel was ineffective. *Id.*

II. Wixom claims he received ineffective assistance because his trial attorney did not raise an objection based on the single larceny rule. Under the single larceny rule, the stealing of property from different owners at the same time and at the same place constitutes but one larceny. *State v. Chrisman*, 514 N.W.2d 57, 59 (Iowa 1994). Wixom believes he should have been charged with only one count of robbery because he broke into only one residence.

The crime of robbery includes the element of assault. Iowa Code § 711.1. Here, Wixom committed separate acts of assault against each of the two victims. Different facts supported the two different crimes. We determine Wixom was properly charged with two counts of robbery. We find he did not receive ineffective assistance due to his counsel's failure to object on this issue.

III. Wixom also claims he received ineffective assistance from his trial counsel due to his counsel's failure to object to the introduction of evidence he had been convicted of counterfeiting in 1980.

Under Iowa Rule of Evidence 609(b), because more than ten years had passed since the conviction, the State was required to show, by specific facts and circumstances, the probative value of the conviction substantially outweighed its prejudicial effect. *State v. Axiotis*, 569 N.W.2d 813, 815-816 (Iowa 1997). The conviction for counterfeiting was one of dishonesty or false statement. *See State v.*

Romeo, 542 N.W.2d 543, 548 (Iowa 1996). The district court found the probative value of the conviction substantially outweighed its prejudicial effect.

We review a district court's decision to admit a prior conviction for an abuse of discretion. *State v. Roby*, 495 N.W.2d 773, 775 (Iowa App. 1992). We find no abuse of discretion in the district court's conclusion evidence of the conviction was admissible. Therefore, Wixom was not prejudiced by his counsel's failure to object to admission of the conviction.

We affirm Wixom's convictions for robbery and false imprisonment. Costs of this appeal are assessed to Wixom.

AFFIRMED.