IN THE COURT OF APPEALS OF IOWA

No. 8-146 / 97-528

DWIGHT DEIMUND,

Appellant,

vs.

STATE OF IOWA,

Appellee.

FILED
MAY 29 1998
CLERK SUPREME COURT

Appeal from the Iowa District Court for Lee County, William L. Dowell, Judge.

Dwight Deimund appeals the decision of the district court which dismissed his application for postconviction relief. **AFFIRMED.**

Barry M. Anderson, Keokuk, for appellant.

Thomas J. Miller, Attorney General, Robert P. Ewald, Assistant Attorney General, Michael Short, County Attorney, and Bruce C. McDonald, Assistant County Attorney, for appellee.

Considered by Cady, C.J., and Huitink, and Vogel, JJ. Sackett, J., takes no part.

CADY, C.J.

This is an appeal by an applicant claiming the district court should not have dismissed his application for postconviction relief. Applicant claimed he received ineffective assistance of counsel at his criminal trial. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

Dwight Deimund was charged with sexual abuse in the second degree for sexually abusing his ten year old stepdaughter, S.P. At the criminal trial, S.P. testified to the sexual abuse. S.P.'s mother, Rosa, testified Deimund admitted to her the allegations were true. Dr. Kathleen Opdebeeck testified S.P.'s physical condition was consistent with recent penetration. Deimund testified and denied sexually abusing S.P. A jury found Deimund guilty of the crime charged. His direct appeal was dismissed as frivolous. *See* Iowa R. App. P. 104.

Deimund filed an application for postconviction relief, claiming he received ineffective assistance of counsel at his criminal trial. The district court found Deimund was not credible. The court dismissed the application. Deimund now appeals.

I. To show ineffective assistance of counsel, an applicant must show (1) the attorney failed to perform an essential duty, and (2) prejudice resulted therefrom. *State v. Shumpert*, 554 N.W.2d 250, 254 (Iowa 1996).

II. Deimund asserts his trial counsel was ineffective because he failed to fully investigate the case. Deimund identified three people he thought his trial counsel should investigate. In particular, he claimed Jane Day would have testified Rosa was out to get him. At the postconviction relief hearing, trial counsel testified he contacted Day and found her to be very hostile. He concluded she would not testify on Deimund's behalf.

Deimund also claimed Stephanie Fortman, who had been living with Rosa, could have provided valuable information. Trial counsel did not contact Fortman because she was in the hospital on the night of the alleged abuse and he believed she could have no relevant information.

Finally, Deimund alleged S.P.'s grandfather should have been investigated because he sexually abused S.P. when she was six years old. The district court did not rule on this issue, and we find it is not before us on appeal.

We determine trial counsel did not breach his duty to investigate. Counsel's duty to investigate and prepare a defense is not limitless and does not require counsel to pursue each possible witness and delve into every line of inquiry. *Heaton v. State*, 420 N.W.2d 429, 431 (Iowa 1988). The potential information available from these witnesses was not helpful to the defense strategy, which admitted S.P. had been sexually abused, but argued someone else had been the perpetrator.

III. Deimund contends he received ineffective assistance because his trial counsel did not conduct any discovery. Trial counsel did not take any depositions.

Deimund believes depositions of Rosa, S.P., Dr. Opdebeeck, and Day were necessary in this case because he did not know how they would testify.

Trial counsel testified he did not take depositions because he did not want the witnesses to have any opportunity to rehearse telling their stories and solidify their testimony for trial. We find this is a valid exercise of trial strategy and does not constitute ineffective assistance of counsel under the facts of this case.

IV. Deimund claims his trial counsel failed to properly advise him regarding the strengths of the case. Deimund testified his trial counsel advised him not to accept a plea bargain because they had a good chance of winning. Deimund feels trial counsel was unable to properly advise him because he had not conducted any discovery.

Trial counsel testified it was Deimund's decision whether or not to accept the plea bargain. He testified he fully apprised Deimund of the risks involved in going to trial. We note the district court found Deimund was not a credible witness at the postconviction hearing.

We determine Deimund has failed to show he received ineffective assistance of trial counsel. We also determine he has not shown he was prejudiced by his counsel's performance.

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

AFFIRMED.