

IN THE COURT OF APPEALS OF IOWA

No. 9-423 / 88-932

FILED

DEC 21 1989

CLERK SUPREME COURT

THOMAS A. MUNZ,

Applicant-Appellant,

vs.

STATE OF IOWA,

Respondent-Appellee.

288

Appeal from the Iowa District Court for Johnson County,
Lynne E. Brady, Judge.

Applicant appeals the district court's denial of his
application for postconviction relief. **AFFIRMED.**

Randy Larson of Joe Johnson Law Firm, P.C., Iowa City,
for appellant.

Thomas J. Miller, Attorney General, Richard J. Bennett,
Assistant Attorney General, J. Patrick White, Johnson
County Attorney, and Anne Lahey, Assistant County Attorney,
for appellee.

Heard by Donielson, P.J., and Sackett and Habhab, JJ.

PER CURIAM

Applicant-appellant Thomas A. Munz appeals the denial of his application for postconviction relief. He was charged and convicted of two counts of third-degree sexual abuse under Iowa Code sections 709.1 and 709.4(5) (1981). Munz, then thirty-six, was accused of having sexual relations with a fourteen-year-old girl. The Iowa Supreme Court affirmed his convictions. State v. Munz, 355 N.W.2d 576 (Iowa 1984). Munz now raises questions as to his absence at a pretrial conference, the adequacy of his trial counsel, the appointment of experts to aid in his defense, and the withholding of evidence by the State.

Review of postconviction proceedings is ordinarily for errors at law, but if, as here, there is an alleged denial of constitutional rights, we make our own evaluation of the totality of the circumstances in a de novo review. Kane v. State, 436 N.W.2d 624, 626 (Iowa 1989). We affirm the trial court's denial of the application for postconviction relief.

Munz first contends he was denied his right to be present at all stages of the trial under Iowa R. Crim. P. 25(1). This rule does not give a defendant the right to be present at pretrial proceedings involving only questions of law or procedure. State v. Foster, 318 N.W.2d 176, 179 (Iowa 1982). The district court found the only matters discussed at the pretrial conference at issue here were

whether the matter would be tried, and if so, how long the trial would last and whether it would be to the court or a jury. We find the conference was not covered by Rule 25(1). At any rate, Munz was not prejudiced by his absence from the conference.

Munz next contends he was denied effective assistance of counsel due to his trial counsel's failure to depose certain witnesses and investigate information Munz claimed could have been used to impeach the testimony of the victim. The witnesses and information Munz wanted his counsel to pursue were relevant only to incidents of alleged sex abuse on dates other than those charged in the trial information. Munz himself participated in the decision not to call further witnesses for this reason. A reasonable decision by counsel regarding strategy will not be questioned merely because the strategy proved unsuccessful. State v. Losee, 354 N.W.2d 239, 243 (Iowa 1984); Frank v. State, 376 N.W.2d 637, 641 (Iowa App. 1985).

Munz also contends he was entitled to experts to assist in his defense and that the State suppressed material exculpatory evidence. Claims not raised at trial or on direct appeal may not be asserted on postconviction unless a petitioner proves (1) sufficient reason or cause for not raising them earlier and (2) that actual prejudice resulted from the alleged errors. Polly v. State, 355 N.W.2d 849,

854-56 (Iowa 1984). Without addressing the question of cause or reason, we find Munz suffered no prejudice from any errors he alleges, if in fact any actually exist. Our review of the record convinces us the outcome of the case would not have been any different had any of Munz's alleged errors been addressed.

The district court decision denying postconviction relief is affirmed.

AFFIRMED.