IN THE COURT OF APPEALS OF IOWA 000389

No. 8-006 / 96-2198
Filed March 27, 1998

FILED
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CLERK SUPREME COURT

CLAYTON VESEY,
Appellant,

vs.

STATE OF IOWA,
Appellee.

Appeal from the Iowa District Court for Polk County, Arthur E. Gamble, Judge.

Clayton Vesey appeals from the district court ruling denying his application for postconviction relief. **AFFIRMED.**

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

Thomas J. Miller, Attorney General, Ann E. Brenden, Assistant Attorney General, John Sarcone, County Attorney, and Steve Foritano, Assistant County Attorney, for appellee.

Considered by Huitink, P.J., and Streit and Vogel, JJ.

PER CURIAM

Clayton Vesey appeals the district court decision denying his application for postconviction relief. Vesey claimed he received ineffective assistance of trial counsel. We affirm on appeal.

On March 30, 1990, police officers executed a search warrant on a residence in Des Moines. Vesey was found in a bedroom, along with twenty-four individually wrapped "buttons" of heroin, over $2000 in cash, a digital scale, and items used for packaging drugs for sale. Vesey was on probation at the time. Two police officers, Joanne Pollock and Brian Danner, testified about the execution of the search warrant at a probation revocation hearing.

Vesey was also charged with possession of heroin with intent to deliver, in violation of Iowa Code section 204.401(1)(c)(1). Officer Danner and Sergeant Bruce Elrod testified at the criminal trial about the execution of the search warrant. Vesey was convicted and was sentenced as a habitual offender. Vesey's conviction was affirmed on direct appeal. *State v. Vesey,* 482 N.W.2d 165 (Iowa App. 1991).

Vesey filed an application for postconviction relief, claiming he received ineffective assistance of counsel at his criminal trial. The district court denied the request for postconviction relief. Vesey appeals.

To establish a claim of ineffective assistance of counsel, Vesey 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 Vesey has the burden to prove by a preponderance of the evidence that counsel was ineffective. *Id.*

Vesey claims his trial attorney rendered ineffective assistance because he failed to obtain a transcript of the probation revocation hearing. Vesey believes the police officers changed their testimony, and it would have been possible to impeach the officers at the criminal trial with their prior statements at the probation revocation hearing.

We determine Vesey has failed to show his trial counsel failed to perform an essential duty. Counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary. *Bear v. State,* 417 N.W.2d 467, 473 (Iowa App. 1987). In addition, we find the testimony given at the probation revocation hearing could not have aided Vesey to impeach the officers' testimony at the criminal trial. Only one officer testified at both proceedings, and he was asked different questions at each proceeding.

We also determine Vesey has failed to show prejudice resulted from his trial counsel's failure to obtain a transcript of the probation revocation proceedings. Vesey was found in close proximity to illegal drugs, a large amount of cash, and items used to sell drugs. We find he has failed to show the result of his criminal trial would have been different if not for counsel's alleged errors.

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

AFFIRMED.