FILED
JAN 27 1988
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

CHRISTOPHER LeGEAR,	)	
Applicant-Appellant,	)	Filed January 27, 1988
vs	)	
STATE OF IOWA,	)	7-422 87-126
Respondent-Appellee	)	

Appeal from the Iowa District Court for Lee County (No. CL 1415(N)0986), R David Fahey, Judge

Applicant appeals from the dismissal of his second action for postconviction relief **AFFIRMED.**

Jacqueline Miller of Dolezal & Miller, Cedar Rapids, for applicant-appellant.

Thomas J Miller, Attorney General, and John M Parmeter, Assistant Attorney General, for respondent-appellee

Heard by Oxberger, C J , and Donielson and Schlegel, JJ.

DONIELSON, J. 134

Applicant appeals from the dismissal of his second action for postconviction relief. We affirm.

Applicant appeared before the prison disciplinary committee in November 1983 concerning his alleged involvement in a physical altercation at the prison. Applicant denied his involvement and said he had four witnesses who could explain that his swollen hand was from an injury in the weight room. The committee ruled against applicant, citing his injured hand and "confidential information supplied to the committee," and imposed punishment. Applicant appealed and eventually brought his first postconviction relief action in 1984. His court-appointed attorney, John Standafer, claimed the disciplinary proceedings violated LeGear's constitutional right to due process of law by their use of the confidential information. This claim was rejected by the district court and applicant appealed. This appeal was dismissed on July 2, 1985, pursuant to Iowa Rule of Appellate Procedure 104. See No. 84-1759.

Current counsel filed this postconviction relief action claiming that the ineffectiveness of the first attorney allows him to claim relief from the disciplinary committee decision. Applicant contends that: (1) the disciplinary committee failed to follow its rules concerning the use of confidential information; (2) the committee failed to comply with constitutional due process when it neglected to take testimony from applicant's witnesses; and (3) the committee failed to follow its rules concerning the use of applicant's witnesses in the proceeding.

The district court dismissed applicant's action noting that no constitutional right to effective assistance of counsel existed in this case and that the initial counsel's decision not to assert the issues raised herein waived them. Applicant appeals.

Postconviction relief actions pursuant to Iowa Code chapter 663A are law actions and are ordinarily reviewed only on error. Schertz v. State, 380 N W.2d 404, 408 (Iowa 1985). However, when there is an alleged violation of a constitutional safeguard, we will make an independent evaluation of the totality of the circumstances under which the postconviction ruling was made. Polly v State, 355 N.W.2d 849, 854 (Iowa 1984); Thomas v. State, 316 N.W.2d 182, 183 (Iowa App. 1981).

Applicant contends on appeal that the district court improperly rejected his claim that ineffective assistance of counsel may be raised in a challenge to prison disciplinary proceedings. Patchette v. State, 374 N.W.2d 397, 399 (Iowa 1985). Based on this, applicant argues that sufficient reason exists for his failure to raise all claims in the first action for postconviction relief. The State agrees that ineffectiveness of counsel can be raised, but argues that the applicant did not establish sufficient reasons for failing to raise these claims on appeal in his first postconviction action.

Iowa Code section 663A.8 (1985) provides:

> All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not raised, or knowingly, voluntarily, and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental, or amended application.

In accordance with this section, any claim not properly raised at trial or on direct appeal may not be litigated in postconviction proceedings unless the applicant has provided a sufficient reason for not properly raising it previously. Washington v. Scurr, 304 N.W.2d 231, 234 (Iowa 1981). The applicant must establish by a preponderance of the evidence sufficient reason for not raising the issue on direct appeal. Sims v. State, 295 N.W.2d 420, 423 (Iowa 1980). The

applicant must additionally show that he or she has suffered actual prejudice resulting from the alleged trial court errors. Polly, 355 N.W.2d at 855. "It is not sufficient that the applicant demonstrate the errors created a possibility of prejudice, he or she must shoulder the burden of showing they worked to his or her actual and substantial disadvantage, infecting the entire trial with error of constitutional dimensions." Id. It is thus clearly the view under Iowa law that a postconviction proceeding is not an avenue for litigating issues that were not properly preserved for our review.

Our framework for review of claims of ineffective assistance of counsel is well established. See, e.g., Snethen v. State, 308 N.W.2d 11, 14 (Iowa 1981). In regard to counsel's failure to perform an essential duty, the reasonable tactical decisions of counsel are not grounds for finding ineffective assistance. Fryer v. State, 325 N.W.2d 400, 413 (Iowa 1982). Even improvident trial strategy, miscalculated tactics or mistakes in judgment do not necessarily amount to ineffective assistance of counsel. Sallis v. Rhoades, 325 N.W.2d 121, 123 (Iowa 1982).

A review of the record discloses that applicant did not raise on direct appeal from the first postconviction relief action those claims which he is now asserting are tantamount to ineffective assistance of counsel as they relate to Attorney Standafer, nor has he shown sufficient reason for not raising this issue on direct appeal.

Neither do we find applicant was prejudiced. Attorney Standafer determined the sole issue in the first postconviction action was "whether the applicant was denied due process by the way in which confidential information was used in a prison disciplinary hearing." Sound trial strategy generally dictates that only the most promising issues be raised. Jones v. Barnes, 463 U.S. 745, 751-52, 103 S. Ct. 3308, 3313, 77 L. Ed. 2d 987, 994 (1983). Applicant has not demon-

strated that the outcome of the trial would have been different had counsel raised the three issues which applicant contends should have been asserted. The fact Attorney Standafer chose an alternative avenue to defend his client does not infer his representation was ineffective Counsel's performance was reasonable considering all the circumstances Strickland v. Washington, 466 U S 668, 688, 104 S Ct 2052, 2065, 80 L Ed 2d 674, 694 (1984).

For the foregoing reasons, we affirm the district court's decision dismissing applicant's action

AFFIRMED.