

IN THE COURT OF APPEALS OF IOWA

No. 1999-436 (9-693) / 98-1139

Filed January 26, 2000

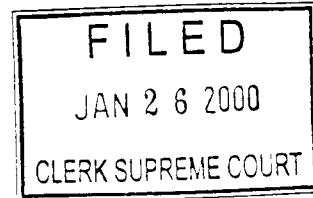
FARLEY TRENTON SHUMPERT,

Applicant-Appellant,

vs.

STATE OF IOWA,

Respondent-Appellee.



Appeal from the Iowa District Court for Clinton County, Charles H. Pelton,
Judge.

On appeal following the denial of his application for postconviction relief,
applicant contends the court erred in finding his counsel was not ineffective.

AFFIRMED.

Patrick J. Kelly, Bettendorf, for appellant.

Thomas J. Miller, Attorney General, Thomas Andrews, Assistant Attorney
General, Lawrence H. Schultz, County Attorney, and Bruce A. Ingham, Assistant
County Attorney, for appellee.

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

HUITINK, P.J.

I. Background Facts and Proceedings.

Shumpert was charged and convicted of possession of cocaine with intent to deliver and possession of cocaine without payment of the required tax. The charges followed discovery of packaged cocaine concealed in Shumpert's clothing while he was undergoing emergency medical treatment for gunshot wounds. On appeal Shumpert's challenge to the imposition of the drug tax, sufficiency of the evidence, and ineffective assistance of counsel claims were rejected, and his convictions were affirmed. *State v. Shumpert*, 554 N.W.2d 250 (Iowa 1996).

In these postconviction proceedings Shumpert claims his trial counsel was ineffective for (1) failing to carefully investigate the scene of the shooting with regard to the paramedics finding crack cocaine; (2) failing to file a motion to suppress the seized cocaine; (3) advising Shumpert to waive a jury trial; (4) advising Shumpert to pay the tax stamp and penalty; and (5) failing to object to expert testimony concerning drug trafficking. The postconviction court considered all of Shumpert's claims on the merits and denied postconviction relief. On appeal Shumpert renews the claims made in the district court.

II. Standard of Review.

Postconviction relief proceedings are actions at law and are reviewed on error. *State v. Blum*, 560 N.W.2d 7, 9 (Iowa 1997). But when the postconviction applicant asserts violations of constitutional safeguards, we make our own evaluation of the totality of the circumstances in a de novo review. *Osborn v.*

State, 573 N.W.2d 917, 920 (Iowa 1998). We apply the de novo review in claims of ineffective assistance of counsel. *Id.*

A defendant receives ineffective assistance of counsel when (1) the defense attorney fails in an essential duty and (2) prejudice results. *State v. Bugely*, 562 N.W.2d 173, 178 (Iowa 1997). The defendant has the burden to prove both of these elements by a preponderance of the evidence. *Taylor v. State*, 352 N.W.2d 683, 685 (Iowa 1984).

The defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.

Strickland v. Washington, 466 U.S. 668, 694, 104 S. Ct. 2052, 2068, 80 L. Ed. 2d 674, 698 (1984).

III. Error Preservation.

An applicant for postconviction relief is generally barred from assigning grounds for postconviction relief that were not raised on direct appeal. See Iowa Code § 822.8 (1997); *Collins v. State*, 477 N.W.2d 374, 376 (Iowa 1991). Any claim not raised on direct appeal may not be litigated in postconviction proceedings unless there is a showing of "sufficient reasons" or "cause" for not raising it on direct appeal and actual prejudice resulting from the failure to timely raise the issue. *Jones v. State*, 479 N.W.2d 265, 271 (Iowa 1991).

In this appeal, Shumpert raises four grounds not raised on direct appeal including counsel's alleged failure to investigate, failure to file a motion to suppress evidence, advice concerning waiver of a jury trial, and advice to make a

tax payment. Shumpert offers no reason for his failure to raise or preserve these grounds on direct appeal, and we will not consider them.

On direct appeal, Shumpert argued his counsel was ineffective in failing to object to the admission of expert opinion concerning the packaging of the drugs found on his person. The supreme court rejected this claim stating:

We conclude that this testimony was properly admitted, and as a result, defense counsel's failure to object was not a breach of an essential duty. In addition, Shumpert has not proven that he was prejudiced by any failure to object. As already noted, there was substantial evidence in addition to the expert testimony that Shumpert possessed the drugs for delivery and not for personal use.

Shumpert, 554 N.W.2d at 254.

Postconviction relief is not a means for relitigating claims that were or should have been properly presented on direct appeal. *Earnest v. State*, 508 N.W.2d 630, 632 (Iowa 1993). All of the grounds upon which Shumpert demands relief have either been waived or decided against him on direct appeal. The judgment of the district court is therefore affirmed.

AFFIRMED.