

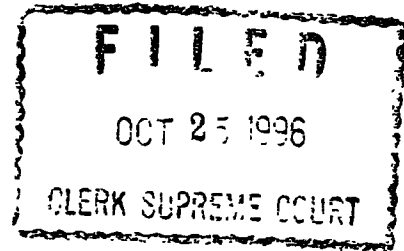
IN THE COURT OF APPEALS OF IOWA

No. 6-396 / 95-1363

ERIC GREER,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.



Appeal from the Iowa District Court for Scott County, James E. Kelley, Judge.

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

Alfredo Parrish and Matthew Boles of Parrish, Kruidenier, Moss, Dunn, Montgomery & Thomas, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Martha E. Boesen, Assistant Attorney General, William E. Davis, County Attorney, and Kelly Raines, Assistant County Attorney, for appellee.

Heard by Habhab, P.J., and Cady and Vogel, JJ. Huitink, J., takes no part.

VOGEL, J.

Eric Greer was convicted of first-degree robbery and second-degree sexual abuse. The victim, John Felske, testified at the criminal trial that he was a clerk at a Coastal Mart when he was confronted by a knife-wielding man who ordered Felske to produce money and perform an act of oral sex. Felske positively identified Greer as the perpetrator. He described to the police the clothing worn by Greer and that clothing was later found at Greer's residence. Greer was found in possession of the items taken from Coastal Mart which included beer, cigarettes, and watches. Greer, offered an alibi defense, testifying he was at a bar at the time of the alleged assault and robbery, he had lent his vehicle to a man named Cortez, and Cortez gave him some watches, in exchange for using Greer's vehicle. Defense counsel called three witnesses in support of Greer's alibi, but Cortez was not called, as his whereabouts and very existence was not known. Greer's defense focused on his alibi as well as trying to discredit Felske's testimony on the basis his employment had been terminated for dishonest conduct.

Greer's conviction was affirmed on appeal. Greer's claims of ineffective assistance of counsel were preserved for postconviction proceedings.

Greer filed an application for postconviction relief. The district court, after a hearing, dismissed the application.

Greer appeals.

Greer contends he was provided with ineffective assistance of trial counsel in two respects. First, he argues trial counsel's representation amounted to no representation because counsel did not subject the prosecution's case to meaningful adversarial testing. Second, Greer asserts trial counsel was ineffective in several specific instances including failing to adequately investigate and prepare for trial, failing to file a pretrial motion to suppress Greer's statement to police, and failing to represent Greer adequately at trial.

Ordinarily, our review of postconviction relief proceedings is for errors of law. *Hinkle v. State*, 290 N.W.2d 28, 30 (Iowa 1980). However, when a postconviction petitioner asserts violation of constitutional safeguards—such as ineffective assistance of counsel—we make our own evaluation based on the totality of the circumstances. This is the equivalent of de novo review. *Id.*

A claim of ineffective assistance of counsel requires a showing that: (1) counsel's performance fell outside the normal range of competency; and (2) the deficient performance so prejudiced the defendant as to give rise to a reasonable probability that, but for counsel's errors, the result of the proceedings would have been different. *State v. McKettrick*, 480 N.W.2d 52, 55 (Iowa 1992). In order to meet the first prong, defendant must overcome the strong presumption that counsel's actions were reasonable under the circumstances and fell within the normal range of competency. *State v. Buck*, 510 N.W.2d 850, 853 (Iowa 1994). To succeed on the second prong, the defendant must show that counsel's failure worked to the

defendant's actual and substantial disadvantage so that, but for counsel's error, the result of the proceeding would have been different. *Id.*

When defense counsel entirely fails to subject the prosecution's case to meaningful adversarial testing, then there is a denial of the defendant's sixth amendment rights, which is presumptively prejudicial. *United States v. Cronin*, 466 U.S. 648, 659, 104 S. Ct. 2039, ___, 80 L. Ed. 2d 657, 668 (1984). The record establishes Greer's defense counsel met with his client, planned Greer's defense strategy of an alibi defense, and carried through with that defense at trial. We conclude Greer's claim of no representation must fail as he has not shown he received "no representation."

Next, we consider Greer's alternative argument of ineffective assistance of counsel. Greer spends considerable time pointing out all of his trial counsel's deficiencies, yet he overlooks his trial counsel's basic strategy of an alibi defense. When that strategy is examined, Greer cannot successfully claim his trial counsel's actions were unreasonable under the circumstances and fell outside the normal range of competency. As a result, all of Greer's claims of ineffective assistance of counsel fail the competency prong of ineffective assistance of counsel claims.

We also find all of Greer's ineffective assistance of counsel claims fail to meet the prejudice prong since Greer cannot show that, but for his trial counsel's unprofessional errors, the result of the proceeding would have been different. Greer's failure to establish the prejudice prong is due to the overwhelming evidence of

Greer's guilt produced at trial. The victim, Felske, testified the Coastal Mart was well lit at the time of the crime. A man came into the store, and asked Felske for a pack of Newport Kings. Felske reached for the cigarettes, and the man paid for them. Then the man stayed at the counter, rummaging around in his pockets for change to make a phone call. The man left the store but returned a few minutes later, saying he needed change for that phone call. He then proceeded around the counter and wielded a knife at Felske. Due to the circumstances surrounding the crime, Felske had ample opportunity to see the face and clothing of the perpetrator. Felske positively identified Greer as the perpetrator of the crime as well as describing and identifying the shoes, shirt and pants worn by Greer. The items stolen from the Coastal Mart were found in Greer's possession. We conclude Greer cannot show he was prejudiced due to the overwhelming evidence supporting his conviction.

We affirm the ruling of the district court denying Greer's application for postconviction relief.

AFFIRMED.