

IN THE COURT OF APPEALS OF IOWA

No. 9-641 / 88-1688

FILED

JAN 25 1990

CLERK SUPREME COURT

WALLIE LAWLESS,

Applicant-Appellant,

vs.

STATE OF IOWA,

Respondent-Appellee.

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Appeal from the Iowa District Court for Linn County, Van
D. Zimmer, Judge.

Lawless appeals the district court's denial of his
applications for postconviction relief, contending he
received ineffective assistance of counsel in his two
criminal trials and direct appeals. **AFFIRMED.**

Richard L. Boresi of King, Smith & Boresi, Cedar Rapids,
for appellant.

Thomas J. Miller, Attorney General, Richard J. Bennett,
Assistant Attorney General, and Denver D. Dillard, County
Attorney, for appellee.

Considered by Schlegel, P.J., and Hayden and Sackett,
JJ.

PER CURIAM

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Plaintiff-appellant Wallie Lawless appeals the denial of his applications for postconviction relief. He was accused of abducting and sexually assaulting three women in two separate incidents, and as a result was convicted of the following crimes in 1981, after two separate jury trials: third-degree kidnapping and second-degree sexual assault arising from one incident; two counts of first-degree robbery, two counts of second-degree sexual abuse, and two counts of false imprisonment arising from the other incident. We affirmed appellant's convictions on direct appeal. State v. Lawless, 332 N.W.2d 120 (Iowa App. 1983); State v. Lawless, 332 N.W.2d 130 (Iowa App. 1982) (table; unpublished opinion).

In 1986 appellant filed two separate applications for postconviction relief, challenging all of his 1981 convictions. After two separate hearings, the district court denied postconviction relief as to all claims in a single ruling. Appellant filed two separate notices of appeal from this single ruling. The two appeals have since been consolidated. We affirm the trial court's denial of the applications for postconviction relief.

Appellant contends he received ineffective assistance of counsel in numerous respects in both of his 1981 criminal trials and also in his 1982 direct appeals. He contends counsel at his first trial failed to maintain sufficient

contact with him, failed to strike a juror or move for a mistrial in regard to that juror, failed to properly object to prosecutorial misconduct, and failed to locate and present a witness.

Appellant also questions the competency of counsel at his second trial. He contends his attorney failed to present exculpatory evidence and an alibi witness, failed to fully investigate evidence that one of the victims had sexual intercourse within twenty-four hours of the abuse incident, failed to properly refute evidence presented by the state and to object to police misconduct, and failed to maintain sufficient contact with him. He also contends the prosecutor at the second trial was guilty of misconduct.

Finally, appellant contends the attorneys who handled his appeals were ineffective. He contends they should have raised the issues of ineffective assistance of trial counsel and the trial courts' denial of his motions to suppress on both appeals. He also contends the attorney for one of the appeals should have raised the issue of the trial court's denial of his motion for a change of venue.

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). For an applicant to establish a claim of ineffective assistance of trial

counsel, he must show "1) that counsel's performance was so deficient as not to be functioning as 'counsel' guaranteed by the sixth amendment; and 2) that the deficient performance so prejudiced the defense as to deprive the defendant of a fair trial." Id. at 627. Counsel is presumed to be competent; the applicant has the burden to prove, by a preponderance of the evidence, that counsel was ineffective. Id.

After thoroughly reviewing the record, we find it unnecessary to specifically address the question of counsels' performance in any of the proceedings because we conclude that appellant has not shown he was prejudiced by the actions of any of his attorneys. Given the overwhelming evidence of guilt, we find his attorneys did a good job of presenting the best case possible. A reasonable decision by counsel will not be interfered with simply because that strategy was unsuccessful. State v. Losee, 354 N.W.2d 239, 243 (Iowa 1984); Frank v. State, 376 N.W.2d 637, 641 (Iowa App. 1985). Appellant's attorneys made reasonable calculations as to the best way to handle the cases. Even if we were to disagree with those decisions, we do not feel the attorneys' performance resulted in undue prejudice to appellant such that he was deprived of fair proceedings. See Kane, 436 N.W.2d at 627. Appellant has not shown that decisions made by his attorneys were so unreasonable as to prove ineffectiveness. See Frank, 376 N.W.2d at 641.

Appellant has not met his burden of proving he was prejudiced by any actions of his attorneys. In light of the overwhelming evidence against appellant, any errors that may have occurred did not affect the outcome of the trials or appeals, nor did they prejudice the defendant. See Kane, 436 N.W.2d at 627; Losee, 354 N.W.2d at 243.

We affirm the district court's denial of postconviction relief.

AFFIRMED.