IN THE COURT OF APPEALS OF IOWA

No. 8-205 / 97-931

MARY HARRINGTON,

Appellant,

vs.

STATE OF IOWA,

Appellee.

FILED
JUL 31 1998
CLERK SUPREME COURT

Appeal from the Iowa District Court for Scott County, David J. Sohr, Judge.

On appeal from the denial of her application for postconviction relief, the appellant argues her trial counsel was ineffective. **AFFIRMED.**

Kent A. Simmons, Davenport, for appellant.

Thomas J. Miller, Attorney General, Robert P. Ewald, Assistant Attorney General, William E. Davis, County Attorney, and Michael Walton, Assistant County Attorney, for appellee.

Considered by Cady, C.J., and Vogel, and Mahan, JJ.

PER CURIAM

This is an appeal by an applicant claiming the district court should have granted her application for postconviction relief, based on a claim of ineffective assistance of counsel. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

On July 2, 1993, a convenience store in Davenport was robbed by a person described as black male, stocky, about five feet six inches tall, and carrying a knife. A neighbor saw a person running from the store to a white Chevy pickup. A pickup fitting this description was stopped shortly after the robbery. Mary Harrington was a passenger in the pickup. Police officers brought Harrington to the store, where the clerk identified her as the robber.

Harrington was then connected to two prior armed robberies of convenience stores which had taken place on March 31, 1993. The clerks from those two stores identified Harrington from a line-up. All three clerks identified Harrington at the trial. She was convicted of three counts of first-degree robbery. Her convictions were upheld on appeal. *State v. Harrington*, No. 94-0363 (Iowa App. Mar. 30, 1995).

Harrington filed an application for postconviction relief, claiming she received ineffective assistance of counsel at her criminal trial. The district court found Harrington failed to show ineffective assistance. She now appeals.

Our review of an allegation of ineffective assistance of counsel is de novo. *Cox v. State*, 554 N.W.2d 712, 714 (Iowa App. 1996). To establish a claim of

ineffective assistance of counsel, an application must show (1) the attorney failed to perform an essential duty and (2) prejudice resulted to the extent it denied applicant a fair trial. *Bettis v. State,* 547 N.W.2d 635, 637 (Iowa App. 1996).

Harrington claims she received ineffective assistance because her counsel failed to move to suppress the identification evidence as unduly suggestive. Harrington believes the initial show-up was improper. She also asserts a photo line-up and the live line-up were unduly suggestive because the other "suspects" were males and had facial hair.

We determine Harrington failed to show sufficient reason or cause for failing to raise the issue on direct appeal. She also failed to show she received ineffective assistance of appellate counsel for failing to raise the issue. We will not second guess a reasonable tactical decision concerning which issues to raise on appeal. *Jones v. State,* 479 N.W.2d 265, 272 (Iowa 1991).

Even if we were to address the case on the merits, Harrington failed to show ineffective assistance. The initial show-up was not any more suggestive than usual for an on-the-scene confrontation. *See State v. Jackson,* 387 N.W.2d 623, 631 (Iowa App. 1986). Additionally, although Harrington was the only female in the photo and live line-ups, the record reveals she had a very masculine appearance. The procedures used in this case were not unduly suggestive. Furthermore, Harrington failed to show counsel's performance was prejudicial.

We find Harrington failed to show she received ineffective assistance of appellate counsel or trial counsel. We affirm the decision of the district court denying Harrington's application for postconviction relief.

AFFIRMED.