

IN THE COURT OF APPEALS OF IOWA

No. 7-166 / 96-1054

TODD GOODSON,
Applicant-Appellant,

000167

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Black Hawk County, Alan L. Pearson,
Judge.

Goodson appeals a district court ruling denying his application for
postconviction relief. **AFFIRMED.**

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

Thomas J. Miller, Attorney General, Robert P. Ewald, Assistant Attorney
General, Thomas J. Ferguson, County Attorney, and Shawn Wehde, Assistant County
Attorney, for appellee.

Heard by Sackett, P.J., and Huitink and Streit, JJ.

HUITINK, J.

Todd Goodson appeals the denial of his application for postconviction relief by the district court. He claims he was denied effective assistance of trial counsel. We affirm.

I. Background Facts and Proceedings.

During a September 1991 execution of a search warrant at Goodson's residence, officers found a large amount of crack cocaine in Goodson's garage and motorcycle. They also discovered a nine-millimeter Tec-9 handgun in the garage's roof rafters near the cocaine. Large bundles of cash and a .22 semi-automatic handgun were retrieved from a bedroom. Police also found a small quantity of marijuana, several boxes of baking soda, records of apparent drug transactions, receipts for expensive stereo equipment, and a copy of a rap song promoting the virtues of drug dealing.

In April 1992, a jury convicted Goodson of possession with intent to deliver a controlled substance while in possession of a firearm, possession of marijuana, and failure to affix a drug tax stamp. The court sentenced him to three separate but concurrent terms of 100 years, one year, and five years. Goodson's conviction and sentence were upheld on direct appeal. *State v. Goodson*, 503 N.W.2d 395 (Iowa 1993).

Four of Goodson's ineffective assistance of counsel claims raised on direct appeal were preserved for postconviction review. Goodson's postconviction hearing on these allegations occurred in April 1996. All of Goodson's claims were rejected by the district court.

Goodson appeals. He contends he was denied effective assistance of trial counsel because his attorney introduced inculpatory evidence, failed to adequately prepare for trial, failed to file a motion to suppress, failed to effectively cross-examine witnesses, and failed to make necessary evidentiary objections at trial.

II. Standard of Review.

Our ultimate concern in claims of ineffective assistance of counsel is with the "fundamental fairness of the proceeding whose result is being challenged." *State v. Risdal*, 404 N.W.2d 130, 131 (Iowa 1987) (quoting *Strickland v. Washington*, 466 U.S. 668, 696, 104 S. Ct. 2052, 2069, 80 L. Ed. 2d 674, 699 (1984)). We review de novo the totality of the circumstances relating to counsel's conduct, keeping in mind the presumption that counsel performed competently. *Risdal*, 404 N.W.2d at 131.

To prevail on a claim of ineffective assistance, the defendant must show: (1) his counsel failed to perform an essential duty; and (2) the failure prejudiced him. *Brewer v. State*, 444 N.W.2d 77, 83 (Iowa 1989). The defendant has the burden to prove both of these elements by a preponderance of the evidence. *Id.*; *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 proceeding 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).

Reasonableness under prevailing professional norms is the standard under which we measure counsel's performance. *Risdal*, 404 N.W.2d at 132. That reasonableness is evaluated from counsel's perspective at the time of the alleged error in light of all the circumstances. *Kimmelman v. Morrison*, 477 U.S. 365, 381, 106 S.Ct. 2574, 2586, 91 L.Ed.2d 305, 323 (1986).

III. Introduction of Inculpatory Evidence.

Goodson faults trial counsel for calling four witnesses at trial to testify that Goodson was paid to store drugs for Anthony Taylor. Counsel explained that he sought to establish Goodson kept the seized drugs as a "warehouse man or bailee" and therefore he was, at most, guilty of the lesser-included offense of possession. Goodson argues counsel misunderstood the applicable law, and this evidence proved he had sufficient knowledge of the intent of the alleged drug dealer to convict him under aiding and abetting and/or conspiracy theories. He cites the trial judge's questions of counsel concerning the reasonableness of this strategy before admitting this testimony. The court later instructed the jury on aiding and abetting as well as

conspiracy. Goodson contends his attorney's strategy prejudiced him by helping to secure his conviction.

Counsel's intention was to focus on Taylor to show Goodson merely had knowledge of the drug trafficking operation but did not participate in it. Although this tactic presented a remote chance of success, we cannot say defense counsel failed to perform an essential duty by attempting to create reasonable doubt that Goodson participated in drug trafficking as opposed to mere possession. Improvident trial strategy, miscalculated tactics, and mistakes in judgment do not necessarily amount to ineffective assistance of counsel. *State v. McKettrick*, 480 N.W.2d 52, 55 (Iowa 1992). Furthermore, Goodson has failed to show a reasonable probability of a different outcome had counsel abandoned this strategy. At the time of the search, Goodson admitted to possessing fifteen wrapped packages of rock cocaine, some of which were stored in his motorcycle, as well as to owning the gun found near the drugs. He also admitted to purchasing a car and car stereo with proceeds from drug sales. We affirm on this issue.

IV. Lack of Trial Preparation.

Goodson also argues counsel allowed insufficient time to conduct meaningful discovery and prepare for a trial. Trial was scheduled for March 31, 1992. Counsel did not file a motion to produce until March 23, 1992. Goodson asserts counsel's

failure to conduct a thorough pretrial investigation or to research the necessary elements of the charges resulted in sufficient prejudice to warrant a new trial.

Trial counsel has a duty to adequately prepare for trial and failure to do so may constitute ineffective assistance of counsel. *State v. McCray*, 231 N.W.2d 579, 581 (Iowa 1975). When lack of preparation is asserted as the basis of denial of adequate representation, the entire record must be examined and the totality of circumstances evaluated to determine counsel's effectiveness. *State v. Massey*, 207 N.W.2d 777, 780 (Iowa 1973).

We agree with the postconviction court that the late filing of the motion to produce did not establish counsel's inadequate trial preparation. Moreover, we note Goodson has failed to specify how counsel's failure to prepare resulted in the necessary prejudice. Goodson's conclusory assertions that counsel's actions were detrimental to his defense is insufficient to sustain his burden of proof. We also affirm on this issue.

V. Motion to Suppress. .

Goodson next argues counsel was ineffective for failing to move to suppress his inculpatory statements. Prior to trial, Goodson was ordered to appear for a nontestimonial identification. The application requested he give handwriting samples by filling out standard forms. Goodson was read his rights but counsel was not present during the procedure. The officer conducting this procedure requested

Goodson write the same words contained in the poem seized during the search. The officer testified at trial the poem boasted about drug trafficking. The officer stated Goodson began to write the words before they were recited by the officer and also supplied a word missing from the officer's copy. The poem taken from Goodson's home was admitted at trial without objection by defense counsel.

Goodson asserts evidence of his familiarity with the poem was an admission of guilt. He argues the foregoing procedure was akin to a custodial interrogation without the benefit of counsel. He claims counsel had a duty to seek suppression of the statements and to object to the testimony of the officer.

The postconviction court ruled that the State failed to establish a voluntary waiver or any other basis for believing the right to counsel did not apply to the nontestimonial identification procedure. The court determined Goodson's rights were violated during the procedure and the evidence elicited was therefore subject to suppression.¹ However, the court concluded that in the context of all the evidence, Goodson's familiarity with the poem was inconsequential. Accordingly, the court

¹ The court observed that the original document found in Goodson's home was available as evidence under any circumstance and no challenge had been made to the search that produced the poem. On appeal, Goodson cites no authority in support of his contention that his trial counsel should have sought to suppress the writings seized from his home. Accordingly, we reject his challenge to defense counsel's failure to object to the admission of the document itself. *See State v. Ray*, 516 N.W.2d 863, 866 (Iowa 1994) (ineffective assistance of counsel may not be predicated on filing of meritless motion).

held there was no reasonable probability that the outcome of the trial would have been different had the evidence been suppressed.

We agree that the admission of the officer's testimony was not prejudicial. When considered in the context of Goodson's earlier admissions, his familiarity with the poem was insignificant. The introduction of this evidence does not undermine our confidence in the verdict. We affirm on this issue.

VI. Representation at Trial.

Goodson next asserts trial counsel failed to effectively cross-examine the State's witnesses or to interpose meaningful objections during the trial. Counsel did not cross-examine three of the State's fourteen witnesses. Counsel also declined to cross-examine the State's rebuttal witnesses, including an expert witness who testified about the "modus operandi" of drug dealers in Waterloo. Goodson argues his constitutional right to confront the witnesses against him was denied by counsel's substandard trial performance.

Goodson has not specified how counsel's failure to cross-examine these witnesses resulted in prejudice. *See State v. Yaw*, 398 N.W.2d 803, 807 (Iowa 1987) (speculative claims of prejudice, unsupported by the record, will not support an ineffectiveness claim). He has also failed to identify the precise testimony to which counsel should have objected. Goodson's general claims of substandard trial performance are insufficient to satisfy his burden on postconviction review. In

addition, we note the postconviction record includes counsel's strategic explanation for deciding not to cross-examine the State's expert witness. We are unable to conclude from the record that trial counsel's performance was deficient or it influenced the outcome of the trial.

We have considered all of the arguments asserted by Goodson and conclude the postconviction court was correct in denying his application for postconviction relief. We affirm the decision in its entirety.

AFFIRMED.