IN THE COURT OF APPEALS OF IOWA

No. 3-002 / 91-1727

FILED
FEB 23 1993
CLERK SUPREME COURT

**TODD GRANT,**

Appellant,

vs.

**STATE OF IOWA,**

Appellee.

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Appeal from the Iowa District Court for Polk County, Ray Hanrahan, Judge.

Grant appeals the district court order denying his application for postconviction relief. **AFFIRMED.**

Francis C. Hoyt, Jr., West Des Moines, for appellant.

Bonnie J. Campbell, Attorney General; Martha E. Boesen, Assistant Attorney General; John P. Sarcone, County Attorney; and Steve Foritano, Assistant County Attorney, for appellee.

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

HABHAB, J.

Todd Grant was convicted of second-degree theft and of being an habitual offender in 1989. This court dismissed Grant's appeal pursuant to Iowa Rule of Appellate Procedure 104 on November 17, 1989.

Grant filed an application for postconviction relief. Grant alleged his trial counsel rendered ineffective assistance. The district court denied Grant's application for postconviction relief. Grant appeals. We affirm.

Our ultimate concern in claims of ineffective assistance 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. Id. at 131. The burden is on the defendant to prove by a preponderance of the evidence that (1) counsel failed to perform an essential duty and (2) prejudice resulted. Id. at 131-32 (citation omitted).

Grant claims his trial counsel was ineffective by not challenging the lack of corroboration of his confession. Grant contends his trial counsel should have moved for a directed verdict of acquittal based on lack of corroboration, and requested a jury instruction as to the state of the law concerning uncorroborated confessions.

Grant's trial counsel responded at the postconviction hearing that she believed that Grant's statement did not amount to a confession and even if it did there was sufficient evidence to corroborate Grant's confession.

"The confession of the defendant, unless made in open court, will not warrant a conviction, unless accompanied with other proof that the defendant committed the offense." Iowa R. Crim. P. 20(4). "Corroboration need not be strong or go to the whole of the case so long as it confirms some material fact connecting the defendant with the crime." State v. White, 319 N.W.2d 213, 214 (1982).

Grant's statement to the police was that he rode the blue Honda motorcycle, he knew it had been hot-wired and stolen, and that he changed the license plates. The independent evidence to corroborate his confession was the following: Robert Howard reported his blue Honda motorcycle stolen; Officer Eastman discovered a motorcycle, which had been hot-wired, parked outside a house; the officer ran a computer check and discovered the motorcycle had been stolen and the license plates changed; the officer found Grant inside the house.

We conclude that Grant has failed to show by a preponderance of the evidence his trial counsel breached an essential duty.

**AFFIRMED**