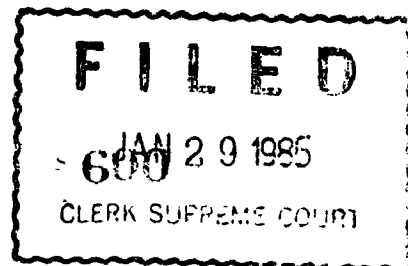


IN THE COURT OF APPEALS OF IOWA



LEONARD LEE WRIEDEN,	)	
Petitioner-Appellant,	)	Filed January 29, 1985
vs.	)	
STATE OF IOWA,	)	<u>4-524</u>
Respondent-Appellee.	)	84-386

Appeal from the Iowa District Court for Lee County - John C. Miller, Judge.

Petitioner appeals from a denial of postconviction relief. **AFFIRMED.**

Charles Harrington, Appellate Defender, and Patrick R. Grady, Assistant Appellate Defender, for petitioner-appellant.

Thomas J. Miller, Attorney General of Iowa, and Mary Jane Blink, Assistant Attorney General, for respondent-appellee.

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

HAYDEN, J.

Petitioner was convicted of burglary in the first degree and sexual abuse in the third degree in February, 1982. His convictions were affirmed on direct appeal to this court, but his claim of ineffective assistance of trial counsel was reserved for postconviction relief. Petitioner now appeals from a denial of his application for postconviction relief. We affirm.

Since petitioner's claim involves the alleged violation of a basic constitutional right, we make an independent evaluation of the totality of the circumstances. Hinkle v. State, 290 N.W.2d 28, 30 (Iowa 1980).

The test of whether an accused has been denied his constitutional right to the effective assistance of counsel is whether "under the entire record and totality of the circumstances counsel's performance was within the range of normal competency." Snethen v. State, 308 N.W.2d 11, 14 (Iowa 1981). When a claim of ineffective assistance is based upon a specific act or omission of counsel, it must be shown that "(1) counsel failed to perform an essential duty, and (2) prejudice resulted therefrom." Id. "Prejudice cannot be found unless the error constitutes a denial of the accused's due process right to a fair trial, a fundamental miscarriage of justice, or an equivalent constitutional deprivation." State v. Miles, 344 N.W.2d 231, 234 (Iowa 1984).

Petitioner claims his trial counsel was ineffective for failing to pursue the defense that petitioner had consent to enter the victim's home. He cites counsel's failure to cross-examine the victim on this issue as evidence of ineffectiveness. Petitioner alleges that counsel did not present any coherent defense theory.

After reviewing the entire record, we conclude petitioner's trial attorney did not fall below the range of normal competency by not presenting more of a defense. An attorney can only do what the facts and circumstances of the case permit. State v. Newman, 326 N.W.2d 788, 795 (Iowa 1982). There was virtually no evidence to support the theory that the victim consented to either defendant's

presence in her house or the sexual intercourse with him. Her testimony about her lack of consent was unequivocal. Counsel's decision not to emphasize that part of her testimony in cross-examination is understandable, especially when counsel was able to attack her general credibility by emphasizing her vagueness concerning the time the events occurred. Furthermore, the record indicates that counsel was not ineffective for failing to pursue an alibi defense when there appears to have been little credible evidence to support one.

Petitioner has not met his heavy burden of showing that under the circumstances of this case counsel's assistance was ineffective.

AFFIRMED.