

IN THE COURT OF APPEALS OF IOWA

No. 7-569 / 96-1680

000241

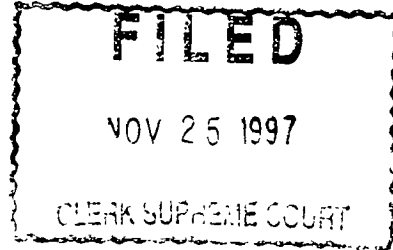
DEON REDMON,

Applicant-Appellant,

vs.

STATE OF IOWA,

Respondent-Appellee.



Appeal from the Iowa District Court for Polk County, George Bergeson, Judge.

Applicant appeals from the denial of his postconviction relief application based on claimed ineffective assistance of counsel. **AFFIRMED.**

Susan R. Stockdale of Roehrick, Hulting, Blumberg, Kirlin & Krull, P.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Ann E. Brenden, Assistant Attorney General, John P. Sarcone, County Attorney, and Steve Foritano, Assistant County Attorney, for appellee.

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

MAHAN, J.

This is an appeal by an applicant claiming he was entitled to postconviction relief due to ineffective assistance of counsel. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

Deon Redmon was charged with sexual abuse in the second degree in violation of Iowa Code section 709.3(2) (1993). The State alleged Redmon had improperly touched a six year old girl, V.W., while he was taking care of her.

Redmon's trial counsel, Michael Maxwell, suggested Redmon should not attend the deposition of V.W. and other witnesses in order to get more forthright testimony. Redmon did not object and did not attend the depositions. The case was tried to the bench and Redmon was convicted of second-degree sexual abuse. The conviction was upheld on appeal. *State v. Redmon*, No. 93-1945 (Iowa App. Jan. 23, 1995).

On December 4, 1995, Redmon filed an application for postconviction relief, claiming he received ineffective assistance from his trial counsel because depositions were taken without his presence. At the postconviction hearing, Redmon testified Maxwell asked him not to attend the depositions in order to avoid "confrontations" and he agreed. The district court denied the request for postconviction relief. Redmon now appeals.

Under Iowa Rule of Criminal Procedure 25, a criminal defendant is to be present at every stage of a trial. *Van Hoff v. State*, 447 N.W.2d 665, 674 (Iowa App.

1989). A discovery deposition not taken for use at trial is not a “stage of trial.” *Id.* (citing *Otteson v. Iowa Dist. Court*, 443 N.W.2d 726, 728 (Iowa 1989)). The record is clear that the depositions were for discovery purposes and were not used at trial. The witnesses testified in person. A criminal defendant’s absence from discovery depositions does not constitute the failure to perform an essential duty of counsel. *Id.* at 675. We conclude trial counsel in this case did not breach an essential duty by failing to have Redmon present at the depositions.

Additionally, we determine Redmon has failed to show prejudice. Redmon has not shown the result of his trial would have been different if he had attended the discovery depositions.

We affirm the decision of the district court denying Redmon’s application for postconviction relief. Costs of this appeal are assessed to Redmon.

AFFIRMED.