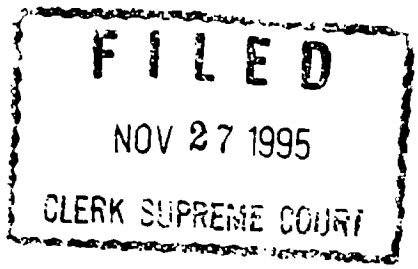
IN THE COURT OF APPEALS OF IOWA

No. 5-568 / 94-1789



MICHAEL A. BARTNICK,

Appellant,

vs.

STATE OF IOWA,

Appellee.

Appeal from the Iowa District Court for Lee County, Harlan W. Bainter, Judge.

Michael A. Bartnick appeals the district court's denial of his application for postconviction relief. **AFFIRMED.**

John Robertson, Iowa City, for appellant.

Thomas J. Miller, Attorney General, and Thomas S. Tauber and Robert Glaser, Assistant Attorneys General, for appellee.

Considered by Donielson, C.J., and Habhab and Cady, JJ.

DONIELSON, C.J.

Michael Bartnick appeals from the denial of his application for postconviction relief. Our review of an allegation of ineffective assistance of counsel is de novo. *State v. Howes*, 525 N.W.2d 874, 876 (Iowa App. 1994). Bartnick has the burden of proving by a preponderance of the evidence that his attorney did not perform an essential duty and, as a result, he was prejudiced. *Id.* To demonstrate prejudice, Bartnick must prove there is a reasonable probability that but for counsel's unprofessional errors, the result of the proceeding would have been different. *State v. Tracy*, 482 N.W.2d 675, 680 (Iowa 1992). A reasonable probability is a probability sufficient to undermine confidence in the outcome. *Id.* Finding a lack of prejudice, we affirm the denial of Bartnick's application.

Bartnick was imprisoned in the Iowa State Penitentiary at Fort Madison. He set fire to his cell and was convicted of first-degree arson. He contends his trial counsel was ineffective in failing to object to inscriptions on the backs of several photographs admitted into evidence. This issue was raised in his direct appeal and preserved for review in postconviction proceedings. *State v. Bartnick*, 478 N.W.2d 878, 880 (Iowa App. 1991).

State's exhibits three through thirteen were photographs of Bartnick's damaged cell. On the backs of the photos were notes made by Michael Hiles, a special agent with the State Fire Marshall's office. The notations include:

Exhibit 3	Shows - door secure
Exhibit 4	View from outside shows material hanging from door
Exhibit 5	Shows sheet material around door
Exhibit 6	Fire debris on floor of doorway
Exhibit 7	Fire on bunk - no accidental cause
Exhibit 8	Light covered with blanket & towel
Exhibit 9	Accidental cause - eliminate no damage from fire
Exhibit 10	Security light no accidental cause
Exhibit 11	Shows damage to bunk after mattress is removed no accidental cause of ignition
Exhibit 12	Receptacle not in use no accidental cause
Exhibit 13	Vent - smoke to others

Identifying information should not be attached to exhibits offered into evidence. *See State v. Gallup*, 500 N.W.2d 437, 441 (Iowa 1993). Such information is hearsay, and it unduly emphasizes the State's evidence because such information is a "neat condensation" of the State's whole case against a defendant. *Id.* However, the erroneous admission of such evidence can be rendered nonprejudicial where the defendant has admitted the conduct for which the evidence was offered to prove. *See id.* (admission of drug evidence with attached identification tag was harmless where defendant had admitted selling the drugs).

A review of the record reveals many of the inscriptions on the photographs in this case were merely descriptive of the evidence and cumulative of the testimony given by agent Hiles. *See State v. Reese*, 259 N.W.2d 771, 777 (Iowa 1977) (notations on photographic exhibits were descriptive of the evidence only and did not in any manner emphasize or summarize the State's case to the prejudice of the defendant). It was undisputed Bartnick set fire to his cell. He admitted doing so in

pretrial admissions, and he admitted it in his testimony at trial. Under these circumstances any notations on the photographic exhibits regarding causation of the fire were irrelevant. Given his admission that he caused the fire, the only issue in dispute was whether the presence of one or more persons in the cellhouse could have been reasonably anticipated by Bartnick. Bartnick's admissions and testimony revealed his awareness of the presence of other prisoners and guards in the cellhouse. Contrary to the assertion in his brief, there was overwhelming evidence, aside from the photographic exhibits, to support of his conviction for first-degree arson.

Since an applicant must prove both incompetent representation and prejudice, a reviewing court can deny an application for postconviction relief based on the failure to prove prejudice, without deciding whether counsel's representation was deficient. *See State v. McKettrick*, 480 N.W.2d 52, 56 (Iowa 1992); *Taylor v. State*, 352 N.W.2d 683, 685 (Iowa 1984). Bartnick has failed to demonstrate prejudice, and we affirm the denial of his application for postconviction relief.

AFFIRMED.