FILED
NOV 22 1978
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

ARTHUR LEE WILLIAMS, JR.,	)	
Appellant,	)	Filed November 22, 1978
v.	)	690
STATE OF IOWA,	)	2-61463
Appellee.	)	

Appeal from the Black Hawk District Court - Carroll E. Engelkes, Judge.

Petitioner appeals from trial court order denying his application for postconviction relief. Affirmed.

Alfredo G. Parrish, of Des Moines, for appellant.

Richard C. Turner, Attorney General, Ann Fitzgibbons, Assistant Attorney General, and David H. Correll, Black Hawk County Attorney, for appellee.

Submitted to Oxberger, C.J., and Donielson, Snell and Carter, JJ.

PER CURIAM

Petitioner, Arthur Lee Williams, Jr., appeals from trial court order denying his application for postconviction relief. That application sought to avoid petitioner's August, 1972 conviction for murder in the first degree and the life sentence which resulted therefrom. We affirm the trial court.

Petitioner contends on this appeal that the trial court erred in rejecting his claim that he was denied the effective assistance of counsel at his criminal trial. To state this contention in more particularized fashion, it is contended that because of conflicts which arose between petitioner's retained counsel and his court-appointed counsel and their inability to work together, his defense was inadequate.

Before we reach the merits of this contention, we must deal with the State's contention that the claims made in this postconviction proceeding could have been raised on direct appeal from the judgment of conviction and that petitioner's failure to do so precludes him from now raising them. As support for this contention, the State relies upon § 663A.8, The Code, and Bledsoe v. State, 257 N.W.2d 32, 34 (Iowa 1977). We do not agree that the claims now asserted were fully available to petitioner on direct appeal. There was such an appeal which resulted in affirmance of the conviction. State v. Williams, 217 N.W.2d 573 (Iowa 1974). One of the issues involved in that appeal was petitioner's contention that the court erred in permitting retained counsel to associate with his court-appointed counsel for the remainder of the trial after two-thirds of the State's case had already been completed. The supreme court found no error in this respect but the issue presented was not framed in terms of ineffective assistance of counsel. It is clear that petitioner's present claim is based upon "the sequence of events which followed during the remainder of the trial" and depends, in part, upon evidence of matters which would not be contained in the record of the original criminal trial. See e.g., State v. Coil, 264 N.W.2d 293, 296 (Iowa 1978). We therefore reject the State's contention that petitioner's claim is precluded by § 663A.8, The Code.

Turning to the merits of petitioner's claim it is established that the right to counsel means effective assistance of an attorney. Cleesen v. State, 258 N.W.2d 330, 332 (Iowa 1978). Effective assistance of counsel has been defined as including a

"conscientious, meaningful representation wherein the accused is advised of his rights and honest, learned and able counsel is given a reasonable opportunity to perform the task assigned to him." Zacek v. Brewer, 241 N.W.2d 41, 51 (Iowa 1976). But effective assistance of counsel does not mean every mistake in judgment or error in trial strategy by an attorney serves to deprive an accused of a constitutional right. Long v. Brewer, 253 N.W.2d 549, 558 (1977). The benchmark is whether under all the circumstances counsel's performance was within the range of normal competency. Cleesen v. State, supra at 332. And it is settled that in order to warrant finding a deprivation of due process, a defendant must present an affirmative factual basis demonstrating counsel's inadequacy of representation. State v. Massey, 207 N.W.2d 777, 780 (Iowa 1973).

It is petitioner's contention that because of the conflict between his counsel and their inability to work together; because of the different strategies and defenses each sought to use; because of his retained counsel's lack of knowledge regarding Iowa law, as evidenced by inability to meet the foundational requirements needed to present character testimony by reputation and lack of knowledge regarding use of the diminished responsibility defense, and the totality of the circumstances, petitioner was afforded an inadequate trial defense. We have considered these contentions both individually and collectively and fail to find sufficient merit in any of them to warrant setting aside petitioner's murder conviction. Petitioner has failed to demonstrate in what matter he was prejudiced by any differences in trial strategy between his counsel. The record reflects that before any psychiatric witnesses testified on the issue of diminished responsibility, both counsel were in agreement as to the use of such defense. With respect to the use of reputation testimony as to character, the issue was not only whether counsel was familiar with the foundational requirements, but also whether sufficient foundation could be established as to these witnesses in any event. There is no indication that any evidence helpful to petitioner was lost because of counsel's unfamiliarity with the law. The record fails to disclose that petitioner was ever presented with conflicting advice by his counsel so as to be unable to intelligently participate in his defense.

To mount a successful challenge based upon lack of reasonable competency of counsel there must be some showing of prejudice as a result of the attorneys'

representation. United States ex rel Johnson v. Johnson, 531 F.2d 169, 178 (3d Cir. 1976), cert. den. 425 U.S. 997 (1976). Defendant has failed to establish sufficient affirmative factual basis for his claim of ineffective assistance of counsel.

AFFIRMED.