IN THE COURT OF APPEALS OF IOWA

No. 8-282 / 97-1157

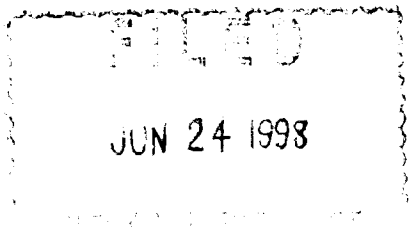
SCOTT EDWARD KNUTSON,

Applicant-Appellant,

vs.

STATE OF IOWA,

Respondent-Appellee.



Appeal from the Iowa District Court for Webster County, Kurt L. Wilke, Judge.

Applicant appeals the district court's denial of his application for postconviction relief from his conviction of first-degree murder. **AFFIRMED.**

Alfredo Parrish and Matthew Boles of Parrish, Kruidenier, Moss, Dunn & Montgomery, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Richard J. Bennett, Assistant Attorney General, and James J. Koll, County Attorney, for appellee.

Heard by Sackett, P.J., and Huitink and Mahan, JJ.

PER CURIAM.

Petitioner-appellant Scott Edward Knutson was convicted of first-degree murder following the stabbing death of his wife, Annette. He subsequently filed a petition for postconviction relief contending his trial attorney was not effective. The trial court denied his petition. Petitioner appeals from that denial contending he showed his trial attorney breached her duty in: (1) not objecting and moving for a mistrial following remarks of the prosecutor in rebuttal; (2) failing to cross-examine a medical witness; and (3) not obtaining and presenting certain expert testimony. We affirm.

On December 9, 1991, petitioner called his father, Marvin Knutson, and told him Annette had been stabbed. Marvin found Annette on the floor. He took a knife from petitioner's hands and saw that his wrists were cut. There had also been a call to the emergency dispatcher from petitioner reporting, "This is a murder/suicide . . . . I'm dying." A police officer was sent. Petitioner met the officer at the door telling him he had killed his wife, Annette.

Review of claims of ineffective assistance of trial counsel requires an independent evaluation of all the relevant circumstances, which is the equivalent of de novo review. *Taylor v. State*, 352 N.W.2d 683, 684 (Iowa 1984). A postconviction applicant cannot obtain review of such an issue unless he or she demonstrates by a preponderance of the evidence: (1) sufficient reason or cause exists for not having raised it on direct appeal; and (2) actual prejudice resulted from the

claimed error. *Polly v. State*, 355 N.W.2d 849, 856 (Iowa 1984). Ineffective assistance of appellate counsel, in failing to raise an issue, may satisfy the "cause" requirement. *Kane v. State*, 436 N.W.2d 624, 627 (Iowa 1989).

An applicant must prove the alleged error "worked to his or her *actual* and substantial disadvantage, infecting the entire trial with error of constitutional dimensions." *Polly*, 355 N.W.2d at 855. If an applicant fails to prove both cause and actual prejudice, then the failure to raise a claim before postconviction is fatal; the substantive issue is waived and need not be considered by the reviewing court. *See Kane*, 436 N.W.2d at 629.

To establish cause based on ineffective assistance of appellate counsel, a strong presumption of competency of counsel must be rebutted. *Taylor*, 352 N.W.2d at 685; *Henderson v. Scurr*, 313 N.W.2d 522, 524 (Iowa 1981). First, applicant must prove counsel's failure to raise a particular issue on appeal constituted breach of an essential duty. Second, applicant must prove prejudice by demonstrating a reasonable probability the outcome of the trial would have been different. *Strickland v. Washington*, 466 U.S. 668, 694, 104 S. Ct. 2052, 2065-66, 80 L. Ed. 2d 674, 698 (1984); *Gering v. State*, 382 N.W.2d 151, 153-54 (Iowa 1986).

Petitioner contends the prosecutor made remarks in closing arguments that were highly prejudicial and his trial attorney failed to object to the remarks or move for a mistrial. Closing arguments were not reported. The trial court found petitioner failed to show by a preponderance of the evidence the alleged prejudicial remarks

were made. On our review of the record, we find no reasons to disagree with the trial court's finding and affirm on this issue.

Petitioner's second contention is his trial attorney should have cross-examined the Webster County Medical Examiner Daniel Cole, who went to the scene of the stabbing. Petitioner's trial attorney testified she found no need to question Cole because his testimony showed only a description of the scene and that he pronounced Annette dead. Petitioner has failed to show cross-examination would have elicited any facts favorable to his position. Trial counsel did not breach a duty to petitioner in not cross-examining Cole. *See State v. Rice*, 543 N.W.2d 884, 888 (Iowa 1996).

Petitioner's next contention is his trial attorney should have called an expert witness who would have testified the wounds to his wrists and stomach were a suicide attempt. The doctor who treated the wounds testified they were self-inflicted but were a suicide gesture rather than a suicide attempt because the wounds were not deep enough to be fatal.

It appears petitioner makes this argument because he is of the opinion testimony that the wounds were a suicide attempt would have mitigated the offense. Petitioner has failed to show such testimony was available. His trial attorney had consulted a psychiatrist and another doctor, but their opinions did not contradict the testimony elicited on this fact at trial. Petitioner has failed to meet the required burden to succeed on this issue.

Petitioner's final contention is that the cumulative effect of all the claimed errors of trial counsel support his petition. We have found no ground for relief on the specific claims made. There is no basis to support this claim. *See State v. Burkett*, 357 N.W.2d 632, 638 (Iowa 1984). We affirm.

AFFIRMED.