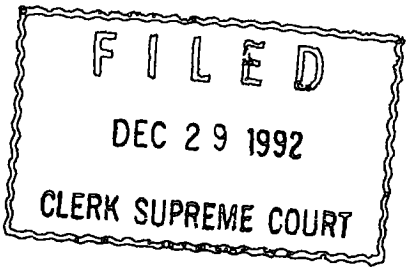
IN THE COURT OF APPEALS OF IOWA

No. 2-605 / 92-114



RODNEY TERRANCE CARTER,

Appellant,

vs.

STATE OF IOWA,

Appellee.

Appeal from the Iowa District Court for Linn County, L. Vern Robinson, Judge.

The applicant appeals from the district court's denial of his application for postconviction relief. **AFFIRMED.**

Anna Wirt O'Flaherty of O'Flaherty Law Firm, Cedar Rapids, for appellant.

Bonnie J. Campbell, Attorney General; Roxann M. Ryan, Deputy Attorney General; Denver D. Dillard, County Attorney; and Scott C. Peterson, Assistant County Attorney, for appellee.

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

DONIELSON, P.J.

Rodney Terrance Carter appeals from the district court's denial of his application for postconviction relief.

Carter was convicted of third-degree sexual abuse, following a jury trial, in December 1987. He was represented at the trial by two attorneys, John Logan and Amanda Potterfield. Carter's conviction was affirmed by the court of appeals and further review was denied. Carter subsequently filed the present application for postconviction relief.

At the postconviction hearing, Carter argued his trial counsel was ineffective for calling two witnesses whose testimony proved favorable to the victim. At trial, Carter's counsel had introduced the testimony of Detective Mellgren, a police officer; and of Patrick Morrissey, a DHS investigator. However, both Mellgren and Morrissey testified about the victim's own account of the abuse to them, which differed from the testimony given by the victim at trial. Trial counsel had called these two witnesses in order to point out the victim's prior inconsistent statements.

John Logan, one of Carter's trial counsel, testified he discussed with Carter the reasons for calling Detective Mellgren to the stand, but did not discuss with Carter the strategy behind calling Morrissey. Carter testified he had no discussions with his trial counsel before trial

regarding their reasons for calling either of these witnesses, and he was surprised when these witnesses were called.

The district court found Carter had not received ineffective assistance of counsel and denied Carter's claim for postconviction relief. Carter now appeals.

Carter contends his trial counsel knew the testimony of these two witnesses would be damaging to his case. He further argues that if the State had sought to introduce this evidence, it would have been excluded as hearsay. Carter also contends that appellate counsel was ineffective for failing to raise this issue on direct appeal.

Ordinarily, our review of postconviction relief proceedings is for errors of law. Hinkle v. State, 290 N.W.2d 28, 30 (Iowa 1980). However, when a postconviction petitioner asserts a violation of constitutional safeguards--such as ineffective assistance of counsel--we make our own evaluation based on the totality of the circumstances. This is the equivalent of de novo review. Id.

In order to prevail on such a claim, appellant must show by a preponderance of the evidence that (1) counsel failed to perform an essential duty and (2) prejudice resulted. See State v. Risdal, 404 N.W.2d 130, 131 (Iowa 1987); Edman v. State, 444 N.W.2d 99, 101 (Iowa App. 1989). In evaluating counsel's performance, we presume

that counsel acted competently. See Risdal, 404 N.W.2d at 131.

Counsel's performance under our de novo review must fall within the range of normal competency. State v. Wilkens, 346 N.W.2d 16, 18 (Iowa 1984). However, "[a] claim of ineffectiveness of counsel must be premised on more than simply questionable or unsuccessful trial tactics." Risdal, 404 N.W.2d at 133 (citations omitted). When trial counsel makes a reasonable decision concerning trial strategy, we will not interfere simply because the chosen strategy did not achieve the desired result. Wilkens, 346 N.W.2d at 18. There must be more than a showing that trial strategy backfired or that another attorney would have prepared and tried the case somewhat differently. Bear v. State, 417 N.W.2d 467, 472 (Iowa App. 1987) (citation omitted).

Carter's attorneys testified they introduced the testimony of these witnesses in order to point out the inconsistencies in the victim's testimony. Carter contends this was an unreasonable trial strategy and, therefore, he received ineffective assistance of counsel. We do not agree.

The main issue in this case was the credibility of the victim's testimony. Defense counsel introduced the testimony of Detective Mellgren and DHS investigator Morrissey in order to point out the prior inconsistent statements which had been made by the victim. The decision

to highlight the prior inconsistent statements in the victim's testimony was well within the range of normal competency, especially in a case in which her credibility was paramount. We note the findings of the district court:

> In this case, the court determines that trial counsel's representation of the Defendant was not just within the range of normal competency, but was an example of outstanding advocacy in representation. There is no question but that Carter was ably represented and has no basis for his challenge to his attorney's representation.

We find Carter did not receive ineffective assistance of counsel and the district court properly denied him postconviction relief. Because we have addressed the issue of ineffective assistance of trial counsel, it is not necessary to address the issue of whether Carter received ineffective assistance of appellate counsel by appellate counsel's failure to raise the issue of ineffective assistance of trial counsel in his direct appeal.

The costs of this appeal are taxed to Carter.

For the reasons stated, we affirm the judgment of the district court.

AFFIRMED.