IN THE COURT OF APPEALS OF IOWA

No. 0-369 / 89-1084

FILED
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CLERK SUPREME COURT

GEORGE H. MACLIN-EL,

Appellant,

vs.

STATE OF IOWA,

Appellee.

Appeal from the Iowa District Court for Muscatine County, J.L. Burns, Judge.

The district court denied Maclin-El's application for postconviction relief, and Maclin-El has appealed. **AFFIRMED.**

Linda Del Gallo, Acting State Appellate Defender, and B. John Burns, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Mark Joel Zbieroski, Assistant Attorney General, and Stephen J. Petersen, County Attorney, for appellee.

Considered by Oxberger, C.J., and Donielson and Sackett, JJ.

OXBERGER, C.J.

In 1987 a jury found George Maclin-El guilty of false use of a financial instrument. Maclin-El was then sentenced to a prison term of up to five years.

Maclin-El later filed the present application for postconviction relief. The district court denied postconviction relief, and Maclin-El appealed.

Maclin-El contends the attorney who represented him in the 1987 criminal trial rendered ineffective assistance. Maclin-El asserts his trial attorney should have moved for a new trial on the ground one of the jurors was racially prejudiced and had been involved in a personal conflict with Maclin-El's brother.

Our ultimate concern in claims of ineffective assistance is with the "fundamental fairness of the proceeding whose result is being challenged." State v. Risdal, 404 N.W.2d 130, 131 (Iowa 1987), quoting Strickland v. Washington, 466 U.S. 668, 696, 104 S. Ct. 2052, 2069, 80 L.Ed.2d 674, 699 (1984). We review de novo the totality of the circumstances relating to counsel's conduct, keeping in mind the presumption that counsel performed competently. Risdal, 404 N.W.2d at 131. The burden is on the defendant to prove by a preponderance of the evidence that (1) counsel failed to perform an essential duty and (2) prejudice resulted. State v. Miles, 344 N.W.2d 231, 233-234 (Iowa 1984)(citation omitted).

After evaluating the totality of the circumstances we find that Mr. Maclin-El failed to carry his burden of proof. His claim consists only of bald assertions without any evidence. Consequently, we affirm the district court's denial of Mr. Maclin-El's application for postconviction relief.

AFFIRMED.