

IN THE COURT OF APPEALS OF IOWA

No. 8-554 / 97-1967  
Filed November 30, 1998

MARIA SPATES,  
Appellant,

vs.

STATE OF IOWA,  
Appellee.

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Appeal from the Iowa District Court for Black Hawk County, George L.  
Stigler, Judge.

Maria Spates appeals the district court's denial of her application for  
postconviction relief. **AFFIRMED.**

Jeanne K. Johnson, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Sheryl A. Soich, Assistant Attorney  
General, Thomas J. Ferguson, County Attorney, and Shawn Wehde, Assistant County  
Attorney, for appellee.

Considered by Sackett, C.J., and Huitink, Streit, Vogel, and Mahan, JJ.

**HUITINK, J.**

This is an appeal by Maria Spates claiming the district court should have granted her request for postconviction relief. Spates claims she received ineffective assistance of counsel at her guilty plea proceedings. We affirm on appeal.

In June 1996, Spates was charged with prostitution, an aggravated misdemeanor, in violation of Iowa Code section 725.1 (1995). The State alleged Spates had agreed to perform sex with an undercover police officer for money. At the time of her arrest, Spates had pending charges against her for possession of a controlled substance (marijuana) and possession of a controlled substance (cocaine). These crimes are serious misdemeanors. Iowa Code § 124.401(3).<sup>1</sup>

Spates entered into a plea agreement with the State. In October 1996, she signed a written plea of guilty to the prostitution charge. In exchange, the State dismissed the two charges of possession of a controlled substance. Spates was sentenced to a term of imprisonment not to exceed two years on the charge of prostitution. Spates appealed, but her appeal was dismissed as frivolous under Iowa Rule of Appellate Procedure 104.

In March 1997, Spates filed an application for postconviction relief. She claimed she received ineffective assistance of counsel during the guilty plea proceedings. The district court found Spates was not credible and denied her claim for postconviction relief. Spates has appealed.

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<sup>1</sup> This section is now codified as section 124.401(5) (1997).

Our review of an allegation of ineffective assistance of counsel is de novo. *Cox v. State*, 554 N.W.2d 712, 714 (Iowa App. 1996). To establish a claim of ineffective assistance of counsel, an applicant must show: (1) the attorney failed to perform an essential duty; and (2) prejudice resulted to the extent it denied applicant a fair trial. *Bettis v. State*, 547 N.W.2d 635, 637 (Iowa App. 1996).

Spates contends her trial counsel was ineffective because he failed to adequately prepare for a trial. She believes trial counsel failed to develop possible defenses, such as entrapment or intoxication. Spates claims the undercover officer forced \$20 into her hand and there was no agreement to perform sex.

Spates' trial counsel, Charles Fagan, testified he listened to an audiotape made by the undercover officer which contained evidence of a transaction of money for sex. He also deposed two police officers who were prepared to testify at trial. Fagan discussed this evidence with Spates, and she began to seriously consider the State's plea agreement. We conclude Spates has failed to show her trial counsel failed to adequately investigate the case.

Spates also asserts she was coerced into signing the plea agreement. She testified Fagan told her she faced a possible fifteen-year sentence as a habitual offender if she did not enter into the plea agreement.

Fagan testified he did not raise the issue of a conviction as a habitual offender. He states the statute was inapplicable in this case because Spates was not charged with felonies. The habitual offender statute only applies to class "C" or "D" felonies.

*See* Iowa Code §902.8. Due to the district court's findings regarding credibility, we determine Spates has failed to show her version of events on this issue is correct.

We find Spates has failed to show she received ineffective assistance of counsel. We affirm the decision of the district court.

**AFFIRMED.**