

IN THE COURT OF APPEALS OF IOWA

No. 8-564 / 97-2175

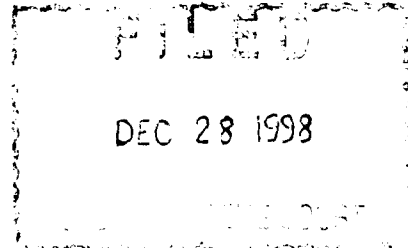
VALENTINO E. WHITAKER,

Applicant-Appellant,

vs.

STATE OF IOWA,

Respondent-Appellee.



Appeal from the Iowa District Court for Dallas County, Darrell J. Goodhue,
Judge.

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

Michael J. Burdette of Cook, Gotsdiner, McEnroe & McCarthy, Des Moines,
for appellant.

Thomas J. Miller, Attorney General, Mary Tabor, Assistant Attorney General,
and William R. Byers, County Attorney, for appellee.

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

MAHAN, J.

This is an appeal by an applicant claiming he is entitled to postconviction relief due to ineffective assistance of counsel at his criminal trial. We affirm on appeal.

In 1994, Valentino Whitaker was convicted of sexual abuse in the second degree, sexual abuse in the third degree, and assault with intent to cause sexual abuse. The State alleged Whitaker had sexually abused his girlfriend's two minor daughters. The conviction was upheld on appeal. *State v. Whitaker*, No. 95-0145 (Iowa App. Apr. 23, 1996).

In January 1997, Whitaker filed an application for postconviction relief. He alleged he received ineffective assistance at his criminal trial because counsel did not call certain parties as witnesses. The district court found Whitaker had not shown a reasonable likelihood the verdict would have been different if the witnesses had been called. Whitaker now appeals.

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).

Whitaker asserts he received ineffective assistance because his defense counsel did not adequately investigate the case and failed to call his parents and some friends, who he claims could have testified to his relationship with the victims.

The State contends Whitaker has failed to properly preserve this issue for appeal. Under Iowa Code section 822.8, a postconviction relief applicant bears the burden of showing sufficient reason why the grounds for relief were not asserted on direct appeal. *LeGrand v. State*, 540 N.W.2d 667, 668 (Iowa App. 1996). Whitaker has failed to present on appeal the issue of ineffective assistance of appellate counsel, or any other reason for failing to previously raise his claims. His claim is, therefore, barred.

Even if the issue were properly before us, we would find against Whitaker on the merits. Whitaker has not shown there was a reasonable probability that but for counsel's failure to call these witnesses, the result of the proceeding would have been different. *State v. Kone*, 557 N.W.2d 97, 102 (Iowa App. 1996); *State v. Johnson*, 534 N.W.2d 118, 128 (Iowa App. 1995). Whitaker's parents had little actual knowledge of his relationship with the victims. Whitaker's friends would have testified he had a strained relationship with the girls, which the girls themselves admitted. We conclude Whitaker has failed to show he was prejudiced by counsel's performance.

We affirm the decision of the district court denying Whitaker's application for postconviction relief.

AFFIRMED.