FILED
OCT 25 1983
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

ARTHUR C. VESEY,	)	Filed October 25, 1983
Petitioner-Appellant,	)	
vs.	)	3-283 / 69396
STATE OF IOWA,	)	
Respondent-Appellee.	)	

Appeal from Scott District Court, J. Hobart Darbyshire, Judge.

Petitioner appeals the trial court's denial of postconviction relief, claiming he was denied effective assistance of counsel when his attorney in his 1981 robbery trial failed to challenge the admissibility of his confession as the tainted fruit of an unlawful arrest. AFFIRMED.

LuAnn White, Assistant Appellate Defender, for the petitioner-appellant.

Thomas J. Miller, Attorney General, and Lona Hansen, Assistant Attorney General, for the respondent-appellee.

Heard by Oxberger, C.J., and Snell and Hayden, JJ.

PER CURIAM

Petitioner, Arthur Vesey, was convicted of robbery in the first degree in April 1981. He appealed the conviction and sentence but the appeal was dismissed as frivolous pursuant to Iowa Rule of Appellate Procedure 104. In July 1982, Vesey applied for postconviction relief, alleging that his attorney had rendered ineffective assistance. The postconviction court held that Vesey had not met the burden required of him to show ineffective assistance of counsel, and thus denied postconviction relief.

On appeal, Vesey contends that the police did not have probable cause or a reasonable basis to seize him, and that therefore his subsequent confession was the fruit of an illegal arrest and thus inadmissible evidence under Dunaway v. New York, 442 U.S. 200, 99 S. Ct. 2248, 60 L. Ed. 2d 824 (1979), and Brown v. Illinois, 422 U.S. 590, 95 S. Ct. 2265, 45 L. Ed. 2d 416 (1975). Vesey asserts that, because his attorney did not object to the admissibility of the tainted confession, he was denied effective assistance of counsel.

Ineffective assistance of counsel would be a violation of a basic constitutional safeguard. Consequently, we make our own evaluation of the claim under the totality of the circumstances. State v. Lemburg, 257 N.W.2d 39, 46 (Iowa 1977). In reviewing an attorney's performance, the defendant has the burden of proof to establish by a preponderance of the evidence a claim of ineffective assistance of counsel. We presume counsel was competent. When the claim is premised on the failure of counsel to take some action, the defendant must show that counsel failed to perform an essential duty and that prejudice resulted. Henderson v. Scurr, 313 N.W.2d 522, 524 (Iowa 1981). The question is whether the attorney's challenged performance was within the range of normal competency. Kellogg v. State, 288 N.W.2d 561, 563 (Iowa 1980).

The Iowa Supreme Court, in State v. Cooley, 229 N.W.2d 755 (Iowa 1975), analyzed the polestar case of Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968), and many cases from other jurisdictions dealing with the requisite cause for an investigatory stop and the admissibility of evidence obtained as a result. Cooley, 229 N.W.2d at 759-61. It is not necessary for us to reiterate the analysis set forth in Cooley. The law is well established that an officer may make an investigatory stop when he has specific and articulable facts to support a reasonable belief that criminal activity may be afoot. Terry, 392 U.S. at 22-23, 88 S. Ct. at 1880-81, 20 L. Ed. 2d at 906-07; State v. Lamp, 322 N.W.2d 48, 51 (Iowa 1982); State v. Dixon, 241 N.W.2d 21, 23 (Iowa 1976).

In Terry, the police officer had observed the defendant and two others "go through a series of acts, each of them perhaps innocent in itself, but which taken together warranted further investigation." Terry at 22, 88 S. Ct. at 1881, 20 L. Ed. 2d at 907. In the instant case, the combination of circumstances led the arresting officers to suspect that Vesey was involved in the robbery which had been recently reported: Vesey was near the scene of the robbery within three hours of its occurrence; Vesey fit the general description of one of the robbers; Vesey was walking along an interstate highway ramp in his shirtsleeves on a cold January morning. These specific and articulable facts gave the officers cause to stop Vesey and make further inquiries. See State v. Lamp, 322 N.W.2d 48, 51 (Iowa 1982). When they stopped him, Vesey explained that he had been jogging for the past seven hours in the cold. The officers searched him and found a large amount of money in his pocket, which he could not explain. Vesey's responses to the officers' inquiries thus gave the officers reasonable cause to believe Vesey was the robber for whom they were looking.

Counsel was not ineffective for failing to challenge the admissibility of Vesey's confession; Vesey was not prejudiced by counsel's failure to raise a losing

argument. Nothing in the record indicates defendant was represented by anything but competent counsel whose performance was within the range of normal competency.

AFFIRMED.