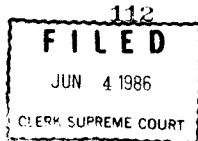


IN THE COURT OF APPEALS OF IOWA



RICK DEAN FOSTER,	)	
Petitioner-Appellant,	)	FILED JUNE 4, 1986
vs	)	6-114
STATE OF IOWA,	)	85-760
Respondent-Appellee.	)	
	)	

Appeal from the Iowa District Court for Warren County (20355), Thomas S. Bown and Michael J. Streit, Judges.

Petitioner appeals a denial of post-conviction relief, asserting that the factual issues generated were sufficient to require an evidentiary hearing.

AFFIRMED.

B John Burns, Assistant Appellate Defender, West Des Moines, Iowa, for petitioner-appellant.

Roxann M. Ryan, Assistant Attorney General, Des Moines, Iowa, for respondent-appellee.

Considered by Snell, P.J., and Hayden and Sackett, JJ.

HAYDEN, J.

Petitioner appeals a denial of postconviction relief, asserting that the factual issues generated were sufficient to require an evidentiary hearing. We affirm.

Rick Foster was convicted of first degree kidnapping and second degree sexual abuse. The conviction was affirmed on direct appeal. State v. Foster, 318 N.W.2d 176 (Iowa 1982).

Foster subsequently filed a pro se application for postconviction relief asserting, inter alia, that he was denied effective assistance of counsel. In particular, he cited the following acts and omissions of trial counsel: 1) inadequate investigation of the case; 2) improper preparation for trial; 3) inadequate advice concerning his rights; 4) misadvice concerning potential punishment; and 5) consumption of alcohol during the course of proceedings.

The postconviction court filed an order expressing its intention to dismiss the matter without an evidentiary hearing. The order expressly gave Foster an opportunity to respond to the proposed dismissal.

By affidavit, Foster discussed a matter he felt should have been investigated, asserted that trial counsel gave him erroneous advice concerning his right to testify, alleged counsel had breached a promise to call two witnesses, and further alleged counsel breached a promise to suppress certain unspecified evidence.

An affidavit of defendant's wife stated that she had observed trial counsel drinking beer on three occasions, once prior to the proceeding in which he was appointed and twice during breaks in trial proceedings. On the last occasion counsel was alleged to have been drinking with the arresting officer.

The application for postconviction relief was dismissed without an evidentiary hearing; this appeal followed.

The sole issue before this court is whether the petitioner was entitled to an evidentiary hearing.

Our postconviction procedure allows summary disposition when it appears from the pleadings and evidence that "there is no genuine issue of material fact". Iowa Code § 663A.6 (1985). Whether a genuine issue of material fact exists, turns on whether reasonable minds could draw different inferences and reach different conclusions from the facts. Boge v. State, 309 N.W.2d 428, 430 (Iowa 1981). There is no need to afford petitioner a hearing on allegations which directly contradict the record, unless some minimum threshold question of credibility appears. State v. Boge, 252 N.W. 2d 411, 414 (1977). Bare allegations do not overcome the presumption that the record reflects the true state of facts. Id.

After reviewing the record in the present case, we conclude that summary disposition was appropriate. Foster's allegations of improper investigation, inadequate preparation of trial, and *misadvice concerning* potential punishment have no factual support in the record. Petitioner's claim that he received inadequate advice regarding his rights is directly contradicted by Foster's own statements during trial. Finally, the allegation that trial counsel consumed alcohol during the proceedings does not generate a genuine issue of material fact. There is no indication that counsel's performance at trial was affected by any alcohol consumption. Thus, even if petitioner's allegations are accepted as true, it cannot be said that *but for* trial counsel's actions, the result of the proceedings would have been different. See Taylor v. State, 352 N.W.2d 683, 685 (Iowa 1985).

It is apparent that none of Foster's allegations would support a claim of ineffective assistance of counsel and that an evidentiary hearing was unwarranted. Accordingly, we affirm.

AFFIRMED.