IN THE COURT OF APPEALS OF IOWA

No. 0-253 / 99-1089
Filed May 31, 2000

JOEL GOOSMANN,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

FILED
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CLERK SUPREME COURT

Appeal from the Iowa District Court for Woodbury County, John D. Ackerman, Judge.

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

Martha M. McMinn, Sioux City, for appellant.

Thomas J. Miller, Attorney General, Thomas S. Tauber, Assistant Attorney General, Thomas S. Mullin, County Attorney, and James J. Katcher, Assistant County Attorney, for appellee.

Heard by Streit, P.J., and Zimmer and Hecht, JJ.

STREIT, P.J.

Joel Goosmann claims his appellate counsel was ineffective for failing to raise his trial counsel's failure to (1) properly locate information regarding the alleged mishandling of the victim at the hospital, (2) locate an expert regarding the position of the firearm at the time it was fired, and (3) effectively cross-examine a witness regarding bias. As we find no merit to his underlying claims of ineffective assistance of trial counsel, his claim of ineffective assistance of appellate counsel must fail. His convictions are affirmed.

I. Background Facts & Proceedings.

Joel Goosmann was convicted of first-degree murder and going armed with intent in the shooting death of Chad Mackey. The shooting occurred in a parking lot alongside a major Sioux City thoroughfare. The shooting occurred during a verbal altercation between Goosmann, his passenger Jarrett Sands, and three young men. As the bantering began to crescendo, Goosmann pulled out a gun, pointed it at the men, and fired. The bullet struck Chad Mackey in the chest. He died a short time later.

At trial, Goosmann argued he was unaware the gun was loaded, the weapon accidentally discharged after Sands bumped his arm, and he was unable to form the requisite intent for first-degree murder due to intoxication. Sands, as well as numerous eyewitnesses, contradicted his story. The jury found Goosmann guilty, and the court sentenced him to life imprisonment.

Goosmann appealed his conviction, claiming the trial court erred in failing to change venue and there was insufficient evidence to support the convictions.

This court rejected his claims in an unreported opinion filed November 28, 1994. In September 1996 Goosmann filed an application for postconviction relief alleging seven independent grounds of ineffective assistance of trial counsel and that appellate counsel was ineffective for failing to assert trial counsel's alleged wrongdoings. The district court rejected his petition both procedurally and on the merits.

Goosmann appeals, claiming appellate counsel was ineffective for failing to raise trial counsel's failure to (1) properly locate information regarding the alleged mishandling of the victim at the hospital, (2) call an expert regarding the position of the firearm at the time it was fired, and (3) effectively cross-examine Jarrett Sands about bias.

II. Standard of Review.

Normally, a trial court's denial of an application for postconviction relief is reviewed for correction of errors at law. *Fenske v. State*, 592 N.W.2d 333, 338 (Iowa 1999). If, however, the applicant asserts violations of constitutional safeguards, our review is de novo. *Giles v. State*, 511 N.W.2d 622, 627 (Iowa 1994).

III. Ineffective Assistance of Counsel.

Goosmann claims his appellate counsel on direct appeal was ineffective for failing to raise his trial counsel's alleged wrongdoings. Because resolution of the underlying claims of ineffective assistance of trial counsel will dispatch the pendent claim of ineffective assistance of appellate counsel, we only address the merits of the underlying claims.

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)). 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. *Risdal*, 404 N.W.2d at 131-32. With regard to the first prong, Goosmann must prove the performance of both trial and appellate counsel was not within the normal range of competence. *See State v. Gant*, 597 N.W.2d 501, 504 (Iowa 1999). Improvident trial strategy, miscalculated tactics, and mistakes in judgment do not necessarily constitute ineffective assistance of counsel. *Kane v.* State, 436 N.W.2d 624, 627 (Iowa 1989). Where counsel's decisions are made pursuant to a reasonable trial strategy, we will not find ineffective assistance of counsel. *See Hinkle v.* State, 290 N.W.2d 28, 34 (Iowa 1980). In evaluating counsel's performance, we presume he acted competently. *See Risdal*, 404 N.W.2d. at 131. The test for prejudice is whether a reasonable probability existed that the outcome of the trial would have been different but for counsel's alleged omissions. *State v. Bumpus*, 459 N.W.2d 619, 627 (Iowa 1990). An ineffective assistance of counsel claim may be disposed of if the defendant fails to prove either prong. *State v. Cook*, 565 N.W.2d 611, 614 (Iowa 1997). Armed with these principles, we now address each of petitioner's assignments of error.

A. Failure to Locate a Witness. Goosmann first claims trial counsel was ineffective for failing to timely locate and interview a doctor in the emergency room who had some disagreement with the way doctors attempted to resuscitate the victim. As Goosmann cannot support his burden as to either prong, his claim must fail.

First, the record is void of any evidence that trial counsel could have or should have learned of this doctor's existence. The doctor was not directly involved with the treatment of the victim, and her remarks were only made known after the court sentenced Goosmann. We therefore cannot fault counsel for failing to locate a witness he had no reason to suspect even existed.

Second, the doctor's statements are simply too vague to support a claim of prejudice. A defendant may be relieved of criminal responsibility if conduct or forces occurring after the defendant's criminal act break the chain of causal connection between the defendant's conduct and the victim's death. *State v. Hubka*, 480 N.W.2d 867, 869 (Iowa 1992). Such a break is called a superseding cause. *State v. Shortridge*, 555 N.W.2d 843, 845-46 (Iowa App. 1996). Acts or omissions of medical care providers, however, cannot constitute a superseding cause if they are simply the "normal consequences" of the situation created by Goosmann's criminal conduct. *See State v. Murray*, 512 N.W.2d 547, 551 (Iowa 1994); *Davis v. State*, 520 N.W.2d 319, 320 (Iowa App. 1994). The doctor in the present case specifically stated it was Goosmann's criminal conduct that caused the victim's death. She stated her disagreement as merely a difference of opinion, refused to articulate her precise disagreement, and acknowledged it

would be difficult to show the doctors erred in some identifiable fashion. When we take these somewhat noncommittal responses and couple them with the medical examiner's testimony that the victim lost half his blood within two to three minutes of the shooting, we cannot find there was sufficient evidence of a superseding cause to support even a jury instruction on the matter, let alone a finding of not guilty. The claim must fail.

B. Firearm Expert. Goosmann next claims his trial counsel was ineffective for failing to call a firearm expert to testify as to the location of the pistol at the time of its firing. He claims evidence the firearm was fired inside the vehicle would support his claim the shooting was accidental. The forensic evidence presented by the State indicated there was trace evidence consistent with gun residue on the inside of the vehicle but not on the outside of the vehicle. The State's expert, however, could not state this fact with certainty. Goosmann alleges counsel should have called an expert to more definitively corroborate the State's findings.

Counsel's decision not to call a firearm expert was firmly rooted in reasonable trial strategy. The State's expert already supported Goosmann's claim the firearm was inside the vehicle at the time it was fired. Trial counsel did not want to run the risk of dashing this favorable evidence by bringing in an expert that could possibly come to contrary conclusions. Because defense counsel's actions were pursuant to a reasonable trial tactic, we find he acted competently and need not reach the element of prejudice.

C. The Cross-Examination of Jarrett Sands. Goosmann finally claims trial counsel was ineffective for failing to cross-examine the young man that accompanied Goosmann at the time of the shooting, Jarrett Sands, about any motive he may have had to testify favorable to the State.

Although Sands was never arrested in connection with the shooting, the record is void of any evidence Sands received favorable treatment in exchange for his testimony. Absent such evidence, we cannot possibly find defense counsel failed to properly cross-examine Sands about a completely speculative subject. As there is no evidence of bias, we cannot find counsel failed to perform an essential duty.

IV. Conclusion.

As we have now resolved all of Goosmann's underlying claims of ineffective assistance of trial counsel, his claim of ineffective assistance of appellate counsel must likewise fail. Appellate counsel cannot be held ineffective for failing to pursue meritless claims. The district court is affirmed.

AFFIRMED.