IN THE COURT OF APPEALS OF IOWA

No. 9-199 / 98-1159

MELVIN TAYLOR,
Appellant,

vs.

STATE OF IOWA,
Appellee.

Appeal from the Iowa District Court for Woodbury County, Dewie J. Gaul, Judge.

Melvin Taylor appeals a district court order denying his application for postconviction relief. **AFFIRMED.**

Martha M. McMinn, Sioux City, for appellant.

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

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

PER CURIAM.

Melvin Taylor appeals the trial court's denial of his application for postconviction relief contending his trial counsel was ineffective for not interviewing certain witnesses at his request, not presenting a defense of post high-speed chase syndrome, and not adequately explaining the State's plea offers to him. Because we find his counsel's performance competent, we affirm.

In 1995, Taylor was involved in a high-speed chase while fleeing from police. During the chase, Taylor drove his vehicle the wrong way down a one-way street, collided with another vehicle, and killed the passenger. He then fled the scene of the accident.

He was charged and convicted of homicide by vehicle, operating while intoxicated, leaving the scene of a fatal accident, and driving with a revoked license. He was sentenced to consecutive indeterminate terms of ten years, five years, and two years on the first three convictions, and a concurrent term of one year on the driving while revoked conviction. Taylor's direct appeal was dismissed as frivolous. In April 1997, Taylor filed an application for postconviction relief which was denied.

Our review of postconviction relief proceedings is ordinarily for errors of law. *Hinkle v. State*, 290 N.W.2d 28, 30 (Iowa 1980). However, where a postconviction petitioner asserts violations of constitutional safeguards—such as ineffective assistance of counsel—we make our own evaluation based on the totality of the circumstances. This is the equivalent of de novo review. *Id.*

To prevail on a claim of ineffective assistance, the defendant must show: (1) his counsel failed to perform an essential duty; and (2) the failure prejudiced him. *Brewer v. State*, 444 N.W.2d 77, 83 (Iowa 1989). The defendant has the burden to prove both of these elements by a preponderance of the evidence. *Id.; Taylor v. State*, 352 N.W.2d 683, 685 (Iowa 1984).

Taylor's first contention is his trial counsel was ineffective for not interviewing witnesses who would allegedly help prove Taylor's proximate cause theory. Taylor asserts the victim was killed not by the impact of his vehicle, but by being run over by a police car after she was thrust from the vehicle.

The supreme court has stated "[c]ounsel's duty to investigate and prepare a defense is not limitless and does not require counsel to pursue each possible witness and delve into every line of inquiry." *Id.* Defense counsel's duty is to make reasonable investigation or a reasonable decision that a particular investigation is unnecessary. *Origer v. State*, 495 N.W.2d 132, 136 (Iowa App. 1992).

Upon review of the record, including the testimony of Taylor's counsel at the postconviction review hearing, we find counsel's decision not to interview the witnesses reasonable under the circumstances. *See Van Hoff v. State*, 447 N.W.2d 665, 670 (Iowa App. 1989) ("[w]hen counsel makes a reasonable tactical decision, this court will not engage in second-guessing").

There is no question the victim was thrown from her car after it was struck broadside by Taylor's car. His conduct was the proximate cause of death, even if she

had been run over by a police car after she landed on the pavement. *See, e.g., State v. Shortridge*, 555 N.W.2d 843, 845 (Iowa Ct. App. 1996) (defendant's conduct is a proximate cause of death if conduct is a substantial factor in bringing about the death) Uncontroverted medical evidence showed the victim died solely as a result of the collision with Taylor's car which caused a "blunt traumatic head injury and cervical spine fracture." Further, none of Taylor's witnesses saw the accident. The State offered evidence of two police officers who testified in detail on their observations of the collision.

For these reasons, trial counsel did not fail an essential duty in deciding not to interview witnesses who would have testified with respect to Taylor's proximate cause theory.

Taylor contends his trial counsel was ineffective for not explicitly presenting a post high-speed chase syndrome defense. Taylor alleges he ran from the scene of the accident because he was afraid the officers would beat him up after the high-speed chase. Counsel's decision not to pursue such defense was reasonable in light of the fact such a defense has not been recognized in Iowa. A defendant does not have a right to resist an arrest, even an unlawful one. *See State v. Dawdy*, 533 N.W.2d 551, 555 (Iowa 1995). Even so, the defense brought forth the same evidence Taylor contends would make up such a defense. For these reasons, we find Taylor's counsel did not fail an essential duty by not pursuing the defense and find his claim of ineffective assistance of counsel based on this ground without merit.

Taylor contends his counsel was ineffective for not adequately explaining the State's plea offer of a ten-year sentence. Taylor testified at the postconviction hearing the plea had not been explained to him. His trial counsel testified he explained the plea offer to Taylor and Taylor refused the offer. Defense counsel was an experienced defense attorney who had worked in the state public defender's office since 1986. The plea offers were reflected in defense counsel's notes. The trial court believed Taylor's counsel. We give weight to the findings made by a postconviction court regarding the credibility of witnesses. *Cox v. State*, 554 N.W.2d 712, 714 (Iowa Ct. App. 1996); Wycoff v. State, 382 N.W.2d 462, 465 (Iowa 1986). Taylor has offered no evidence which gives us reason to second guess the credibility finding of made by the trial court. Because we find Taylor's counsel explained the plea offer to Taylor, counsel did not fail to perform an essential duty. Taylor's ineffective assistance of counsel claim on this ground is denied.

We affirm the trial court on all grounds.

AFFIRMED.

No. 98-1159. [9-199] TAYLOR v. STATE

Appeal from the Iowa District Court for Woodbury County, Dewie J. Gaul, Judge. **AFFIRMED.** Considered by Sackett, C.J., and Streit and Mahan, JJ. Per Curiam. (5 pages $2.00)

Melvin Taylor appeals the trial court's denial of his application for postconviction relief contending his trial counsel was ineffective for not interviewing certain witnesses at his request, not presenting a defense of post high-speed chase syndrome, and not adequately explaining the State's plea offers to him. Upon review of the record, including the testimony of Taylor's counsel at the postconviction review hearing, we find counsel's decision not to interview the witnesses reasonable under the circumstances. Counsel's decision not to pursue a post high-speed chase defense was reasonable in light of the fact such a defense has not been recognized in Iowa. Because we find Taylor's counsel explained the plea offer to Taylor, counsel did not fail to perform an essential duty. Taylor's ineffective assistance of counsel claim on this ground is denied.