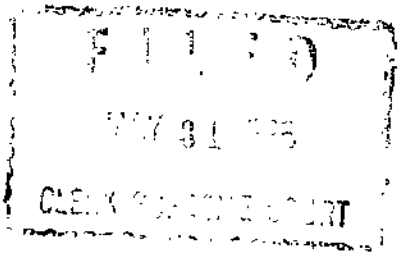
IN THE COURT OF APPEALS OF IOWA

No. 6-258 / 95-1171



**JERRY E. BELT,**

Applicant-Appellant,

**vs.**

**STATE OF IOWA,**

Respondent-Appellee.

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Appeal from the Iowa District Court for Mills County, Charles L. Smith III, Judge.

Jerry Belt appeals from a denial of his application for postconviction relief in which he challenged his convictions for second-degree burglary and third-degree theft. **AFFIRMED.**

Kermit L. Dunahoo of Dunahoo Law Firm, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Roxann M. Ryan, Assistant Attorney General, and Connie Anstey, County Attorney, for appellee.

Considered by Sackett, P.J., and Cady and Streit, JJ. Vogel, J., takes no part.

**PER CURIAM.**

This is an appeal by an applicant claiming he should receive a new criminal trial because he received ineffective assistance of counsel. The district court denied his request for postconviction relief. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

Jerry Belt was previously convicted of theft in the third degree and burglary in the second degree. The theft charge arose from allegations Belt stole groceries from the Emerson Food Mart and the burglary charge arose from allegations he broke into the store. The supreme court upheld his convictions, but preserved his claims of ineffective assistance of counsel for postconviction proceedings. *State v. Belt,* 505 N.W.2d 182 (Iowa 1993).

**I.** At the time of the crimes, Belt was living in the home of Sabrenna King, who was his sister-in-law. The minutes of testimony provided King would testify Belt told her he "got" the groceries. At the trial, King testified Belt admitted to her he had stolen the groceries and had broken into the store by throwing a brick through the window. In his postconviction action, Belt claims he received ineffective assistance of counsel due to his counsel's failure to object on the basis that King's testimony went beyond the scope of the minutes.

To establish a claim of ineffective assistance of counsel, an applicant must show that (1) the attorney failed to perform an essential duty, and (2) prejudice

resulted to the extent that it denied defendant a fair trial. *Caldwell v. State*, 494 N.W.2d 213, 214 (Iowa 1992). We will not reverse where counsel has made a reasonable decision concerning trial tactics and strategy, even if such judgments ultimately fail. *Brewer v. State*, 444 N.W.2d 77, 83 (Iowa 1989).

Defense counsel testified his trial strategy was to cross-examine King on this discrepancy in an attempt to show she changed her story in order to receive favorable treatment from the County Attorney on criminal charges pending against her. We find defense counsel made a reasonable decision regarding trial tactics and strategy.

**II.** During the trial the prosecutor asked Pam Taylor, a parole officer, if Belt was required under penalty of law to provide her with his current address. Belt now claims this question revealed he was a parolee and he states he received ineffective assistance because his counsel did not object to the question.

The question itself does not reveal Taylor was a parole officer, and no evidence was presented to show her occupation. The evidence was presented to show that Belt was living in King's home, where the stolen goods were found. We conclude Belt has failed to show ineffective assistance due to counsel's failure to object to this question.

**III.** A deputy sheriff testified Belt gave King's address as his address. Defense counsel asked the deputy about Belt's willingness to answer questions after his arrest, and the deputy admitted Belt refused to answer any questions. Belt claims he

received ineffective assistance because the question elicited improper use of his post-Miranda silence.

We determine defense counsel engaged in reasonable strategy in eliciting this information. Counsel wanted to show Belt had not provided King's address as his address, and he suggested the police had merely assumed this was Belt's address. Defense counsel's question was appropriate under the circumstances.

We affirm the decision of the district court denying Belt's request for postconviction relief. Costs of this appeal are assessed to Belt.

**AFFIRMED.**