IN THE COURT OF APPEALS OF IOWA

No. 7-339 / 96-744

FILED
JUL 30 1997
CLERK SUPREME COURT

CHARLES EDWARD GRAYER,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

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Appeal from the Iowa District Court for Des Moines County, David B. Hendrickson, Judge.

Grayer appeals the denial of his application for postconviction relief. **AFFIRMED.**

Philip B. Mears of Mears Law Office, Iowa City, for appellant.

Thomas J. Miller, Attorney General, Martha E. Boesen, Assistant Attorney General, Patrick C. Jackson, County Attorney, and Ronald E. Robertson, Assistant County Attorney, for appellee.

Considered by Cady, P.J., and Streit and Vogel, JJ.

000184

VOGEL, J.

Charles Grayer appeals the denial of his application for postconviction relief. He argues his trial counsel was ineffective in failing to object to the admission of evidence about a knife and in failing to object to hearsay testimony linking him to a vehicle used in a robbery.

Scope of review. Ordinarily we review postconviction relief proceedings on error. *Polly v. State*, 355 N.W.2d 849, 854 (Iowa 1984). However, when constitutional rights are implicated, we make our own evaluation of the totality of the circumstances, equivalent to a de novo review. *Id.*

I. Ineffective assistance of counsel. To establish a claim of ineffective assistance of counsel, the applicant must show by a preponderance of the evidence that: 1) counsel's performance fell outside a normal range of competency (breach of an essential duty); and 2) the deficient performance so prejudiced the defense as to deprive the criminal defendant of a fair trial. *Jones v. State*, 479 N.W.2d 265, 271-72 (Iowa 1991) (citing *State v. Losee*, 354 N.W.2d 239, 243 (Iowa 1984) and *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984)). It is not necessary that a court deciding an ineffective assistance claim address both components of the inquiry if an applicant makes a showing on one ground of counsel's deficiency. *Whitsel v. State*, 439 N.W.2d 871, 872 (Iowa App. 1989); *White v. State*, 380 N.W.2d 1, 3 (Iowa App. 1985).

A. Evidence. Grayer was convicted of first-degree robbery after robbing a Kum and Go convenience store clerk at knife point on July 31, 1993. Grayer asserts trial counsel, Mr. Taylor, was ineffective in failing to object to evidence concerning the knife. Mr. Taylor testified he did not object to the evidence surrounding the admission of the knife as a matter of strategy. By not insisting that the State prove a chain of custody of the knife, he thought he could effectively control the admission of more damaging evidence against Grayer. Mr. Taylor was trying to prevent the State from parading three other witnesses into court to talk about the knife, further implicating Grayer.

The *Whitsel* court recognized the sanctity of a counsel's strategy, by quoting *Strickland*:

> Strategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation.

Whitsel, 439 N.W.2d at 873 (quoting *Strickland*, 460 U.S. at 690-91, 104 S. Ct. at 2066, 80 L. Ed. 2d at 695).

We find trial counsel's strategy was both reasonable and plausible; he did not fail to perform an essential duty, nor did his competence fall outside the normal range

of competency. We further find there was insufficient evidence that Grayer was thereby prejudiced.[1] Grayer's claim must fail on this issue.

B. Hearsay. Grayer claims Mr. Taylor was ineffective in failing to object to alleged hearsay statements linking the car to the robbery. This issue was not raised in Grayer's application for postconviction relief, nor in his two amended applications. Additionally, Grayer did not raise this issue at the postconviction relief hearing, and consequently, the court did not rule on it. Grounds for postconviction relief not raised in a postconviction application nor ruled upon by the district court are not preserved for appellate review. *See Jasper v. State*, 477 N.W.2d 852, 857 (Iowa 1991).

Having carefully considered all issues before us, we affirm the district court's denial of Grayer's petition for postconviction relief.

AFFIRMED.

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[1] We find no prejudice existed independent of the State's argument. We note the State improperly draws its prejudice argument from the minutes of testimony, not from the record adduced at the postconviction hearing.