FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

JERRY (NMN) GARY,)
Petitioner-Appellant,) Filed April 8, 1983
vs.)
STATE OF IOWA,) 2-482
Respondent-Appellee.) 2-68161

Appeal from Black Hawk District Court - L. D. Lybbert, Judge.

Petitioner appeals the denial of his application seeking postconviction relief from his 1979 conviction of first degree robbery. AFFIRMED.

Francis C. Hoyt, Jr., State Appellate Defender, and Linda Del Gallo, Assistant Appellate Defender, for petitioner-appellant.

Thomas J. Miller, Attorney General, and John P. Messina, Assistant Attorney General, for respondent-appellee.

Considered en banc.

PER CURIAM

In this appeal from denial of postconviction relief, petitioner challenges the reliability of an identification and the legality of an investigatory stop of his automobile. Petitioner also asserts that he was denied effective assistance of trial counsel. We find no merit in petitioner's claims.

Even assuming that the pretrial identification procedure involved here was "impermissibly suggestive," the victim's identification of petitioner was reliable under the totality of the circumstances; therefore, the postconviction court correctly ruled that the pretrial and in-court identifications of petitioner were admissible. See State v. Mark, 286 N.W.2d 396 (Iowa 1979).

Under the circumstances of this case, including the time and location of the investigatory stop of petitioner's automobile, we find the stop was based on reasonable cause; therefore, the postconviction court correctly ruled that the investigatory stop was legal and that evidence seized from the auto by police and incriminating statements made by petitioner were admissible. See State v. Lamp, 322 N.W.2d 48 (Iowa 1982).

We find that petitioner failed to present sufficient evidence that his trial counsel's waiver of final argument constituted ineffective assistance. See Sims v. State, 295 N.W.2d 420 (Iowa 1980).

Based on the foregoing, the postconviction court's denial of postconviction relief is affirmed.

AFFIRMED.