

IN THE COURT OF APPEALS OF IOWA

No. 6-250 / 95-972

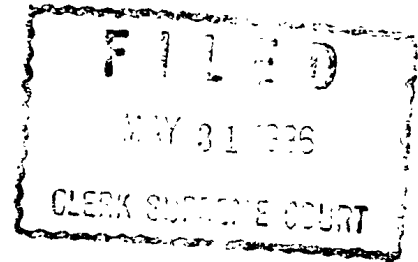
WALI AL-HAMEED,

Applicant-Appellant.

vs.

STATE OF IOWA,

Respondent-Appellee.



Appeal from the Iowa District Court for Webster County, William C. Ostlund,
Judge.

Wali Al-Hameed appeals the district court's denial of his application for
postconviction relief. **AFFIRMED.**

William H. Habhab, Fort Dodge, for appellant.

Thomas J. Miller, Attorney General, Roxann M. Ryan, Assistant Attorney
General, and James J. Koll, 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 his conviction for driving while license suspended should be overturned 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.

After a jury trial, Wali Al-Hameed was convicted of driving while license suspended, in violation of Iowa Code sections 321A.17 and 321A.32(1) (1991). At the criminal trial, a police officer testified he had seen Al-Hameed driving in Fort Dodge on April 5, 1993. Al-Hameed's son, Zakee, testified he had actually been driving the car on that day. Al-Hameed did not testify.

Al-Hameed filed a petition in district court seeking postconviction relief, claiming he received ineffective assistance of trial counsel. The district court found Al-Hameed had failed to show he received ineffective assistance. He now appeals.

Al-Hameed claims his trial counsel failed to present all aspects of his defense, because he did not call his wife or his daughter to testify that he was at home on April 5, 1993. He also claims the daughter could have testified that the police officer had once previously mistaken Zakee for Al-Hameed. In addition, he claims his counsel should have permitted him to testify.

Al-Hameed's trial counsel testified that they had discussed these matters, and they had come to a mutual agreement to only call Zakee to testify. Counsel stated he felt Zakee was a "wonderful" witness and the other witnesses would only be

cumulative. He also stated he felt Al-Hameed might have been subject to impeachment due to prior convictions for driving while license suspended.

Review of a constitutional challenge based on ineffective assistance of counsel is de novo. *State v. Risdal*, 404 N.W.2d 130, 131 (Iowa 1987). To establish a claim of ineffective assistance of counsel, a postconviction applicant must show (1) the attorney failed to perform an essential duty, and (2) prejudice resulted to the extent it denied defendant a fair trial. *Calchwell v. State*, 494 N.W.2d 213, 214 (Iowa 1992). Representation by counsel is presumed competent, and an applicant has the burden to prove by a preponderance of the evidence counsel was ineffective. *Jones v. State*, 479 N.W.2d 265, 272 (Iowa 1991).

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). Under the facts of the present case, we find trial counsel made a reasonable decision to present a defense based only on the testimony of Zakee. We find Al-Hameed has failed to show that the presentation of additional witnesses **would** have changed the outcome of the trial. We conclude Al-Hameed has not shown **he** received ineffective assistance of trial counsel.

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

AFFIRMED.