IN THE COURT OF APPEALS OF IOWA

No. 1-544 / 10-0833
Filed August 10, 2011

RONNIE HARRINGTON,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Cerro Gordo County, Stephen P. Carroll, Judge.

Ronnie Harrington appeals from the denial of his application for postconviction relief. **AFFIRMED.**

Patrick Thomas Parry of Forker and Parry, Sioux City, for appellant.

Ronnie Harrington, Fort Dodge, pro se.

Thomas J. Miller, Attorney General, Darrel Mullins, Assistant Attorney General, Carlyle D. Dalen, County Attorney, for appellee State.

Considered by Sackett, C.J., and Doyle and Danilson, JJ.

DOYLE, J.

Ronnie Harrington appeals the district court's denial of his application for postconviction relief stemming from his conviction of indecent exposure. On appeal Harrington claims his trial counsel was ineffective in failing to investigate for potential witnesses.

This court, on Harrington's direct appeal, summarized the facts as follows:

> On June 2, 2004, Rachel McGuire and two colleagues were eating lunch together at Northern Iowa Area Community college when McGuire noticed a man seated at another table looking at her. The man, later identified as Harrington, had a hole in his pants and his penis was exposed. McGuire observed him stroking the shaft of his erect penis.
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> Approximately thirty to forty-five minutes later, Harrington entered a staff break room on campus where Mary Bloomingdale was retrieving her lunch. Harrington entered and sat in a chair. Bloomingdale heard Harrington making groaning noises, which she described at trial as "sexual type noises."

State v. Harrington, No. 05-0062 (Iowa Ct. App. Jan. 19, 2006). After trial by jury, Harrington was convicted of indecent exposure, third offense, in violation of Iowa Code sections 709.9, 901A.1(1)(a), and 901A.2(2) (2003). His conviction was affirmed by this court. *Id.*

Harrington filed a multifaceted pro se application for postconviction relief. He was represented by counsel at the hearing. The district court addressed each ground raised by Harrington and denied relief. Harrington appeals.[1]

On appeal Harrington argues his trial counsel was ineffective for failing "to conduct any real investigation for other potential witnesses such as Ken Weber." He suggests that "any other witness that could have corroborated [Harrington's]

[1] The docket shows Harrington was denied an extension to file a pro se supplemental proof brief, but was granted an extension to file a pro se supplemental reply brief. No supplemental pro se briefs were filed.

version of events would have been vital to [his] case." Further, "[i]f Weber would have even testified that he did not remember anything unusual about that day, a reasonable jury could have acquitted [him] since it would have rebutted McGuire's testimony and created reasonable doubt."

Our review is de novo. *Ledezma v. State*, 626 N.W.2d 134, 141 (Iowa 2001). In order to prevail on an ineffective-assistance-of-counsel claim, an applicant must show by a preponderance of the evidence that (1) counsel failed to perform an essential duty and (2) prejudice resulted. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984). In order to show prejudice, Harrington must show a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Id*. at 694, 104 S. Ct. at 2068, 80 L. Ed. 2d at 698. The claim may be resolved on either ground. *Id.* at 697, 104 S. Ct. at 2069, 80 L. Ed. 2d at 699.

With respect to Harrington's failure-to-investigate claim, we observe an attorney's duty to investigate is not limitless. *Schrier v. State*, 347 N.W.2d 657, 662 (Iowa 1984); *see also Ledezma*, 626 N.W.2d at 145. "The extent of the investigation required in each case turns on the peculiar facts and circumstances of that case." *Schrier*, 347 N.W.2d at 662. Counsel is not required to "pursue 'every path until it bears fruit or until all conceivable hope withers.'" *Id*. (quoting *United States v. Tucker*, 716 F.2d 576, 584 (9th Cir. 1983)). But, we need not decide this case on the *Strickland* duty prong.

Harrington failed to present any evidence as to how Weber, or any other potential witness, would have testified. Additionally, there is no indication

Weber's testimony, or the testimony of any other potential witness, would have aided Harrington's case, and his bald assertion their testimony would have been beneficial is pure speculation. *See Stewart v. Nix*, 31 F.3d 741, 744 (8th Cir. 1994) ("To prove prejudice from a trial attorney's failure to investigate potential witnesses, a petitioner must show that the uncalled witnesses would have testified at trial and that their testimony would have probably changed the outcome of the trial."). Even if the potential witnesses would testify as Harrington wishes, he cannot show how such testimony would have produced a different result, particularly since two witnesses at trial testified they did not see Harrington performing the acts McGuire described. Therefore, his claim fails on the *Strickland* prejudice prong.

We affirm the district court's denial of Harrington's application for postconviction relief.

AFFIRMED.