IN THE COURT OF APPEALS OF IOWA

No. 2-1030 / 12-0436
Filed February 13, 2013

ROBERT J. DAVIS,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Mahaska County, Joel D. Yates, Judge.

Robert Davis appeals the denial of his application for postconviction relief, arguing that his criminal trial attorney's performance was deficient. **AFFIRMED.**

Julie De Vries of De Vries Law Office, P.L.C., Centerville, for appellant.

Thomas J. Miller, Attorney General, Elisabeth S. Reynoldson, Assistant Attorney General, and Rose Anne Mefford, County Attorney, for appellee.

Considered by Eisenhauer, C.J., and Vogel and Vaitheswaran, JJ.

VAITHESWARAN, J.

A jury found Robert Davis guilty of six counts of sexual abuse. On direct appeal, Davis contended that a Department of Criminal Investigation report obtained after trial that found no evidence of foreign DNA in a sexual assault kit constituted "newly discovered evidence." *State v. Davis*, No. 08-1942, 2009 WL 4116322, at *5–6 (Iowa Ct. App. Nov. 25, 2009). This court rejected the assertion and affirmed Davis's judgment and sentence.

Davis filed an application for postconviction relief. At a hearing on the application, his attorney framed the primary issue as "whether or not his trial attorney was ineffective in some way in not obtaining DNA results prior to the beginning of the jury trial." At the same hearing, Davis testified the DNA analysis "showed that [he] didn't do nothing."

The State rebutted Davis's testimony with a transcript of a deposition of Davis's trial attorney. The attorney stated that he was aware of the pending DNA analysis, knew a report would not be ready before trial, and discussed with Davis a strategy of proceeding to trial without the report and "ranting and raving" about the absence of the DNA sample. He recalled opining that the odds of a favorable report were slim, but even if the report did not implicate Davis, the report "would not be helpful," because the complaining witness testified she showered prior to the sexual assault examination. He also recalled that Davis agreed to this strategy.

In its ruling, the district court summarized the trial attorney's deposition testimony and concluded, "In no way can it be said that [trial counsel] breached

an essential duty by pursuing this trial strategy." The court denied the postconviction relief application, and this appeal followed.

On appeal, Davis contends: (1) the evidence supporting the finding of guilt was insufficient because "trial counsel did not diligently seek to get the results of the DNA test before trial began" and (2) trial counsel was ineffective because "the lack of results could have been remedied had trial counsel made a reasonable effort to obtain those results." Both arguments are repackaged versions of the issue framed by counsel at the postconviction relief hearing: whether Davis's trial attorney was ineffective in failing to obtain the DCI report prior to trial.

On our de novo review, we agree with the postconviction court that counsel pursued a reasonable strategy in proceeding to trial without the report and, for that reason, did not breach an essential duty in failing to acquire the report prior to trial. *See Strickland v*. *Washington*, 466 U.S. 668, 687 (1984) (setting forth the two-part test for proving ineffective assistance of counsel: showing that counsel's performance was deficient and that prejudice resulted). We also conclude, based on the detailed and graphic testimony of the complaining witness, as well as Davis's confession, that there was no reasonable probability of a different outcome had trial counsel obtained the report prior to trial. *See id.* at 692.

We affirm the denial of Davis's postconviction relief application.

AFFIRMED.