IN THE COURT OF APPEALS OF IOWA

No. 3-606 / 11-0147
Filed October 23, 2013

DONALD A. VAUGHN,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Michael D. Huppert, Judge.

Donald Vaughn appeals from the district court's dismissal of his application for postconviction relief, contending the postconviction court erred in its evidentiary rulings and that his criminal trial and appellate counsel were ineffective. **AFFIRMED.**

Felicia M. Bertin Rocha, Urbandale, for appellant.

Thomas J. Miller, Attorney General, Kevin R. Cmelik, Assistant Attorney General, John P. Sarcone, County Attorney, and Dan C. Voogt, Assistant County Attorney, for appellee State.

Heard by Potterfield, P.J., and Mullins and Bower, JJ.

POTTERFIELD, P.J.

Donald Vaughn appeals from the district court's dismissal of his application for postconviction relief, contending the postconviction court erred in its evidentiary rulings, and that his criminal trial and appellate counsel were ineffective. Because postconviction proceedings are not available to retry the applicant's criminal case and because Vaughn failed to establish either appellate or trial counsel was ineffective, we affirm.

I. Background Facts and Proceedings.

The facts leading up to Vaughn's murder conviction were thoroughly set out by the district court in its ruling on this application for postconviction relief.

> The murder charge against Vaughn stemmed from the killing of Matthew Glover on or about December 19, 2005. Glover was reported missing by his mother on December 22, 2005, after he did not return home to Detroit after a trip to Des Moines. On December 27, 2005, Matthew Martinez came to the Des Moines Police Department to be interviewed regarding Glover's apparent disappearance. In the interview, Martinez told the police that he and Vaughn had travelled from Des Moines to Detroit earlier in December to pick up Glover, and then returned with him as well as a large quantity of marijuana. The marijuana was then repackaged for resale.
>
> Martinez told the police that Vaughn shot Glover while he and Martinez were in Vaughn's vehicle (an SUV owned by Vaughn's girlfriend, Jamella Coplen). Martinez identified the location of the shooting as a car wash at S.E. 22nd Street and Park Avenue in Des Moines. Martinez then told the police that he and Vaughn drove to a cornfield in the vicinity of Army Post Road and S.E. 36th Street in Des Moines, where Glover's body was dumped. Martinez reported that Vaughn stopped at a local convenience store to purchase some cleaning products after the body was dumped. Video from the store confirmed that Vaughn was there at approximately the time Martinez placed him there. Martinez went on to tell police that Vaughn subsequently told him that he had burned the vehicle at an unspecified location.
>
> Martinez took police to the area where the body was dumped, where it was eventually located. Vaughn's vehicle had been located outside of Newton by local law enforcement on

December 20, 2005, in a condition that was consistent with having been "torched" or burned from the inside. On December 28, 2005, Newton law enforcement was notified that the Des Moines Police Department was looking for a vehicle that matched the description of the vehicle found outside Newton. The vehicle was then turned over to Des Moines law enforcement for testing. A small sample of blood which was taken from the carpet of the interior of the vehicle was confirmed as having come from Glover. Although it was ultimately determined that a .45 caliber weapon had been used to shoot Glover (based on the bullets removed from his body at autopsy), no weapon was ever recovered.

Vaughn was interviewed by Des Moines police also on December 27, 2005. During the interview, Vaughn told the police that he had taken Glover to the bus station on December 19 so that he could return to Detroit. He also told the police that that the SUV had probably been repossessed by the loan company that held the title to the vehicle. Vaughn conceded in his trial testimony that both of these statements were false. No blood evidence was ever tied to any of Vaughn's clothing. On the other hand, Martinez informed police that he had noticed a small spot of blood (presumably Glover's) on his shoelace immediately after the shooting, which prompted him to drive to his father's home in Carlisle and burn the shoes and other articles of his clothing in a burn pile.

The trial strategy adopted and pursued on Vaughn's behalf was to attack the credibility of Martinez as the purported eyewitness to the shooting, and to emphasize the circumstantial evidence (or lack thereof) that supported Vaughn's contention that he had no connection to the shooting. Regarding Martinez, [Vaugh's trial attorney, Roger] Owens focused on the many inconsistencies in the two statements he gave the police, the considerable delay between the shooting and his going to the police (during which time he met with Vaughn on more than one occasion), the fact that he (and another prosecution witness, Jesse Smith) went into the military shortly after the shooting and that he burned his clothes and shoes to remove any possible physical evidence which might link him to Glover's killing. The trial strategy also focused on the long friendship between Vaughn and Glover and the lack of any physical evidence tying him [Vaughn] to the shooting (specifically no connection between him and any weapon matching the caliber of the bullets used to kill Glover, as well as no blood on the clothing he was wearing on the day of the shooting, as confirmed by the surveillance video taken at a local Walgreens and the convenience store).

Vaughn testified at trial that he met up with Martinez in the early evening of December 19, 2005, at which time Martinez told Vaughn that Glover had taken a cab to the bus station to return to Detroit. It was also in this conversation that Vaughn claimed that

> Martinez told him that he and Glover had earlier shot and killed someone inside Vaughn's vehicle during a botched attempt at a robbery while selling some of the marijuana brought back from Detroit. He further testified that he and Martinez went to the car wash in an unsuccessful effort to wash off the blood from inside the vehicle. After Vaughn instructed Martinez to clean the vehicle, Martinez and Smith left with the vehicle in an effort to do so. When Martinez returned with the vehicle, it smelled heavily of gasoline. Vaughn explained that he and Martinez then drove east on Interstate 80 (with Smith travelling behind) and eventually burned the vehicle outside Newton when he could no longer take the smell of gasoline coming from the vehicle. He testified that he did not go to the police earlier because he wanted to protect Glover from being implicated in the purported robbery. He went on to testify that when he came in to talk to the police on December 27 that he still thought that they were focusing on the claimed robbery and had no idea that they were investigating Glover's murder. Once it was clear that the police were talking to him about the murder, he ended the interview and requested an attorney.

Vaughn was found guilty as charged[1] and his motion for new trial and motion in arrest of judgment were denied. Over Vaughn's pro se objections, his direct appeal was dismissed by the Iowa Supreme Court as frivolous.

Vaughn filed an application for postconviction relief alleging his trial counsel, Roger Owens, and appellate counsel, Scott Bandstra, were ineffective in a number of respects. With respect to Owens, Vaughn asserted he was ineffective in failing to: (1) present the theory at trial that someone else committed the murder, (2) prevent impeachment of both Vaughn and defense witnesses through their prior convictions, (3) cross-examine certain witnesses regarding their plea agreements, (4) object to certain opinion testimony presented by the State, (5) have potentially exculpatory evidence tested,

[1] Vaughn was charged with one count of murder in the first degree. He was also charged with possession of a controlled substance with intent to deliver, conspiracy to deliver a controlled substance, failure to possess a tax stamp, and four counts of child endangerment.

(6) move for a new trial on the basis that the verdict was contrary to the weight of the evidence, (7) sever the murder charge from the remaining counts, and (8) retain an expert to address the trajectories of the bullets that killed the decedent. Vaughn also contended the trial court erred in a number of its evidentiary rulings, as well as in failing to submit a jury instruction on corroboration of accomplice testimony, failing to provide the jury with certain requested testimony, and failing to grant Vaughn's motion for judgment of acquittal. Vaughn contended Bandstra as appellate counsel was ineffective in failing to adequately address all these issues.

Vaughn's motion for an expert witness at the State's expense was denied by the postconviction court because the proposed expert, Richard Ernst, was hired in the underlying criminal trial, but was not called to testify. The postconviction court found Ernst could be deposed as a fact witness on the issue of whether the decision not to call him at the criminal trial constituted ineffective assistance of counsel. Vaughn later moved to have the witness reimbursed at a rate more than allowed for a fact witness, which the postconviction court also rejected. Vaughn cancelled Ernst's deposition.

Vaughn submitted a witness list before the postconviction trial indicating the intent to call several witnesses from the criminal trial: Victor Murillo, the State's firearms expert; Dr. Gregory Schmunk, the medical examiner; and Detectives Judy Stanley, Carl Wycoff, and David Seybert. The State filed a motion in limine to exclude the testimony of these witnesses, arguing Vaughn was improperly attempting to retry the underlying fact questions and credibility determinations of the criminal trial. Before trial was to begin, the court heard

arguments on the motion to exclude. Vaughn's postconviction counsel argued that the witnesses were necessary to "point out enough discrepancies" and "show that the weight of the evidence was that Mr. Vaughn did not commit this murder." The court ruled:

> [T]he entirety of the trial record will be before me, including the testimony of the five witnesses who are identified earlier on the Applicant's supplemental witness and exhibit list. It would be inappropriate and duplicative to allow. However you have captioned it, Ms. Rocha, it's clear to me that you're attempting to retry the merits of the criminal trial which is not appropriate for today. If a new trial is granted, then you start from the beginning and that defense can be restructured however Mr. Vaughn and his counsel see fit. But for today the only issues that are before me are whether trial and appellate counsel were effective.

The postconviction trial proceeded with the testimony of Vaughn, Owens, and Bandstra. Post-trial briefs were to be filed by December 22, 2010. Vaughn's counsel moved twice for additional time to file the post-trial brief, contending the postconviction trial transcript was not yet available. The court denied the motions.

The postconviction court entered its written ruling on January 7, 2011, finding Owen's trial strategy was not unreasonable and rejecting Vaughn's current complaint that "Owens should have been more vigorous in his trial strategy by engaging in considerable testing of potentially exculpatory evidence and hiring an expert to 're-create' the scene inside the SUV in an effort to somehow establish that Vaughn could not have been the shooter." The court found "[s]uch activity was inconsistent with the trial strategy outlined above, and unnecessary when measured by the fundamental premise of Vaughn's defense—that he was not in the car when the fatal shots were fired."

The court also rejected Vaughn's claim that Owens had not pursued a theory that someone else shot Glover, pointing out "that is exactly the conclusion Owens wanted the jury to draw." The court observed that the trial defense

> focused on establishing Martinez as the person who committed the murder. It was Martinez who by his own testimony was present in the vehicle when Glover was shot. It was Martinez who was the only person to have blood on his clothing immediately after the shooting. It was Martinez who admitted to burning his own clothes and shoes to destroy the physical evidence from the crime. Finally, it was Martinez who waited over a week to contact the police with what he claimed to know about the shooting, and then provided inconsistent information. Vaughn is not in a position to now claim that his counsel somehow failed to argue a circumstantial case that Martinez was in fact the person who killed Glover.

The court also found that because the "competing presentations at trial focused on the credibility of Martinez and Vaughn," Vaughn's claim trial counsel was ineffective in failing to file a motion for new trial based on the argument the verdict was contrary to the weight of evidence "would have been a futile effort."

Because the postconviction court concluded criminal trial counsel was not ineffective, the court also concluded appellate counsel was not ineffective in failing to claim trial counsel was ineffective. The court wrote:

> What remains are those claimed errors otherwise preserved for appeal that Bandstra failed to pursue: 1) the trial court's refusal to allow the jury to consider the fact that Martinez refused to take a polygraph test after initially indicating that he would; 2) allowing Vaughn's prior convictions into evidence; 3) sustaining a hearsay objection during the examination of Audrey Gonzalez, a defense witness; 4) failing to give the jury an accomplice instruction; 5) providing the jury with requested information; and 6) failing to grant Vaughn's motion for judgment of acquittal. None of these issues is of sufficient weight to justify a new trial in this case on the basis of ineffective assistance of appellate counsel.

Vaughn now appeals.

II. Scope and Standard of Review.

> We typically review postconviction relief proceedings on error. However, when the applicant asserts claims of a constitutional nature, our review is de novo. Thus, we review claims of ineffective assistance of counsel de novo. In addition, we give weight to the lower court's findings concerning witness credibility.

Ledezma v. *State*, 626 N.W.2d 134, 141 (Iowa 2001) (citations omitted).

III. Discussion.

Vaughn contends the postconviction court erred and denied him a fair trial in denying his motion for expert witness fees, disallowing the testimony of the five proposed witnesses, and "denying necessary access to the trial transcripts in order to complete post-trial briefs." He also contends the criminal trial court erred in excluding testimony about Martinez's refusal to take a polygraph. He argues trial counsel was ineffective in not calling an expert witness, in not having evidence tested or investigated, and in failing to "correct" misleading testimony. Finally, he argues appellate counsel was ineffective in claiming his criminal appeal was frivolous.

A. *Postconviction Issues*.

The first several issues raised by Vaughn stem from a misunderstanding of the issues the district court could properly consider in this postconviction action. Counsel for Vaughn asserts, in essence, that *all claims* that were viable on direct appeal are preserved for postconviction proceedings because the Iowa Supreme Court "never heard his criminal appeal." This premise resulted in

Vaughn's claims that he was entitled to the appointment of an expert witness,[2] to recall trial witnesses, and to have access to the postconviction transcript prior to closing postconviction briefs.

While it is true that claims of ineffective assistance of counsel are statutorily preserved for postconviction proceedings whether or not raised on direct appeal, *see* Iowa Code § 814.7 (2011), this rule developed because the record to establish such claims is often not available at the time of the defendant's direct appeal. *See State v. Johnson*, 784 N.W.2d 192, 196-98 (Iowa 2010); *see generally State v. Tate*, 710 N.W.2d 237, 239-40 (Iowa 2006) ("We prefer to reserve such questions for postconviction proceedings so the defendant's trial counsel can defend against the charge.").

Nonetheless, Vaughn's direct criminal appeal did act as a ruling on the merits of all *other* issues that were raised or could have been raised at that time. *See* Iowa Code § 822.2(2) ("This [postconviction] remedy is not a substitute for nor does it affect any remedy, incident to the proceedings in the trial court, or of direct review of the sentence or conviction.").

On Vaughn's criminal appeal, then-numbered rule of appellate procedure 6.104 allowed appellate counsel to move to withdraw if "convinced after conscientious investigation of the entire record . . . that the appeal is frivolous and that counsel cannot, in good conscience, proceed with the appeal." Iowa R. App. P. 6.104(1) (2006). The rule required Vaughn's appellate counsel to file "a

[2] Vaughn's motion for an expert witness at State expense expressly notes that "[a] person is barred from relitigation in a postconviction proceeding any ground which was finally adjudicated on direct appeal." (citing *Armento v. Baughman*, 290 N.W.2d 11, 12 (Iowa 1980)). But, Vaughn's motion argues that his appeal was "never adjudicated" and "all issues are preserved for relitigation."

brief referring to anything in the record that might arguably support the appeal." *Id.* Pursuant to that rule, the defendant was given notice of appellate counsel's motion to withdraw and the accompanying brief. Iowa R. App. P. 6.104(2). The defendant could express, in writing, the defendant's agreement to dismiss, *id*., or communicate a desire to proceed with the appeal. Iowa R. App. P. 6.104(4). If the defendant expressed a desire to proceed, "[t]he supreme court will then proceed, after a full examination of all the record, to decide whether the appeal is wholly frivolous. If it so finds, it may grant counsel's motion to withdraw and dismiss the appeal." Iowa R. App. P. 6.104(4).[3]

Appellate counsel Bandstra asserted and analyzed the following potential issues:

> I. Whether Trial Attorneys Were Ineffective by not Presenting a Theory of Defenses that Matthew Martinez or Unknown Person or Persons Committed the Murder
>
> II. Whether Attorneys Were Ineffective by Failing to Have Possible Exculpatory Evidence Tested
>
> III. Whether Attorneys Were Ineffective by Failing to File Motion in Limine/Object to Preclude the State From Impeaching Defense Witnesses With Prior Convictions
>
> IV. Whether Attorneys Were Ineffective by Failing to Object/or to Specifically Cross-Examine Matthew and Melissa Martinez Concerning Plea Agreement They Entered with State
>
> V. Whether Attorneys Were Ineffective by Failing to Object to Opinion Testimony
>
> VI. Whether Attorneys Were Ineffective by Failing to Move for New Trial Because the Jury's Verdict was Against Weight of the Evidence
>
> VII. Whether the District Court Erred in Not Allowing Polygraph Examination Refusal Into Evidence

[3] The current rule is found at Iowa Rule of Appellate Procedure 6.1005(6) (2013), and varies slightly in its language, stating: "In all other cases [where the defendant does not agree with counsel's decision] the supreme court will, after a full examination of all the record, decide whether the appeal is wholly frivolous. If it finds the appeal is frivolous, it may grant the motion to withdraw and dismiss the appeal." However, the new rule specifically excludes direct criminal appeals from the process. *See* Iowa R. App. P. 6.1005(1).

VIII. Whether the District Court Erred in Allowing Prior Convictions of Defendant for Impeachment Into Evidence

IX. Whether the District Court Erred in Not Sustaining State's Objection to Hearsay Testimony from Defense Witness

X. Whether the District Court Erred in Failing to Give an Accomplice Instruction

XI. Whether the District Court Erred in Failing to Provide Jury with Requested Testimony of Witnesses

XII. Whether the District Court Erred in Failing to Grant Motion for Judgment of Acquittal

Because Vaughn expressed his desire to have his appeal proceed, the dismissal of Vaughn's appeal represented the supreme court's ruling that the appeal was wholly frivolous, after having reviewed the potential issues raised by appellate counsel and the issues in Vaughn's pro se brief. The court's dismissal is a ruling that the claims—other than claims of ineffective assistance of counsel—were without merit. Consequently, the only issues before the district court in this postconviction proceeding were whether appellate counsel or trial counsel provided ineffective assistance of counsel. Vaughn could not relitigate other issues. Considering the issues properly before the district court in this postconviction proceeding, we find no abuse of discretion in the court's denial of expert witness fees,[4] or its rejection of postconviction testimony by criminal trial witnesses whose testimony was already of record.

B. *Expert Witness*.

Vaughn contends he has a constitutional right to hire an expert witness. This was true in his criminal trial. *See Ake v*. *Oklahoma*, 470 U.S. 68, 72 (1985); *State v*. *Coker*, 412 N.W.2d 589, 591 (Iowa 1987). Vaughn was granted an

[4] As noted in a prior footnote, Vaughn's request for appointment of an expert was based upon the premise that he could relitigate all issues. Vaughn was afforded this expert witness prior to his criminal trial. Trial counsel decided not to have the witness testify because his testimony was consistent with the State's expert witness.

expert prior to trial. He offers no authority that extends that right to civil postconviction proceedings. *See generally Manning v*. *State*, 654 N.W.2d 555, 559 (Iowa 2002) (noting "'all rules and statutes applicable in civil proceedings including pretrial and discovery procedures are available to the parties'" (quoting Iowa Code § 822.7)).

A more fundamental flaw, however, is that Vaughn did not raise this constitutional issue before the postconviction court and it is thus not properly before us. *See State v*. *Mitchell*, 757 N.W.2d 431, 435 (Iowa 2008) ("'Issues not raised before the district court, including constitutional issues, cannot be raised for the first time on appeal.'" (citation omitted)).

C. *Testimony by Prior Trial Witnesses*.

We review a postconviction court's ruling on the admissibility of evidence for an abuse of discretion. *Mohammed v*. *Otoadese*, 738 N.W.2d 628, 631-32 (Iowa 2007). An abuse of discretion exists when the court exercised its discretion "on grounds or for reasons clearly untenable or to an extent clearly unreasonable." *Id.*

The testimony of the five witnesses was already in the record. *See* Iowa R. Evid. 5.403 (allowing exclusion of "needless presentation of cumulative evidence"). As noted, Vaughn erroneously contends he is entitled to relitigate all issues on appeal. Vaughn was limited to attempting to establish trial and appellate counsel were ineffective. The testimony from the five witnesses was already of record. Whether his criminal trial counsel adequately pursued issues with those witnesses did not require their testifying at the postconviction trial. We find no abuse of the postconviction trial court's discretion.

D. *PostconvictionTrial Transcripts*.

Counsel for Vaughn contends the postconviction court erred in denying her motion for extra time to file post-trial briefs until the postconviction trial transcript was completed. Counsel argues that without the transcripts, she was denied a "tool" necessary to mount the applicant's defense—that she was "unable to accurately address the oral rulings made by the court" and could not adequately ensure that all issues the applicant wanted to raise will be considered. We disagree.

The post-trial briefs were, in effect, closing arguments. The issues to be raised had been raised and were of record. This is not a case where counsel was denied necessary evidence to prepare for trial. *See*, *e.g.*, *State v*. *Campbell*, 215 N.W.2d 227, 228-29 (Iowa 1974) (finding defendant had a right to a transcript of the alleged accomplice's prior testimony to prepare for defendant's criminal trial and noting defendant's right to "effective counsel . . . means not only providing defendant with a lawyer; it also means providing that lawyer with the opportunity—in both time and tools—to perform his often onerous task competently and conscientiously").

E. *Polygraph Evidence*.

On appeal, Vaughn contends the criminal trial court erred in not allowing him to question Martinez about his refusal to take a polygraph after initially offering to do so. The postconviction court addressed this issue on the merits, but we conclude the issue was previously decided and not subject to relitigation.[5]

[5] *See* issue VII, page 10. Even if we were to address the question in terms of a claim of ineffective assistance of appellate counsel, which Vaughn does not do, Vaughn cannot

F. Ineffective Assistance of Trial and Appellate Counsel.

Vaughn rather summarily argues trial counsel was ineffective in not calling Ernst as an expert witness, not having evidence tested or investigated, and failing to "correct" misleading testimony. He also argues appellate counsel was ineffective in claiming his appeal was frivolous.

In order to prevail on a claim of ineffective assistance of counsel, an applicant must demonstrate (1) counsel's performance was deficient, and (2) prejudice resulted. *See Ledezma*, 626 N.W.2d at 142.

> Considering the standard of reasonableness utilized in determining ineffective assistance claims, ineffective assistance is more likely to be established when the alleged actions or inactions of counsel are attributed to a lack of diligence as opposed to the exercise of judgment. Clearly, there is a greater tendency for courts to find ineffective assistance when there has been "an abdication—not an exercise—of . . . professional [responsibility]." Miscalculated trial strategies and mere mistakes in judgment normally do not rise to the level of ineffective assistance of counsel. Thus, claims of ineffective assistance involving tactical or strategic decisions of counsel must be examined in light of all the circumstances to ascertain whether the actions were a product of tactics or inattention to the responsibilities of an attorney guaranteed a defendant under the Sixth Amendment.

Id. at 142-43 (citations omitted).

1. Expert witness. The postconviction court rejected Vaughn's contention that his criminal trial counsel was ineffective in not calling Ernst to testify at trial. Owens testified he would have called his expert to testify if his conclusions had differed from the State's witness, Murillo. Owens explained:

---

establish the necessary prejudice, *see Ledezma*, 626 N.W.2d at 143, because (1) appellate counsel *did* raise the issue in his brief filed with his motion to withdraw, (2) Vaughn argued the issue in his pro se brief before the supreme court on direct appeal, and (3) the supreme court found the issue to be without merit in dismissing the appeal.

> . . . I think I gave [to Ernst] Murillo's deposition and Murillo's report. And he concurred with Murillo's report. The fact is we just didn't have the gun, and the fact is what Murillo was saying about the gun or what fired the gun kind of fit into my theory of the case. So it ended there with me.
>
> . . . .
>
> Well, that's—the Texas—the guy in Texas told me what Mr. Murillo did was correct. The fact that this was a Glock .45-21 was perfect—perfect for me. No one had ever seen Mr. Vaughn with a .45. So I had no dispute with whatever documents they introduced. Mr. Murillo is an expert. He's one of the best in the country. And I wanted to make—I had no problems with his testimony whatsoever.
>
> . . . .
>
> I don't want to tie up the loose ends. The fact is it's a .45. End of story. I don't know what other—what other loose end I'd want an expert to say. A .45 caliber weapon shot Mr. Glover. Mr. Vaughn never had a .45 caliber weapon ever. No one ever put him in possession of that type of weapon.
>
> So I don't know what I would want any expert—any weapons expert to testify to other than that. That fit our theory of the case, and that—that bit of evidence had nothing to do with Mr. Vaughn because he never had a .45.

With respect to trajectories of the gun shots, Owens explained that they "cut both ways." Owens stated, "I couldn't very well argue the trajectory because Mr. Vaughn wasn't there, so we had to go by what Mr. Martinez said." Owens attempted to show that "[i]t just could not have happened exactly like Mr. Martinez said it happened."

The postconviction court found no fault with Owens' trial strategy. Upon our de novo review, we conclude Owens' decision not to call the firearms expert was a strategic decision, which was made after a reasonable investigation of law and facts. Such strategic decisions "are virtually unchallengeable." *Id*. at 143.

2. *Failure to investigate*. Vaughn also contends Owens knew of certain evidence and did not adequately follow up by testing or investigating that evidence. He argues there was a cell phone near the victim's body that was

never identified. Owens, however, testified that a private investigator "tried to get any information he could about the phone, and we couldn't find anything about the phone."

Vaughn next complains that there was a baby car seat found in the burned SUV, which was not investigated for blood, gun powder residue, stippling, or bullet holes. He contends an investigation may have undermined the credibility of Martinez. "When complaining about the adequacy of an attorney's representation, it is not enough to simply claim that counsel should have done a better job. The applicant must state the specific ways in which counsel's performance was inadequate and identify how competent representation probably would have changed the outcome." *Dunbar v*. *State*, 515 N.W.2d 12, 15 (Iowa 1994). Vaughn's contention falls short. We observe that trial counsel repeatedly brought out that no blood or gun powder residue was found on Vaughn's clothing, whereas Martinez admitted burning his own clothing to destroy blood on his person. Vaughn does not explain how additional testing on the car seat would have changed the outcome of the trial.

3. *"Misleading" evidence*. Vaughn also argues that trial counsel was ineffective in failing to challenge the decedent's mother's testimony identifying a cell phone admitted at trial as Glover's. He contends the cell phone introduced as exhibit 25 belonged to Vaughn's brother and was used as Vaughn's directory. He argues this "misleading evidence was the strongest 'evidence' linking Vaughn and Glover in the murder." The State contends that several things linked Vaughn to the killing: (1) "the fact that the murder took place in his vehicle," (2) "the fact that he chose to destroy the evidence contained in the

truck by abandoning and burning it," (3) Vaughn's admitted lies to the police undermined his claims of innocence, and (4) Martinez's testimony. Vaughn has failed to establish the requisite prejudice.

4. *Frivolous appeal*. Vaughn finally contends that appellate counsel was ineffective in moving to withdraw on the basis of a frivolous appeal. But, having rejected all previous claims, we—like the postconviction court—conclude this claim fails as well.

AFFIRMED.