IN THE COURT OF APPEALS OF IOWA

No. 6-571 / 05-1113
Filed October 25, 2006

SHAWN JAMES,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Richard G. Blane, II, Judge.

Shawn Allen James appeals the district court's ruling denying his application for post-conviction relief. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Patricia Reynolds, Assistant Appellate Defender, for appellant.

Shawn James, Anamosa, pro se.

Thomas J. Miller, Attorney General, Richard Bennett, Assistant Attorney General, John Sarcone, County Attorney, and Daniel Vooght and Steve Bayens, Assistant County Attorneys, for appellee State.

Heard by Mahan, P.J., and Miller and Vaitheswaran, JJ.

MAHAN, P.J.

Shawn Allen James appeals the district court's ruling denying his application for post-conviction relief (PCR). He claims he received ineffective assistance of trial counsel and appellate counsel when his trial attorney allegedly conceded James's guilt of terrorism. He also claims he received ineffective assistance of PCR counsel when his attorney failed to argue Minnesota case law providing a new trial when counsel admits guilt. We affirm.

I. Background Facts and Proceedings

On August 9, 1999, Shawn Allen James fired five to six shots at Keon Phillips. James was convicted of both attempted murder in violation of Iowa Code section 707.11 (1999) and terrorism with intent in violation of section 708.6. At his trial, his counsel used a strategy that James was only guilty of terrorism. Counsel later testified at James's PCR hearing the strategy was an attempt to avoid conviction on the attempted murder charge. Counsel testified as follows:

> Q. And how did you intend to effectuate that strategy? A. We fought like cats and dogs that there was no intent to kill. Any—any fact, any evidence, any argument that we could make that there was no intent to kill. That was the be-all-end-all of our strategy, and that was always the case work, from deposition right through to final argument.
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> . . . .
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> Q. Was Mr. James aware that the strategy would be to have the jury find him guilty on terrorism but not on the attempted murder charge? A. I would say he had to have been aware of that. We—we were always trying to get the terrorism charge because it—it didn't carry that eighty-five percent. We were always discussing the fact that he could not afford to get convicted of attempted murder, which carried eighty-five percent. Like I say, I—that was all I ever worked on in this case from start to finish.
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> . . . .
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> A. Given the evidence, that's exactly what I wanted the jury to do, find him guilty of terrorism.

On appeal, James made nine claims of ineffective assistance of counsel. His conviction, however, was affirmed by the Iowa Court of Appeals on June 13, 2001. The court wrote:

> James has not elaborated on his claims to show why his trial counsel was ineffective or how his actions caused him prejudice. Because he has not complied with these minimal requirements, we conclude he has raised no viable claim of ineffective assistance and find no basis for preserving these issues for postconviction review.

State v. James, No. 01-0362 (Iowa Ct. App. June 13, 2001).

James filed for post-conviction relief on September 24, 2001. In his pro se application, he made the same nine claims of ineffective assistance of counsel. The State filed for summary judgment alleging that none of James's claims had been preserved in his direct appeal. The motion was denied. James's attorney raised only some of the initial nine claims of ineffectiveness. He also raised a claim of ineffective assistance of appellate counsel for failure to raise ineffectiveness of trial counsel. The district court ruled that James failed to prove he received ineffective assistance of trial or appellate counsel or that he was prejudiced by any error. James appeals.

II. Standard of Review

Generally, we review postconviction relief proceedings for errors at law. *Ledezma v. State*, 626 N.W.2d 134, 131 (Iowa 2001). However, when the petitioner alleges ineffective assistance of counsel, we review that claim de novo. *Nguyen v. State,* 707 N.W.2d 317, 322-23 (Iowa 2005). Ineffective assistance of appellate counsel is also reviewed de novo. *Osborn v. State*, 573 N.W.2d 917, 920 (Iowa 1998).

III. Merits

In order to show his counsel was ineffective, James must show both that his attorney failed in an essential duty and that the failure resulted in prejudice. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984). First, miscalculated trial strategy and mistakes in judgment usually do not rise to the level of ineffective assistance of counsel. *State v. Wissing*, 528 N.W.2d 561, 564 (Iowa 1995). In James's case, evidence that he committed the shooting was overwhelming. His counsel stressed the terrorism charge to show James did not have intent to commit murder. That strategy was both valid and reasonable, and the district court concluded James was not denied effective assistance of counsel or prejudiced as a result of its use. Because James is unable to show ineffective assistance of trial counsel based on this claim, he is unable to show ineffective assistance of appellate counsel.

Second, James argues he received ineffective assistance of post-conviction relief counsel because his counsel failed to argue Minnesota case law requiring a presumption of prejudice where a defendant's attorney admits guilt without the defendant's consent. *See In re B.R.C.*, 675 N.W.2d 348, 352 (Minn. Ct. App. 2004). However, the district court concluded the attorney properly investigated and prepared the case, and consulted with James prior to implementation of this strategy. After reviewing the record, we agree with the district court. The record shows either consent or acquiescence to the strategy.

Finally, James cannot show this trial strategy completely "fails to subject the prosecution's case to meaningful adversarial testing." *Florida v. Nixon*, 543 U.S. 175, 190, 125 S. Ct. 551, 562, 160 L. Ed. 2d 565, 580 (2004) (quoting

United States v. Cronic, 466 U.S. 648, 659, 104 S. Ct. 2039, 2047, 80 L. Ed. 2d 657, 668 (1984).

The district court's ruling is affirmed.

AFFIRMED.