

IN THE COURT OF APPEALS OF IOWA

No. 9-959 / 09-0014
Filed December 30, 2009

BRUCE E. MARTIN,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Scott County, Mark D. Cleve,
Judge.

Appellant appeals the summary disposition of his application for
postconviction relief. **AFFIRMED.**

Brian Farrell, Hiawatha, for appellant.

Thomas J. Miller, Attorney General, Cristen Douglass, Assistant Attorney
General, Michael J. Walton, County Attorney, and Julie Walton, Assistant County
Attorney, for appellee, State.

Considered by Vogel, P.J., and Doyle and Mansfield, JJ.

VOGEL, P.J.

Bruce Martin appeals the denial of his third application for postconviction relief, asserting the court erred in granting summary disposition as his trial counsel and second postconviction counsel were ineffective. On our de novo review, we affirm. *Ledezma v. State*, 626 N.W.2d 134, 141 (Iowa 2001).

On December 1, 2003, Martin was charged with four counts of second-degree sexual abuse, in violation of Iowa Code section 709.3(2) (2003), which was later amended, adding one count of lascivious acts with a child in violation of 709.8. In February 2004, Martin pled guilty to one count of second-degree sexual abuse and to lascivious acts, but was allowed to withdraw his guilty plea prior to sentencing. In June 2004, Martin again pleaded guilty to one count of second-degree sexual abuse and to lascivious acts, but subsequently asked to again withdraw his pleas. His request was denied and he was sentenced to a maximum indeterminate twenty-five year prison term for second-degree sexual abuse, and a five-year indeterminate prison term for lascivious acts with a child, the sentences to run concurrently.¹

Martin filed an application for postconviction relief. The court granted the State's summary judgment motion in October 2006, dismissing the action. Martin did not appeal. Martin filed a second application for postconviction relief in January 2005, and an amended application in October 2006, claiming his trial counsel was ineffective in various ways, including failing to fully investigate the charges and obtain "possibly exculpatory" reports and documents. Following a

¹ On appeal, our supreme court vacated a sentencing provision it determined was inapplicable.

trial on the merits, the district court denied the application, finding Martin, “failed to produce any evidence on relevant issues upon which this Court could find that the entry of his pleas were not voluntary and intelligently entered.” Our supreme court dismissed his subsequent appeal as frivolous in March 2008.² In June 2007, Martin filed a third application for postconviction relief, asserting he had “evidence to show my innocence in this crime.” He again claimed trial counsel and now his second postconviction counsel were ineffective in failing to investigate “numerous documents” relevant to the charges. Granting the State’s motion for summary disposition, the district court denied Martin’s third application for postconviction relief. Martin appeals.

Martin argues the district court erred in granting summary disposition. In a postconviction relief action, the court may grant a motion for summary disposition when it appears from the record as a whole that there is no genuine issue of material fact. *Manning v. State*, 654 N.W.2d 555, 559-60 (Iowa 2002). In order to succeed on a claim of ineffective assistance of counsel, Martin must prove by a preponderance of evidence that (1) counsel failed to perform an essential duty and (2) prejudice resulted. See *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984). In order to satisfy the prejudice requirement, Martin must show that there is a reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and would have insisted on going to trial. *State v. Straw*, 709 N.W.2d 128, 136 (Iowa 2006).

Martin maintains his trial and second postconviction counsel did not investigate his claims that another male family member was the actual

² *Martin v. State*, 06-1799 (Iowa March 2008).

perpetrator, nor did counsel investigate numerous documents Martin claims existed supporting his innocence. He now asserts trial counsel's failures bore on his decision to plead guilty. The second postconviction court addressed Martin's assertions, as did the third postconviction court, which specifically found,

The Applicant may only be granted relief from his conviction by showing the guilty pleas he entered on June 10, 2004 were either unknowing or involuntary. . . . The Applicant draws no factual connection between the investigation or presentation of these reports and the validity of his guilty pleas. The Applicant states only that "these documents demonstrate his innocence in that no reports with regard to his asserted sexual abuse of his daughter surfaced until 2002 or 2003 relating to acts supposedly taking place in 1995 or 1996." . . . This assertion is untenable. The fact that reports from 1994 and 1998 do not specifically identify him as perpetrating sexual abuse against his daughter simply has no bearing on whether his guilty pleas were entered in a knowing and voluntary manner.

We agree with the postconviction court's findings that summary disposition was appropriate because Martin's claims of his innocence do not undermine the validity of his guilty plea. Martin failed to show that but for the alleged ineffectiveness he would not have pleaded guilty. See *Straw*, 709 N.W.2d at 136. Martin therefore suffered no breach of duty by his trial or postconviction counsel, nor resulting prejudice.

Having reviewed the record and agreeing with the district court's fact findings, reasoning, and conclusions of law, we affirm pursuant to Iowa Court Rule 21.29(1)(a), (c), (d), and (e).

AFFIRMED.