

**IN THE COURT OF APPEALS OF IOWA**

No. 3-022 / 12-0648  
Filed March 13, 2013

**DANIEL E. WILSON,**  
Applicant-Appellant,

**vs.**

**STATE OF IOWA,**  
Respondent-Appellee.

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Appeal from the Iowa District Court for Des Moines County, John G. Linn,  
Judge.

Appeal from the denial of postconviction relief. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Nan Jennisch, Assistant  
Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Tyler Buller, Assistant Attorney  
General, Patrick C. Jackson, County Attorney, and Amy Beavers, Assistant  
County Attorney, for appellee State.

Considered by Eisenhauer, C.J., and Danilson and Bower, JJ.

**EISENHAUER, C.J.**

Daniel Wilson appeals from the district court's denial of his application for postconviction relief. He contends the court erred when it concluded his trial attorney was not ineffective for failing to call certain defense witnesses. We affirm.

In 2008 Wilson was convicted of domestic abuse assault following a bench trial. He filed a pro se application for postconviction relief in 2009, alleging ineffective assistance of counsel. The matter was submitted in 2012 on the parties' briefs, depositions of Wilson and his trial attorney, and the trial court record. The court denied relief on the merits and dismissed the application.

Generally, we review an appeal from a denial of an application for postconviction relief for correction of errors at law. *Lamasters v. State*, 821 N.W.2d 856, 862 (Iowa 2012). When an applicant raises claims of a constitutional nature, such as ineffective assistance of counsel, our review is de novo. *Id.*

Applicants who claim ineffective assistance of counsel must prove counsel breached an essential duty and prejudice resulted. *Castro v. State*, 795 N.W.2d 789, 794 (Iowa 2011). We may affirm the court's rejection of an ineffective assistance claim if either element is lacking. *Anfinson v. State*, 758 N.W.2d 496, 499 (Iowa 2008).

Concerning the breach of duty prong, we start with a presumption the attorney performed competently. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). "[I]neffective 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.” *Ledezma v. State*, 626 N.W.2d 134, 142 (Iowa 2001).

To meet the prejudice prong, an applicant must show his attorney’s “errors were so serious as to deprive [him] of a fair trial.” *Strickland*, 466 U.S. at 687.

Wilson contends his trial attorney was ineffective in not calling several witnesses. He asserts they were present at the scene of the incident with his former wife and “would have supported Wilson’s claim that [she] was the aggressor.” Complaints about the failure to call witnesses should be accompanied by proof their testimony would have been beneficial. *Nichol v. State*, 309 N.W.2d 468, 470 (Iowa 1981).

Wilson’s trial attorney testified in his deposition concerning the potential witnesses.

[I]n preparing for trial, it was my opinion that those witnesses should not be called. The strategy decided upon for the trial would not call for using any of those persons as witnesses, whether it was because their testimony was irrelevant or they had no personal knowledge of the events.

I believe, . . . that his son, or, perhaps his son and daughter were in his vehicle by the garage when the event took place, but did not see the event. In any event, whether it was their age or their lack of personal knowledge, I chose not to call the children as well.

When asked if he had interviewed the potential witnesses, the attorney replied, “I don’t recall that I talked to them before making the decision not to use them as witnesses. I believe what I relied upon were the police reports and my conversations with Mr. Wilson.”

At the postconviction hearing, Wilson did not call any of the individuals to testify what their testimony might have been if called during the trial. In addition,

Wilson did not produce any evidence, other than his own testimony, these individuals actually were witnesses to the incident or their testimony would have supported his version of the event. Without more, we cannot conclude his attorney's decision not to call these potential witnesses was anything other than sound trial strategy. See *State v. Polly*, 657 N.W.2d 462, 468 (Iowa 2003); see also *Nims v. State*, 401 N.W.2d 231, 235 (Iowa Ct. App. 1986). Wilson has not proved his trial attorney failed in an essential duty. Therefore, his ineffective assistance claim fails.

**AFFIRMED.**