IN THE COURT OF APPEALS OF IOWA

No. 6-970 / 06-0737
Filed April 11, 2007

DAVID ALAN LONDRIE,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Lee (South) County, John G. Linn, Judge.

Londrie appeals from the district court order dismissing his application for postconviction relief. **AFFIRMED.**

Esther J. Dean, Muscatine, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney General, Michael Short, County Attorney, and Bruce C. McDonald, Assistant County Attorney, for appellee.

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

VAITHESWARAN, J.

A jury found David Allen Londrie guilty of (1) possession with intent to manufacture methamphetamine, (2) possession with intent to deliver more than five grams of methamphetamine, (3) possession of a precursor with intent to manufacture, and (4) a tax stamp violation.

On direct appeal, our court reversed the judgment for possession with intent to manufacture but affirmed in all other respects. *State v. Londrie*, No. 02-0543 (Iowa Ct. App. May 29, 2003).

Londrie filed an application for postconviction relief. That application was later amended to raise fourteen ineffective-assistance-of-counsel claims. Following an evidentiary hearing, the district court rejected all fourteen claims and dismissed the postconviction relief application.

Londrie appeals. As all fourteen claims raise issues of constitutional magnitude, our review is de novo. *Giles v. State*, 511 N.W.2d 622, 627 (Iowa 1994). Londrie was obligated to show that counsel breached an essential duty and prejudice resulted. *Strickland v. Washington*, 466 U.S. 668, 690, 104 S. Ct. 2052, 2066, 80 L. Ed. 2d 674, 695 (1984).

I. Analysis

***Claim 1*: "Failure to properly prepare and investigate regarding Motion to Suppress."**

Prior to trial, Londrie filed motions to suppress evidence seized in searches of his vehicle, the home in which he lived, and an El Camino pickup truck parked near the home that was being searched. The district court denied the suppression motions and our court affirmed. In his postconviction relief

application, Londrie reasserted a challenge to the suppression ruling. The district court concluded he was impermissibly "attempting to relitigate" the issue. The court nevertheless considered and rejected the claim on the merits. We find no reason to disagree with the court's detailed findings and conclusions on this claim.

Claim 2: "Failure to properly prepare and investigate regarding Trial to Jury."

Londrie contends trial counsel should have had Wayne Saunders, Paul Londrie, Teri Thrush, and Angel Welch testify as defense witnesses.

A. Saunders. Londrie asserts that Saunders's testimony was important because he could have stated that a key witness for the State, Stephanie Jones, "made methamphetamine." However, this evidence was already in the record. Jones testified she went on "runs" with Londrie to purchase cold pills that were used in the preparation of methamphetamine. She also testified that Londrie made her participate in a methamphetamine "cook" so that she would be as guilty as he was. In light of this testimony, we conclude trial counsel's decision not to call Saunders was a reasonable strategic decision. Accordingly, this ineffective-assistance-of-counsel claim fails.

B. Paul Londrie. Londrie contends that another Londrie, Paul, "could have testified that Jones tried to sell him drugs." He also maintains Paul could have testified that he saw a black bag containing methamphetamine in Jones's possession. Again, this evidence was already in the record. Jones stated she pled guilty to aiding and abetting the delivery of methamphetamine. As for the black bag, it was found under her car seat. Although Jones testified the bag

belonged to Londrie, the fact that it was briefly in her constructive possession renders Paul's testimony cumulative.

C. Thrush. Londrie contends Thrush could have testified that "Jones was jealous of [him]." Londrie does not specify how this testimony would have assisted him. If he is contending that the testimony would have diminished Jones's credibility, defense counsel performed this task in his vigorous cross-examination of Jones.

D. Welch. Londrie contends Welch would have testified that "she was with [him] the night before he was arrested and therefore he could not have been making methamphetamine as Jones had accused him." He also contends Welch knew Jones was "cooking" methamphetamine.

Counsel's failure to elicit the first piece of testimony was not prejudicial, as the charge of possession with intent to manufacture was dismissed. The second piece of testimony would have been cumulative. Additionally, there was evidence that Welch was a methamphetamine user, rendering her testimony subject to impeachment. We conclude that trial counsel was not ineffective in declining to call the listed witnesses.

Claim 3: "Failure to object to testimony."

Londrie contends trial counsel was ineffective in failing to object to evidence of his "character, prior bad acts, his relationship with his girlfriends, and his relationship with his family." The postconviction court thoroughly addressed this issue, citing several pieces of testimony to which trial counsel arguably should have objected. The court concluded that, even if objections to these

pieces of testimony had been made and had been sustained, there is no reasonable probability that the outcome would have been different.

We agree with this conclusion. The State presented overwhelming evidence to support the elements of the crimes on which judgment was ultimately entered. We find it unnecessary to detail this evidence, much of which was summarized in our earlier opinion. *See State v. Londrie*, No. 02-0543 (Iowa Ct. App. May 29, 2003). As Londrie was unable to establish *Strickland* prejudice, this ineffective-assistance-of-counsel claim fails.

Claim 4: "Failure to impeach witnesses."

Londrie contends "trial counsel offered no evidence which would have impeached Stephanie Jones and his brother Keith Londrie." He specifically contends counsel should have impeached Jones with love letters she wrote to him and should have impeached his brother with evidence of his mental illness.

In fact, this evidence was in the record. First, contrary to Londrie's assertion, defense counsel asked Jones about the love letters she wrote to Londrie while in jail and established that these letters were inconsistent with her testimony that Londrie threatened her. Second, Keith Londrie testified he had schizoaffective disorder. Defense counsel elicited an admission from Keith that this disorder caused lapses in memory. Because trial counsel cross-examined these State witnesses as Londrie wished, we discern no breach of an essential duty. Therefore, the ineffective-assistance-of-counsel claim must fail.

Claim 5: "Failure to file Motions in limine."

Londrie contends there were "no efforts to exclude the deposition testimony of Stephanie Jones, Keith Londrie Jr. and Elizabeth Londrie regarding

their alleged fear of Londrie, the alleged threats he made to Jones and Elizabeth Londrie and the alleged assaults on Keith Londrie." We cannot discern how exclusion of these witnesses' deposition testimony would have aided the defense. The prosecution elicited similar testimony at trial and defense counsel effectively used these witnesses' earlier deposition testimony to highlight inconsistencies in their trial testimony. For this reason we conclude this ineffective-assistance-of-counsel claim fails.

Claim 6: "Failure to pursue plea negotiations."

Londrie contends "trial counsel failed to pursue plea negotiations and properly advise him of the benefits of a plea agreement." The postconviction court found that "Londrie's trial testimony on this issue is not credible." We give weight to this finding. *See Ledezma v. State,* 626 N.W.2d 134, 141 (Iowa 2001). In addition, Londrie's trial attorney testified that he "asked Dave if he would want to see about getting a plea worked out, and he said he would not take a plea." Based on this testimony and the postconviction court's credibility finding, we reject this ineffective-assistance-of-counsel claim.

Claim 7: "Trial counsel's failure to make a timely Motion for Mistrial."

This ineffective-assistance-of-counsel claim must fail because counsel in fact moved for a mistrial. Indeed, the trial court's denial of the motion was raised as an issue on direct appeal and our court found no abuse of discretion in the trial court's ruling. *See State v. Londrie*, No. 02-0543 (Iowa Ct. App. May 29, 2003).

***Claim 8*: "Trial Counsel failed to move for a new trial."**

Londrie contends "trial counsel did not move for a new trial based on the fact that the verdict was contrary to the weight of the evidence." First, we note that, although trial counsel did not explicitly raise this ground in his motion for new trial, the trial court addressed the demeanor of several witnesses and the inconsistencies in their testimony. Second, there is no reasonable probability that, had counsel explicitly raised the issue, the outcome would have been different. For these reasons, we reject this ineffective-assistance-of-counsel claim.

Claim 9: "Trial Counsel failed to request Jury Instruction 200.34."

Londrie contends trial counsel should have requested a jury instruction on other wrongful acts. We have already concluded that, even if trial counsel arguably should have objected to the testimony of prior bad acts, there is no reasonable probability that the outcome would have changed if these objections had been sustained. That conclusion applies equally to this ineffective-assistance-of-counsel claim.

Claim 10: "Trial Counsel failed to request a mistrial based on testimony and evidence not appearing in the Minutes of Evidence."

The district court thoroughly addressed this claim. We agree with the court's reasoning and disposition.

Claim 11: "Trial Counsel failed to specify grounds for Motion to Dismiss at the close of evidence."

On this claim, the record reveals that trial counsel moved for a judgment of acquittal on all counts and had a lengthy discussion with the trial court on several

key elements. Londrie does not specify what additional elements trial counsel should have challenged. Based on this lack of specificity and the fact that trial counsel challenged the State's evidence, we reject this ineffective-assistance-of-counsel claim. *See Dunbar v. State*, 515 N.W.2d 12, 15 (Iowa 1994) ("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.").

Claim 12: *"Trial Counsel failed to request a merger of counts I and II."*

Appellate counsel concedes that "[t]he Court of Appeals handled this issue when it vacated Londrie's conviction on Count I with no assistance from trial counsel." This concession disposes of the claim.

Claim 13: "Trial Counsel failed to investigate a potential problem with Jeff Herr."

The postconviction court fully addressed this claim both factually and legally. We agree with the court's reasoning on this issue.

Claim 14: "The Appellant (sic) Attorney did not raise all the issues on applicant's behalf in the presentation of this appeal."

Londrie asserts that appellate counsel "did not raise the issue of the Trial Court's denial of the Motion to Suppress." In fact, this issue was raised and considered on direct appeal. *See State v. Londrie*, No. 02-0543 (Iowa Ct. App. May 29, 2003).

II. *Disposition*

We affirm the dismissal of Londrie's application for postconviction relief.

AFFIRMED.