IN THE COURT OF APPEALS OF IOWA

No. 7-427 / 06-0621
Filed November 15, 2007

GERARDO GONZALEZ,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Allamakee County, John Bauercamper, Judge.

Gerardo Gonzalez appeals the district court's denial of his application for postconviction relief. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and David Arthur Adams, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sheryl A. Soich, Assistant Attorney General, William J Shafer, County Attorney, and Douglas D. Hammerand, Assistant County Attorney, for appellee.

Gerardo Gonzalez, Pro Se.

Considered by Sackett, C.J., and Vogel and Miller, JJ.

MILLER, J.

Gerardo Gonzalez appeals the district court's denial of his application for postconviction relief. We affirm.

I. BACKGROUND FACTS AND PROCEEDINGS.

The applicant, Gerardo Gonzalez, was charged with and convicted of murder in the first degree, in violation of Iowa Code section 707.2 (1999). The charge stemmed from allegations that Gonzalez was angry about losing in a street fight, and after the fight went to an apartment and shot Francisco "Lolito" Costillo in the head at close range.

Gonzalez appealed his conviction, which this court affirmed in *State v. Gonzalez,* No. 00-1689 (Iowa Ct. App. April 24, 2002). We found the following facts in the direct appeal:

> On January 14, 2000, Gonzalez and his roommates went to the Horseshoe bar in Postville. Prior to going to the bar, the men consumed a large amount of alcohol at their residence. While at the bar, Gonzalez engaged in an argument with Santiago "Chago" Vega about a fifty-dollar debt. Gonzalez and his friends remained at the bar until closing time. While walking home, Gonzalez again encountered Chago, as well as Francisco "Lolito" Costillo and his friends. A fight ensued between the two groups. After the fight, the participants dispersed. Shortly thereafter, Gonzalez and three of his friends arrived at Lolito's apartment. Gonzalez asked for Chago but Lolito told him that Chago did not live at the apartment. At that time, Gonzalez shot Lolito in the head at close range.

Id.

Following our affirmance of Gonzalez's conviction, he filed a pro se application for postconviction relief on April 14, 2003. The State filed a motion for summary judgment, which the district court denied. Gonzalez later filed a supplement to his application and later an amendment to his application, alleging

additional grounds of ineffective assistance of both trial and appellate counsel. In his postconviction application Gonzalez argued his trial attorneys were ineffective for failing to challenge jurors Mervil Mabb and Marlene Blocker, and for calling witnesses William Geary, Dr. Kishore Thampy, and expert Arlen Stegen to testify without properly investigating and preparing their testimony. A hearing was held on the application and in a written ruling filed March 20, 2006, the court denied the application. In denying Gonzalez's application the court concluded, in part, that "[n]o grounds for challenge for cause was shown for jurors Mabb and Blocker, nor was any actual prejudice shown", "[n]o actual prejudice was shown from the testimony of the witnesses Geary, Thampy, and Stegen", and "[t]he record in this case presents overwhelming evidence of guilt."

Gonzalez now appeals the postconviction court's denial of his postconviction application. On appeal he contends (1) the postconviction court erred in denying his request to participate in the postconviction hearing, (2) postconviction counsel was ineffective for failing to secure his participation in the hearing on his postconviction application, (3) his trial attorneys were ineffective for failing to investigate, prepare, and properly present witnesses Geary, Thampy and Stegen, (4) his trial attorneys were ineffective for failing to seek removal of jurors Mabb and Blocker, (5) appellate counsel was ineffective for failing to raise on direct appeal his trial attorneys' failure to properly investigate and present these witnesses and the trial court's abuse of discretion in failing to strike jurors

Mabb and Blocker, and (6) appellate counsel was ineffective for failing to file an application for further review from this court's decision affirming his convictions.[1]

II. SCOPE AND STANDARDS OF REVIEW.

We review the district court's decision regarding Gonzalez's participation in the hearing on his postconviction application for an abuse of discretion. *Mark v. State,* 370 N.W.2d 609, 610 (Iowa Ct. App. 1985). We typically review postconviction relief proceedings on error. *Ledezma v. State*, 626 N.W.2d 134, 141 (Iowa 2001). However, when the applicant asserts a claim of constitutional nature, such as ineffective assistance of counsel, we evaluate the totality of the circumstances in a de novo review. *Id*.

III. MERITS.

A. Participation in Hearing.

Gonzales participated in an initial, abbreviated hearing on September 22, 2005, which was stopped due to his claim of inadequate interpretation. He then asked to be permitted to attend the subsequent hearing in person. The district court ruled that Gonzalez's presence was not necessary under Iowa Code section 822.7 (2003). After the court denied Gonzalez's request for personal attendance at the hearing, Gonzalez asked to participate in the hearing by telephone and requested that costs of such participation be paid for with judicial branch funds. The court ruled that although judicial branch funds would not be used to pay for the call, Gonzalez could listen to the proceeding by telephone and the court would take recesses during the hearing to allow Gonzalez to speak privately with his attorney.

[1] Claims 3-6 are alleged by Gonzalez in his pro se appellate brief.

At the hearing on February 3, 2006, Gonzalez's counsel reiterated his objection and resistance to the court's order denying Gonzalez's request to be present in person at the hearing, arguing he had a "right to be here, and also raises his right to participate telephonically." The court overruled the objection concluding again that Gonzalez's presence was not necessary based on the issues presented. The court further stated it had not denied Gonzalez the opportunity to participate by telephone, it only found that judicial branch funds would not be used to pay for it. The court noted it had not received any application requesting the State Indigent Defense Fund be directed to pay for Gonzalez's participation by telephone, although it had been open to receive such applications.

On appeal Gonzalez first claims the district court erred in denying his request to participate in the hearing on his postconviction application. More specifically, he claims the court abused its discretion by not allowing him to attend in person or even participate by telephone.

Because postconviction proceedings are civil in nature, an applicant does not have a constitutional right to be present. *Webb v. State,* 555 N.W.2d 824, 825 (Iowa 1996). The district court's discretion to exclude an inmate from personally attending a postconviction hearing has been recognized by this court in several prior cases. *See id.* at 826; *Sallis v. Rhoads,* 325 N.W.2d 121, 123 (Iowa 1982); *Mark,* 370 N.W.2d at 611. Refusal to allow personal attendance at the hearing is supported by relevant statutory language.

> Section 622.82 states an inmate "*may* be required to be produced for oral examination," and section 822.7 states the court "*may* order

> applicant brought before it for the hearing." (Section 622.82 also works against [Gonzalez] because his hearing was held in a different county than the one in which he was imprisoned-the section states the inmate may be produced for oral examination in the county where the person is imprisoned.)

Webb, 555 N.W.2d at 826. "[A] postconviction hearing need not include the applicant's testimony, particularly in the absence of proof that applicant's attendance was necessary." *Id.* Furthermore, our supreme court has noted practical and sound policy reasons for denying postconviction applicants the absolute right to attend every hearing. "The personal attendance of . . . inmates at every postconviction hearing would create problems of cost and security, and would almost certainly encourage the filing of repetitive and groundless applications for the purpose of getting 'a day on the outside.'" *Hahn v. State*, 306 N.W.2d 764, 768 (Iowa 1981).

Given the court's discretion in permitting the applicant's participation, and the costs and security issues involved, it is not too much to require the postconviction applicant to make a preliminary showing of need before allowing an incarcerated applicant to personally attend postconviction proceedings. *See Webb*, 555 N.W.2d at 826; *Sallis,* 325 N.W.2d at 124. Here, the only reason given by Gonzalez as to why his personal attendance was necessary was because interpretation would be easier in person than over the phone. There was no showing by Gonzalez as to why his personal presence at the hearing, rather than utilizing the means authorized by statute to present an incarcerated person's testimony in a civil proceeding, was required. *See* Iowa Code § 622.82 (providing for a confined person's examination by deposition); *id*. § 822.7

(providing for proof, in a postconviction proceeding, by, among other means, affidavits and depositions).

Gonzalez did not meet his burden to show why his attendance was necessary based on the issues he raised in his postconviction application. The district court did not abuse its discretion in denying Gonzalez's request to be personally present at the postconviction hearing.

As set forth above, after the court denied Gonzalez's request to personally attend the hearing, he then requested to participate telephonically. First, we note this request is totally inconsistent and contrary to the reason given by Gonzalez for needing to personally participate in the hearing, that it would be too difficult to utilize an interpreter over the phone and he would not be able to hear everything that is being said by everyone all the time. Second, Gonzalez has not cited, and we have not found, authority that would, absent agreement of the parties and the court, allow a party to participate in a postconviction hearing by telephone. Finally, as noted by the district court, the court did not deny Gonzalez's request for telephonic participation. Rather, it denied him judicial branch funds to pay for such participation. Gonzalez did not request funding from the state indigent defense fund, which would appear to have been the proper source of funding for any telephone participation.[2] Thus, Gonzalez's claim that the trial court abused its discretion in denying his request to participate telephonically in the hearing is without merit.

[2] Iowa Code section 815.11 provides in part that costs incurred on behalf of an indigent under chapter 822 (postconviction) shall be paid from funds appropriated to the office of the state public defender.

B. Ineffective Assistance of Counsel.

A person claiming he or she received ineffective assistance of counsel must prove by the preponderance of the evidence that (1) counsel failed to perform an essential duty, and (2) prejudice resulted from the error. *State v. Doggett*, 687 N.W.2d 97, 100 (Iowa 2004). To prove the first prong, failure of an essential duty, the person must overcome a presumption that counsel was competent and show that under the entire record and totality of circumstances counsel's performance was not within the range of normal competency. *State v. Buck*, 510 N.W.2d 850, 853 (Iowa 1994); *Brewer v. State*, 444 N.W.2d 77, 83 (Iowa 1989); *State v. Lockheart*, 410 N.W.2d 688, 695 (Iowa 1987); *Taylor v. State*, 352 N.W.2d 683, 685 (Iowa 1994); *Whitsel v. State*, 439 N.W.2d 871, 872-73 (Iowa Ct. App. 1989). To prove the second prong, resulting prejudice, the person must show that counsel's failure worked to the person's actual and substantial disadvantage so there exists a reasonable probability that but for counsel's error the result of the proceeding would have been different. *Doggett*, 687 N.W.2d at 100; *Ledezma*, 626 N.W.2d at 143-44. Failure to prove either element is fatal to the claim. *Doggett*, 687 N.W.2d at 100. On appeal we can affirm a rejection of an ineffective-assistance-of-counsel claim if proof of either element is lacking. *State v. Greene*, 592 N.W.2d 24, 29 (Iowa 1999); *Taylor*, 352 N.W.2d at 685.

1. Postconviction Counsel.

Gonzalez first contends his postconviction counsel was ineffective for failing to secure his participation in the postconviction hearing by (1) securing

funds, other than judicial branch funds, to allow for his telephonic participation, or alternatively (2) adequately presenting his pro se claims at the hearing. He argues he was prejudiced by his inability to address his pro se issues and the matter should be preserved for a new postconviction hearing.

Claims of ineffective assistance of postconviction counsel are preserved for a further postconviction proceeding only if the applicant makes a minimal showing of the potential viability of the claim. *See State v. Alloway*, 707 N.W.2d 582, 587 (Iowa 2006) (declining, in the context of a claim of ineffective assistance of trial counsel on direct appeal, to preserve the claim). This requires the applicant to show the need to develop a further record, and to explain why the actions of postconviction counsel were ineffective and how those actions resulted in prejudice. *See id*. A bald assertion in insufficient. *Id.*

Gonzalez is required to allege some particular reason how, assuming his attorney could have secured proper funds, his telephonic participation in the hearing would likely have changed the outcome of the proceeding. Lack of participation in itself does not constitute prejudice. We conclude Gonzalez has not sufficiently articulated how the outcome of the proceeding would likely have been different if he had participated telephonically and has thus failed to sufficiently articulate the prejudice prong of his claim. His counsel read his pro se claims to the postconviction court during the hearing and presented argument on the primary claims. Gonzalez makes no showing of how his participation might have changed the outcome of the hearing. Gonzalez has not made even a

minimal showing of the potential viability of this claim and thus we reject his request to preserve the issue for another postconviction hearing.

2. Trial Counsel.

Gonzalez next contends his trial attorneys were ineffective for failing to investigate, prepare, and properly present defense witnesses Bill Geary, Dr. Kishore Thampy, and firearms expert Arlen Stegen.

Bill Geary owned the Horseshoe Bar in Postville. He was called by the defense to testify at trial and was expected to testify that Gonzalez, with whom he was familiar, was intoxicated on the night in question.[3] Prior to trial Gonzalez's attorneys had spoken to Geary and he told them that Gonzalez was either drunk or high on drugs on the night in question. In addition, a private investigator for the public defender's office acquired and provided defense counsel a written report of an interview of Geary in which Geary stated Gonzalez appeared to be "stoned" when he saw him that night, and that he was frequently going into the bathroom, where Geary believed Gonzalez and his friends often used illegal drugs. The report also states that Geary believed he mentioned to the Postville Police Chief, who was in the bar at closing time on the night in question, that Gonzalez was drunk. At trial Geary testified that while Gonzalez seemed to be under the influence of some substance, he did not think it was alcohol and did not think he was drunk because he did not slur his speech and he did not stumble. He did testify Gonzalez seemed to be "troubled" and wore a "blank" expression. He agreed Gonzalez "didn't seem to be tracking."

[3] One of Gonzalez's main defense strategies was to demonstrate he was too intoxicated on the night of the shooting to possess the specific intent necessary for murder in the first degree.

Gonzalez claims his trial attorneys were ineffective because if they had made an effort to investigate and talk to Geary before the trial they would have known he was going to testify that Gonzalez was not intoxicated on the night in question. He further asserts counsel should have used Geary's prior inconsistent statements to impeach Geary, or should have established during re-direct examination or closing arguments that bar owners are often reluctant to give firm opinions on a patron's intoxication for fear of civil repercussions under Iowa's dramshop liability act.

We believe that trial counsel conducted an adequate investigation of Geary prior to trial and based on the information before them could not have anticipated that Geary would modify his testimony at trial. Furthermore, Gonzalez cannot establish resulting prejudice from counsels' actions because at least six other witnesses testified at trial that Gonzalez was in fact intoxicated on the night in question. We conclude Gonzalez has not met his burden to show his trial attorneys were ineffective in their handling of witness Geary.

Forensic psychiatrist Dr. Kishore Thampy was called as a defense expert on the subject of intoxication. He testified at trial about various scenarios, describing the effects of different levels of a person's blood alcohol concentration. Gonzalez claims his trial attorneys should not have called Dr. Thampy, or should have changed their strategy in questioning him, after Geary testified Gonzalez was not drunk as that forced Thampy to speak only in hypothetical terms rather than about Gonzalez specifically. He further asserts Thampy's testimony opened the door for rebuttal testimony, by the State's expert

witness, Dr. Taylor, on Gonzalez's ability to form specific intent. Dr. Taylor testified that he believed Gonzalez was capable of forming the specific intent to kill on the night in question.

Assuming without deciding that Geary's testimony affected Dr. Thampy's testimony, the hypotheticals testified to by Thampy were very detailed, clearly drawn from the facts in the record in this particular case, and designed to apply specifically to Gonzalez. Furthermore, Dr. Thampy concluded his testimony on direct examination by opining that a hypothetical person matching Gonzalez's physical characteristics, his minimum blood alcohol level, and drinking history would not have been able to form the specific intent to commit first-degree murder. Accordingly, Thampy's use of hypothetical situations did not diminish the usefulness of his testimony to Gonzalez's case.

Furthermore, Gonzalez had already presented other evidence attempting to show he was too intoxicated to form the requisite specific intent for murder in the first degree before Dr. Thampy testified. Six witnesses variously testified that Gonzalez was "drunk," "intoxicated," or "very intoxicated." These witnesses included not only friends, but also antagonists from the events of the evening Gonzalez shot Lolito. Thus, evidence from the State tending to rebut that testimony would have been appropriate even absent Thampy's testimony. Accordingly, trial counsel were not ineffective in calling Dr. Thampy as a witness or in presenting his testimony, and his testimony did not have the effect of opening the door for the State's rebuttal testimony concerning facts relevant to Gonzalez's ability to form the specific intent to kill. We conclude Gonzalez has

not met his burden to show his trial attorneys were ineffective in their handling of witness Thampy.

Gonzalez's next claim concerns the testimony of another defense witness, firearms expert Arlen Stegen. Stegen testified he was the owner of a gun shop and indoor shooting range, as well as a company which specialized in the design of various kinds of guns and weaponry. He stated he had testified as an expert in dozens of cases, served as a consultant for ammunition companies, and worked with the federal government. Stegen opined that the gun used in this case, a Jennings .22 caliber pistol, had a "terribly poor" design. He characterized this model as "junk" and a "suicide special," noting he would not sell that type of gun or allow his customers to use it on his shooting range. He described the guns as a "danger to everybody around them, including the shooter," and said that a Jennings .22 could fire unintentionally. Stegen also testified that the actual weapon used in this case had been rusted and poorly maintained. He test-fired the gun twice and it jammed on his third attempt.

On cross-examination Stegen testified that he had not attempted to make this particular gun misfire, and in the tests he did conduct it never went off accidentally. In a requested courtroom demonstration he was not able to properly assemble it. Gonzalez claims that Stegen's testimony on cross-examination "destroy[ed] any hope of a successful accidental discharge defense" and his trial attorneys' "decision to present it was objectively unreasonable."

We conclude that while Stegen may have been subjected to cross-examination that detracted somewhat from his testimony on direct examination, his attorneys did not act unreasonably or otherwise provide ineffective assistance in presenting Stegen's testimony. Despite any diminishing effect of the cross-examination, Stegen's extensive experience with weapons, his opinion of the Jennings .22 as a poorly designed weapon, and the poor condition of the weapon in particular, were presented to the jury. We agree with the postconviction court's conclusion on this matter:

> In reviewing the testimony and looking at the gun itself, it is clear that the gun was in poor repair, and a reasonable implication is that it could fire accidentally. It is also a reasonable conclusion for the fact finder to make from the evidence that testing the gun [to cause a misfire] would not have been safe or appropriate for any expert to attempt.

We conclude Gonzalez has not established that his trial attorneys breached an essential duty or that prejudice resulted from their handling of Stegen as an expert witness. This claim of ineffective assistance must fail.

Finally, Gonzalez claims his trial attorneys were ineffective for failing to challenge jurors Mervil Mabb and Marlene Blocker for cause. Iowa Rule of Criminal Procedure 2.18(5)(*k*) provides that a potential juror may be challenged for cause if the potential juror has "formed or expressed such an opinion as to the guilt or innocence of the defendant as would prevent the juror from rendering a true verdict upon the evidence submitted on the trial."

Juror Mervil Mabb suggested during voir dire that because he was from Postville he might have difficulty setting aside his initial opinion. He was also familiar with someone who perhaps was an uncle or other relative of the

prosecutor, and he knew defense witness Geary because his wife used to tend bar at the Horseshoe Bar. Mabb ultimately stated that he could set aside any preconceived opinions about the case, listen fairly to all the evidence presented, make his decision based on all the evidence presented, and generally serve as a fair and impartial juror.

In the postconviction action one of Gonzalez's trial attorneys explained in her deposition testimony that at the time a jury was being selected defense counsel felt the facts Mabb was familiar with defense witness Geary and Mabb's wife had worked for Geary would be helpful to them in presenting Gonzalez's case. We conclude defense counsel were not ineffective for not challenging juror Mabb for cause, as such a challenge would have been unwarranted or questionable under rule 2.18(5)(*k*), and it was reasonable for counsel to believe an advantage to Gonzalez might be gained by keeping an acquaintance of a defense witness on the jury. *See State v. Greene*, 592 N.W.2d 24, 30 (Iowa 1999) (holding counsel is not ineffective for failing to raise meritless issues).

Juror Marlene Blocker's teenage daughter had recently been the victim of a sex crime and the case was being prosecuted in Allamakee County, the same county as Gonzalez's trial. This matter was fully discussed during jury selection and Blocker stated she could be a fair and impartial juror despite the current situation with her daughter. She was not challenged by the defense and was chosen to serve on the jury.

During the trial, another issue regarding juror Blocker's daughter arose. While the trial was still in progress Blocker contacted the Allamakee County Attorney's Office regarding the status of the case involving her daughter. The prosecutor brought this communication to the court's attention and the court found that neither Blocker nor the County Attorney, Bill Shafer, who had spoken with her, had said or done anything inappropriate with regard to the Gonzalez case. The court instructed juror Blocker to not have further contact with the county attorney's office until the Gonzalez trial concluded.

Subsequently, Blocker's husband telephoned the county attorney's office with a concern regarding the Blockers' daughter. Shafer had a police officer call Mr. Blocker back to find out what the family's concern was. Mr. Blocker informed the officer they were concerned because they believed their daughter, through a school project, was going to be visiting the jail and meeting with prisoners one-on-one. The Blockers were concerned about this because they did not want their daughter to have any contact with her alleged assailant. Defense counsel and prosecutor Shafer brought this matter to the court's attention. Shafer informed the court he had never heard of students having direct contact with the prisoners, and he had spoken to the sheriff who assured him that such contact was not going to happen and had never happened to his knowledge. At that time all parties agreed the best course of action was to have an officer call Mr. Blocker and assure him that no high school students would be meeting with any of the inmates. The court instructed Shafer to have that done.

Gonzalez contends not only that Blocker should have been struck for cause, but also that the contacts that occurred during trial between the Blockers and the county attorney's office disqualified Blocker from continuing to serve as a juror in his trial. He argues his trial attorneys were ineffective for failing to ask the court to replace Blocker with an alternate juror.

Blocker had stated during jury selection that she could be a fair and impartial juror despite the current situation involving her daughter. We conclude defense counsel were not ineffective for not challenging juror Blocker for cause because such a request would have been unwarranted under rule 2.18(5)(*k*). Furthermore, they were under no obligation to seek Blocker's removal in the course of trial as the contacts she had with the county attorney's office during the trial were not related to this case and were handled appropriately. We agree with the postconviction court that Blocker's contacts with the prosecutor's office "appear to be incidental and routine, with information being provided as it would in any case, with nothing extraordinary warranting a challenge from defense counsel." We conclude defense counsel were not ineffective for not seeking to have juror Blocker replaced during the trial.

3. Appellate counsel.

Gonzalez next contends his direct appeal counsel was ineffective for failing to (1) raise on direct appeal trial counsels' failure to investigate, prepare, and properly present witnesses Geary, Thampy, and Stegen, (2) raise on direct appeal the trial court's abuse of discretion for failing to strike jurors Mabb and

Blocker, and (3) file an application for further review following the affirmance of Gonzalez's conviction by this court.

We judge ineffective assistance of appellate counsel claims against the same two-pronged test utilized for ineffective assistance of trial counsel claims. *Ledezma*, 626 N.W.2d at 141. To prove appellate counsel's deficient performance resulted in prejudice, the applicant must show his ineffective assistance of trial counsel claim would have prevailed if it had been raised on direct appeal. *Id.* We have already determined Gonzalez's trial attorneys were not ineffective in their investigation, preparation, and presentation of witnesses Geary, Thampy, and Stegen. Thus such a claim would not have prevailed had it been raised on direct appeal. Gonzalez's claim that appellate counsel was ineffective for failing to raise this on direct appeal must fail.

We have also determined that challenging jurors Mabb and Blocker for cause would have been questionable or unwarranted under rule 2.18(5)(*k*). Thus, appellate counsel was not ineffective for failing to raise the issue on direct appeal. *See Greene*, 592 N.W.2d at 30 (holding counsel is not ineffective for failing to raise meritless issues).

Finally, Gonzalez contends his appellate counsel was ineffective for failing to file an application for further review with our supreme court following this court's affirmance of his conviction and that this omission effectively barred him from federal review of his state conviction.

In complaining about the adequacy of an attorney's representation, it is not enough to simply claim counsel should have done a better job. *Dunbar v. State*,

515 N.W.2d 12, 15 (Iowa 1994). The applicant must: (1) state the specific ways in which counsel's performance was inadequate, and (2) identify how competent representation probably would have changed the outcome. *Id*. Claims of ineffective assistance are preserved only when there is a minimal showing of the potential viability of the claim. *Alloway,* 707 N.W.2d at 587; *State v. Wagner,* 410 N.W.2d 207, 215 (Iowa 1987). This requires an explanation of why the challenged actions of counsel were ineffective and how those actions resulted in prejudice. *Id.* Bald assertions are insufficient. *Id.* Here, Gonzalez does not state what portion or portions of this court's decision affirming his conviction should have been challenged in an application for further review to our supreme court, what the supreme court might have done differently, or what claims might be pursued in federal court. We conclude Gonzalez has made no minimal showing of the potential viability of his claim of ineffective assistance of appellate counsel, and we find no basis for preserving this claim for yet another postconviction proceeding. *See id*. His claim is too general in nature to allow us to address it or to preserve it for yet another postconviction proceeding. *See, e.g., Dunbar*, 515 N.W.2d at 15. We therefore decline to do so.

IV. CONCLUSION.

We conclude the postconviction court did not err in denying Gonzalez's requests to attend the postconviction hearing in person or to expend judicial branch funds for his telephone participation. Gonzalez did not request funding from the state indigent defense fund. We further conclude Gonzalez did not show how he was prejudiced by the fact his postconviction counsel did not

secure his telephonic participation in the postconviction hearing. Neither Gonzalez's trial attorneys nor his appellate counsel were ineffective in any of the ways claimed by Gonzalez in his pro se appellate brief. We have considered all of Gonzalez's claims, whether specifically addressed herein or not, and we find them to be without merit or too general to address or preserve for yet another postconviction proceeding.

AFFIRMED.