IN THE COURT OF APPEALS OF IOWA

No. 7-428 / 06-1255
Filed July 25, 2007

EDWARD TEJEDA,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Gregory A. Hulse, Judge.

Edward Tejeda appeals from the denial of his application for postconviction relief. **AFFIRMED.**

Christopher A. Kragnes, Sr., of Kragnes & Associates, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney General, John P. Sarcone, County Attorney, and Mike Hunter, Assistant County Attorney, for appellee State.

Considered by Mahan, P.J., and Eisenhauer and Baker, JJ.

BAKER, J.

Edward Tejeda, who was convicted of willful injury, appeals from the denial of his subsequent application for postconviction relief. We affirm.

Background Facts and Proceedings.

We find the facts, as found by the postconviction court, are supported by substantial evidence in the record, and set them forth here in full:

> In December 2002, the applicant, Edward Tejeda, was tried for willful injury for striking another individual with a baseball bat, but the jury was unable to reach a unanimous decision and a mistrial was declared. In the period leading up to his second trial, Tejeda alleges that a complete breakdown in communication occurred between his attorney and himself. According to the applicant, prior to trial, the Polk County Attorney extended a plea offer and Tejeda's attorney strongly recommended that he accept. When he refused to do so, Tejeda contends, his attorney stormed from the room in protest. Consequently, the applicant wrote a letter to Judge Novak relating this episode and expressing his opinion that he could not win at trial with his current attorney and furthermore was scared to share possible new evidence with him. In response to this letter, Judge Ovrom ordered counsel to submit responses to the letter, but no filing was made by either attorney.
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> On February 13, 2003, Tejeda again requested that the court appoint substitute counsel in a letter addressed to Judge Novak. The letter again alleged a breakdown in communication. No response was issued by the court or either attorney and the matter proceeded to trial. The applicant was subsequently convicted.
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> Attorney Moss testified in the post-conviction relief hearing that he had no recollection either of being asked to withdraw or feeling the need to withdraw. Furthermore, he never believed that such a breakdown occurred and indeed characterized his communication with his client as "open." Tejeda, on the other hand, testified that the communication had deteriorated to such an extent that he withheld new evidence from his attorney.

Following the trial on this matter, Tejeda was found guilty of willful injury, in violation of Iowa Code section 708.4 (2001). On direct appeal, the supreme court affirmed the conviction, but held that the district court had failed in its duty to inquire into a potential breakdown in communication between Tejeda and his

counsel. *State v. Tejeda*, 677 N.W.2d 744 (Iowa 2004) (*Tejeda* I). It preserved that issue for postconviction relief proceedings. The postconviction court later rejected Tejeda's claims, finding "little, if any, evidence to lend credence to Tejeda's assertions that there was a complete breakdown in communication." Tejeda appeals from this ruling.

Scope of Review.

Iowa appellate courts typically review postconviction relief proceedings on error. *Ledezma v. State,* 626 N.W.2d 134, 141 (Iowa 2001). However, where the applicant asserts claims of a constitutional nature, our review is de novo. *Id.* In order to show his counsel rendered ineffective assistance, Tejeda must show (1) his counsel breached an essential duty and (2) that breach resulted in prejudice to his defense. *Strickland v. Washington,* 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984).

Ineffective Assistance.

In *Tejeda* I, the supreme court held that because prior to trial Tejeda had made a "colorable complaint" indicating a breakdown of his relationship with his attorney, the court should have inquired into whether there was a "complete breakdown in communication between the attorney and the defendant" sufficient to implicate constitutional concerns. *Tejeda*, 677 N.W.2d at 751-52. It thus preserved this claim for a postconviction application. Appropriately responding to this direction, the postconviction court determined its only issue to be "whether a breakdown in communication occurred so as to infringe on Tejeda's Sixth Amendment right to counsel".

On appeal, Tejeda maintains the record evinces a complete breakdown of communication in attorney-client communications. He further alleges the court erred in finding attorney Moss to be more credible than him. Upon our de novo review of the record, we find the court's credibility findings are fully supported by substantial evidence. Iowa R. App. P. 6.14(6)(*g*). The postconviction court had a firsthand opportunity to hear the evidence and view the witnesses. *See In re Marriage of Will,* 489 N.W.2d 394, 397 (Iowa 1992).

Tejeda had the burden to show a complete breakdown of communication in attorney-client communications. As the court noted in *Tejeda I* :

> The types of communication breakdowns that constitute "total breakdowns" defy easy definition . . . . As a general matter . . . to prove a total breakdown in communication, a defendant must put forth evidence of a severe and pervasive conflict with his attorney or evidence that he had such minimal contact with the attorney that meaningful communication was not possible.

Tejeda, 677 N.W.2d at 751.

For his part, attorney Moss recalled a good working relationship with Tejeda, and described it as one that entailed open communication and cooperation during trial. Moss recalled a variety of strategic topics he discussed with Tejeda during trial. The only area Moss could recall any dispute on was whether Tejeda should plead guilty during his second trial.[1] He related that because the State would be able to strengthen its case based upon what it learned during the first trial, he felt a guilty verdict was more likely in the second trial. Tejeda rejected this advice. The trial court found, and we agree, that the

[1] Tejeda's first trial resulted in a hung jury.

evidence did not show a complete breakdown of communication in attorney-client communications.

Although the court in *Tejeda I* appears to have remanded solely for a determination as to the nature of the relationship, Tejeda still had the burden to show the second prong of *Strickland.* *See State v. Jefferson*, 574 N.W.2d 268, 278 (Iowa 1997) ("A defendant must ordinarily show prejudice, unless he has been denied counsel or counsel has a conflict of interest."). *See also Mickens v. Taylor,* 535 U.S. 162, 168 122 S. Ct. 1237, 1242-43, 152 L. Ed. 2d 291, 304 (2002) (requiring a showing of probable effect upon the outcome of trial). During the postconviction proceedings and now on appeal Tejeda stresses that his relationship with Moss had so deteriorated that he began withholding information from Moss. However, during his postconviction testimony Tejeda could not recall any of the specific information that he allegedly withheld from Moss. He could only explain that because he had then been in prison for four years, he had "adapted to the routine in prison" and could not focus on what happened prior to then. Without some indication as to what information was withheld or that the result would have been different, it is not possible to conclude that Tejeda has satisfied the second essential element of *Strickland, i.e.* prejudice.

Conclusion.

In *Tejeda* I, the supreme court ordered a remand to further develop the record as to the health of the attorney-client relationship at the time of trial, and to determine whether a *complete* breakdown in communication had occurred. Finding that such a breakdown had not occurred, the postconviction court denied Tejeda's request for relief. Because our de novo review of the record persuades

us that there was no complete breakdown in communication, we affirm the decision of the postconviction court.

AFFIRMED.