

**IN THE COURT OF APPEALS OF IOWA**

No. 8-356 / 07-0542  
Filed October 15, 2008

**CHESTER GREENUP,**  
Applicant-Appellant,

**vs.**

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

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Appeal from the Iowa District Court for Polk County, Eliza J. Ovrorn,  
Judge.

Chester Greenup appeals the district court decision denying his  
application for postconviction relief. **AFFIRMED.**

Christopher Kragnes of Kragnes & Associates, P.C., Des Moines, for  
appellant.

Thomas J. Miller, Attorney General, Linda Hines, Assistant Attorney  
General, John P. Sarcone, County Attorney, and George Karnas and Joseph  
Weeg, Assistant County Attorneys, for appellee State.

Heard by Mahan, P.J., and Vaitheswaran and Doyle, JJ.

**MAHAN, P.J.**

Chester Greenup appeals the district court decision denying his application for postconviction relief. He alleges he received ineffective assistance of both trial and appellate counsel, and raises several evidentiary postconviction claims. We affirm.

**I. Background Facts and Proceedings.**

Greenup was found guilty of kidnapping in the first degree, theft in the first degree, and eluding for events that occurred June 9, 1998. Greenup accosted an elderly woman in a parking lot, forced her into the backseat of her car, and drove the car to some train tracks where he asked her for money. The woman gave him approximately \$150. Greenup then allegedly sexually assaulted the woman in the backseat of her car. After the assault, Greenup dragged the woman out of the backseat and stole her vehicle. Railroad workers stopped to help the victim and called the police. Police observed the stolen vehicle a short time later and attempted to pull it over, but the vehicle sped up and eventually crashed into a fence. Police arrested Greenup on foot in the vicinity of the crash site shortly thereafter.

Greenup's convictions were affirmed on direct appeal in *State v. Greenup*, No. 99-0256 (Iowa Ct. App. June 28, 2000). Following hearing on September 1, 2006, the district court denied Greenup's application for postconviction relief in a twenty-two page opinion. Greenup now appeals the district court's ruling. Through a pro se brief, he raises many of the claims he alleged in his postconviction application and brief. Through counsel's brief, he challenges the district court's ruling with regard to trial counsel's ineffective assistance.

## II. Scope and Standard of Review.

We review postconviction relief proceedings for errors at law. Iowa R. App. P. 6.4; *Millam v. State*, 745 N.W.2d 719, 721 (Iowa 2008). Under this standard, we affirm if the court's fact findings "are supported by substantial evidence and if the law was correctly applied." *Harrington v. State*, 659 N.W.2d 509, 520 (Iowa 2003). Those claims concerning alleged constitutional violations, including ineffective assistance of counsel claims, are reviewed de novo. *Id.*; *State v. Decker*, 744 N.W.2d 346 (Iowa 2008). We give weight to the lower court's determination of witness credibility. *Millam*, 745 N.W.2d at 721.

## III. Merits.

Greenup now appeals, claiming his trial and appellate counsels were ineffective and the district court erred in rejecting those claims. Greenup further claims the district court erred in dismissing his other pro se claims. We address each argument in turn.<sup>1</sup>

### A. Ineffective Assistance of Trial Counsel.

To establish a claim of ineffective assistance of counsel, a defendant must prove (1) counsel failed to perform an essential duty and (2) prejudice resulted to the extent it denied the defendant a fair trial. *State v. Maxwell*, 743 N.W.2d 185, 195 (Iowa 2008). A defendant's failure to prove either element by a preponderance of the evidence is fatal to a claim of ineffective assistance. *State v. Polly*, 657 N.W.2d 462, 465 (Iowa 2003).

The test for the first element is objective: whether counsel's performance was outside the range of normal competency. *Millam*, 745 N.W.2d at 721. We

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<sup>1</sup> There is some overlap between Greenup's pro se claims and those made by his appellate counsel. We will address all claims that are discernibly different.

start with a strong presumption that counsel's conduct was within the wide range of reasonable professional assistance. *DeVoss v. State*, 648 N.W.2d 56, 64 (Iowa 2002). We presume the attorney performed competently, and the defendant must present an affirmative factual basis establishing inadequate representation. *Millam*, 745 N.W.2d at 721. Miscalculated trial strategies and mere mistakes in judgment normally do not rise to the level of ineffective assistance of counsel. *Id.* However, "strategic decisions made after a 'less than complete investigation' must be based on reasonable professional judgments which support the particular level of investigation conducted." *Id.*; *Ledezma v. State*, 626 N.W.2d 134, 143 (Iowa 2001) (quoting *Strickland v. Washington*, 466 U.S. 668, 690-91, 104 S. Ct. 2052, 2066, 80 L. Ed. 2d 674, 695 (1984)). Ineffective assistance of counsel claims "involving tactical or strategic decisions of counsel must be examined in light of all the circumstances to ascertain whether the actions were a product of tactics or inattention to the responsibilities of an attorney guaranteed a defendant under the Sixth Amendment." *Ledezma*, 626 N.W.2d at 143.

The test for the second element is whether the defendant can prove there is a reasonable probability that, without counsel's errors, the outcome of the proceedings would have been different. *Millam*, 745 N.W.2d at 722; *Ledezma*, 626 N.W.2d at 143. A reasonable probability is one that undermines confidence in the outcome. *Millam*, 745 N.W.2d at 722.

### **1. Failure to perform an essential duty.**

Greenup argues his trial counsel was ineffective because he failed to (1) move to suppress evidence obtained by warrants; (2) move to suppress the victim's identification of Greenup; (3) object to prosecutorial misconduct; (4) obtain an expert witness on the question of hair identification; (5) prepare for the State's DNA expert; (6) properly protect against the admission of prior bad acts evidence; and (7) request severance of the eluding charge.

The most meritorious claim Greenup raises is the issue of trial counsel's alleged ineffectiveness in failing to properly protect against the admission of prior bad acts evidence. Specifically, he argues that his trial counsel "opened the door" to the admission of his prior felony convictions.

In this regard, trial counsel initially successfully moved to limit evidence of these convictions. The district court ruled that only the generic existence of the prior felonies would be admitted on cross-examination if Greenup testified. However, in questioning, trial counsel asked Greenup, "Are you a violent man by nature?" Greenup responded, "No, sir." The State then successfully argued that trial counsel had "opened the door" for the admission of the specific prior offenses. These prior crimes included convictions for sexual abuse in the third degree, assault with intent to cause serious injury, and two convictions for assault causing injury.

Trial counsel testified at the postconviction relief hearing and stated:

On the other hand, I've searched and searched my mind as to why I would have asked that question because it perhaps could have opened the door, and the only—you're in the heat of battle and from a strategic standpoint I think that I had to, in my opinion, attempt to show this jury through [Greenup] that he was not a dangerous, violent man.

We conclude trial counsel failed to perform an essential duty in questioning Greenup and failing to properly protect against the admission of this prior bad acts evidence.

## **2. Prejudice.**

Having concluded such, we now turn to the issue of prejudice. The district court concluded prejudice was not shown. We agree. The victim gave strong, credible testimony against Greenup concerning the alleged sexual assault. This testimony was supported by other evidence in the case. Specifically, the victim testified her underwear had been torn from her body during the assault. Greenup's less than plausible explanation for this fact was that it occurred while he pulled this victim out of the backseat of the car. In addition, the victim's pantyhose were around her ankles when she was left beside the railroads tracks. The railroad workers who arrived at the scene observed underclothing around her ankles and testified she stated a man had tried to rape her. We find this to be overwhelming evidence that a sexual assault occurred. We also note the district court submitted a limiting instruction to the jury. We conclude on the basis of overwhelming evidence that Greenup has failed to establish prejudice.

### **B. Other Claims of Trial Counsel Ineffectiveness.**

We have thoroughly reviewed the record, the briefs of the parties, and the district court's lengthy and detailed opinion. Under our de novo review, we find the district court sufficiently addressed every other issue Greenup now raises. We cannot add to the district court's opinion with regard to these issues. Thus, we decline to address Greenup's other claims of ineffective assistance of trial counsel and agree with the district court that these claims fail.

### **C. Ineffective Assistance of Appellate Counsel.**

Greenup argues his appellate counsel was ineffective because he failed to raise, brief, and argue each claim now set forth in Greenup's pro se brief on direct appeal. He argues that his counsel's failure to do so prejudiced his defense on appeal because he was unable to raise these issues for consideration.

However, upon our review of the record, we find that all the issues were presented to the district court at the postconviction hearing and the court addressed each of the issues in its ruling. Because these issues were raised and addressed, we cannot find that Greenup was prejudiced by his appellate counsel's failure to raise, brief, and argue the issues.

Furthermore, although Greenup alleges his appellate counsel's ineffectiveness could not be rationalized as a trial strategy and that he was prejudiced by the alleged ineffectiveness, he fails to give further arguments for the claims. The mere mention of an issue without substantive arguments or supporting authority is insufficient to raise the issue for appellate review. Iowa R. App. P. 6.14(1)(c) ("Failure in the brief to state, to argue or to cite authority in support of an issue may be deemed waiver of that issue."); *In re Detention of Garren*, 620 N.W.2d 275, 285 (Iowa 2000); *Pierce v. Staley*, 587 N.W.2d 484, 486 (Iowa 1998) ("When a party, in an appellate brief, fails to state, argue, or cite to authority in support of an issue, the issue may be deemed waived."); *Hollingsworth v. Schminkey*, 553 N.W.2d 591, 596 (Iowa 1996); *Soo Line R.R. Co. v. Iowa Dep't of Transp.*, 521 N.W.2d 685, 691 (Iowa 1994) ("[R]andom

mention of [an] issue, without elaboration or supportive authority, is insufficient to raise the issue for our consideration.”).

For these reasons, and because we conclude Greenup’s trial counsel was not ineffective, we conclude his appellate counsel was under no duty to raise the issues Greenup raised pro se. Greenup’s ineffective assistance of appellate counsel claims therefore fail.

#### **D. Other Postconviction Claims.**

Greenup alleges several pro se claims on appeal that were not addressed by his appellate counsel. Each of the claims involves evidentiary issues and was addressed by the district court in its postconviction ruling.<sup>2</sup>

As stated previously, we have thoroughly reviewed the record, the briefs of the parties, and the district court’s lengthy and detailed opinion. Under our review, we find the district court sufficiently addressed every issue Greenup now raises. We cannot add to the district court’s opinion with regard to these issues. Thus, we decline to further address other postconviction claims raised by Greenup. We agree with the district court that these claims fail.

#### **IV. Conclusion.**

For the reasons set forth above, we conclude Greenup has not met his burden to show his trial counsel or appellate counsel rendered ineffective assistance, and has not established any other postconviction claim. We affirm the judgment of the district court.

#### **AFFIRMED.**

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<sup>2</sup> The district court addressed the pro se claims as ineffective assistance of counsel claims.