IN THE COURT OF APPEALS OF IOWA

No. 9-518 / 07-2118
Filed August 6, 2009

NAPOLEON HARTSFIELD,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Scott County, Gary D. McKenrick, Judge.

Napoleon Hartsfield appeals the district court decision denying his application for postconviction relief. **AFFIRMED.**

Gary K. Koos, Bettendorf, for appellant.

Thomas J. Miller, Attorney General, Martha E. Trout, Assistant Attorney General, Michael J. Walton, County Attorney, and Kelly G. Cunningham, Assistant County Attorney, for appellee.

Considered by Potterfield, P.J., and Doyle, J., and Schechtman, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

SCHECHTMAN, S.J.

Napoleon Hartsfield appeals the district court decision denying his application for postconviction relief, alleging he received ineffective assistance of trial counsel. We affirm.

I. Background Facts and Proceedings.

On the evening of August 22, 2001, a multi-jurisdiction task force was conducting a special investigation targeting street-level narcotics dealers in downtown Davenport. Surveillance agents identified the applicant as a suspected dealer, then notified the undercover officers of his location, physical description, and dress. Those officers proceeded to the scene and purchased a "forty," a rock of crack cocaine weighing 0.25 grams, from Hartsfield. The plainclothes officers had been instructed to leave the scene, without any arrest, to assure the integrity of the ongoing operation. Their methodology was to request warrants after several buys, then saturate the area to serve the warrants and round up the offenders.

The surveillance team continued to watch Hartsfield, then notified a uniformed officer, Corporal Jamie Brown, to undertake a further identification. Brown recognized Hartsfield. As Brown approached, he observed Hartsfield drop a piece of white paper to the ground. The officer exited his squad car and ordered Hartsfield to stop. Two other officers arrived to assist. While they tended the subject, Walker recovered the white wrapper which contained suspected cocaine. Hartsfield was placed under arrest for possession and transported to the police station. The substance dropped by Hartsfield tested

positive for the presence of cocaine. Hartsfield was questioned, issued a non-traffic citation for possession of a controlled substance, and released to appear in court at a later date.

On October 10, 2001, Hartsfield was confined in the county jail on an unrelated domestic charge. He was then served with an arrest warrant for delivery of a controlled substance, occurring on August 22, 2001. On October 18, 2001, a trial information was filed, charging Hartsfield with the crime of delivery of a schedule II controlled substance, crack cocaine, in violation of Iowa Code section 124.401(1)(c)(3), a class C felony.

Two days earlier, on October 16, 2001, a trial information had been filed in district associate court charging Hartsfield with possession of a controlled substance, in violation of Iowa Code section 124.401(5), a serious misdemeanor. Hartsfield pled guilty to this charge on November 8, 2001.[1]

Following a jury trial, Hartsfield was convicted as charged and sentenced to an indeterminate term not to exceed ten years. Hartsfield filed a timely appeal which was dismissed as "frivolous." Hartsfield thereafter filed this application for postconviction relief. Following a hearing, the district court denied Hartsfield's application. Hartsfield now appeals.

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

[1] This conviction for possession, based on the cocaine dropped from the applicant's person, was vacated by stipulation as a part of this postconviction proceeding as an obvious violation of the speedy indictment rule (the warrantless arrest on August 22, 2001, through October 16, 2001 constitutes fifty-five days).

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). Alleged constitutional violations, including ineffective assistance of counsel claims, are reviewed de novo. *State v. Decker*, 744 N.W.2d 346 (Iowa 2008); *Harrington*, 659 N.W.2d at 520. We give weight to the lower court's determination of witness credibility. *Millam*, 745 N.W.2d at 721.

III. Ineffective Assistance of Trial Counsel.

Hartsfield argues his trial counsel was ineffective in (1) failing to move for dismissal of the delivery charge for a speedy indictment violation and (2) failing to object to the chain of custody of the cocaine offered and admitted at trial. To establish a claim of ineffective assistance of counsel, an applicant must prove (1) counsel failed to perform an essential duty and (2) prejudice resulted to the extent it denied the accused of a fair trial. *State v. Maxwell*, 743 N.W.2d 185, 195 (Iowa 2008). A 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 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. *Millam*, 745 N.W.2d at 721.

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. *Id.* at 722; *Ledezma v. State,* 626 N.W.2d 134, 143 (Iowa 2001). A reasonable probability is one that undermines confidence in the outcome. *Millam*, 745 N.W.2d at 722. To establish prejudice, the defendant must "'state the specific ways in which counsel's performance was inadequate and how competent representation would have changed the outcome.'" *Rivers v. State*, 615 N.W.2d 688, 690 (Iowa 2000) (quoting *Bugley v. State*, 596 N.W.2d 893, 898 (Iowa 1999)).

A. Speedy Indictment Violation.

Hartsfield argues his arrest on August 22, 2001 constituted an arrest for the delivery of cocaine to the plainclothes undercover officers on the same day. He contends this amounted to a violation of the forty-five day time limit under Iowa Rule of Criminal Procedure 2.33(2)(*a*).[2] Hartsfield contends his trial counsel was ineffective in failing to move for dismissal of the delivery charge for lack of speedy indictment, fifty-seven days having elapsed between arrest and indictment.

Hartsfield contends he was interrogated about the delivery contemporaneously with the questioning relating to the possession charge. That

[2] This rule provides:

> When an adult is arrested for the commission of a public offense . . . and an indictment is not found against the defendant within 45 days, the court must order the prosecution to be dismissed, unless good cause to the contrary is shown or the defendant waives the defendant's right thereto.

Iowa Rule of Criminal Procedure 2.33(2)(*a*).

allegation is disputed by the officers who were a part of the sting, as contrary to their efforts to preserve its continued operation.

The rule is limited by its terms to the "commission of a public offense" which results in being "arrested." The facts are clear that the warrantless arrest on August 22, 2001, was for possession of crack cocaine, not for the separate offense of delivery of a "forty" to the undercover officers. *See State v. Edwards*, 571 N.W.2d 497, 499-500 (Iowa Ct. App. 2007). The arresting officers only served a non-traffic citation for possession. The fact that those officers may have known of the earlier delivery of cocaine, or had probable cause to have arrested the applicant on that charge, does not amount to an arrest. *Id.* at 500.

There is no language in the speedy indictment rule that suggests or infers that it extends to an offense that had not resulted in an arrest. The arrest for the delivery offense occurred on October 10, rather than on August 22, as Hartsfield contends. Even if it were proven that there was some other motive for the arrest on August 22, 2001, that arrest is not transformed into an arrest for a separate offense. *State v. Garcia*, 461 N.W.2d 460, 463-64 (Iowa 1990).

In *Edwards*, 571 N.W.2d at 500, we described the speedy indictment rule as a "restrictive" and "straight forward, sensible legal test" that is "bolstered by a long line of prior cases involving the multiple arrest of one person." We further explained that a "broad construction [of the rule] would require courts to engage in the arduous task of determining what the prosecutor knew at various stages of the prosecution" and "would intrude on governmental functions traditionally reserved to prosecutors . . . ." *Edwards*, 571 N.W.2d at 500.

In this case, the district court cited *Edwards* as authority for its denial of the claim of ineffective counsel. The circumstances in *Edwards* were relatively similar to the facts of this case. *See id.* at 499. In *Edwards*, the defendant sold a rock of cocaine to an undercover agent. *Id*. The agent did not know the seller's identity. *Id*. A week later the defendant was identified via a videotape of the area. *Id*. Later that day, another officer, who was aware of the pending delivery of cocaine offense, warned the defendant to refrain from blocking traffic and to use the crosswalk. *Id*. When the traffic officer observed the defendant continuing to block traffic after the warning, he intended to arrest the defendant for jaywalking. *Id*. When confronted, the defendant began to fight and fled. This resulted in the defendant's arrest for jaywalking, assault, and interference. *Id*. When booked, the undercover agent identified the defendant as the cocaine seller. *Id*. The arrest by warrant on the delivery charge was not made for several months, followed by a trial information filed two days later. *Id*. The defendant asserted his speedy indictment rights were violated due to the excessive preindictment delay. *Id*. Our court concluded that the speedy indictment rule for the delivery charge was not activated until the second arrest (even where the officer approached the defendant prior to the first arrest in part to identify him for the delivery charge). *Id*. at 500.

Upon our de novo review, we conclude Hartsfield's counsel had no duty to file a motion to dismiss that had no merit. Hartsfield was not arrested on August 22, 2001 for delivery of a controlled substance, the charge relevant to this appeal. Rather, Hartsfield was arrested on October 10, 2001, and a trial

information was filed on October 18, 2001. There was no speedy indictment violation. *See id*. Since the applicant has failed to prove the first element of failing to perform an essential duty, we refrain from addressing the second element of resulting prejudice.

B. Chain of Custody Objection.

Hartsfield argues a proper chain of custody of the cocaine evidence was not established and there was a reasonable probability that the wrong drugs were tested by the Division of Criminal Investigation (DCI) laboratory. He contends his trial counsel was ineffective in failing to object to the chain of custody.

We have carefully reviewed the record, including the testimony of the custodians and lab personnel, the briefs of the parties, and the district court's well-reasoned opinion. Any further discussion of this issue by our court would add little and not change the outcome. Hartsfield's assertions are without merit. Hartsfield's counsel *did* interject a number of objections to the chain of custody and, even if he had not, the record shows that the chain of custody was succinctly established. Accordingly, Hartsfield's claim of ineffective assistance of counsel fails.

IV. Conclusion.

We conclude Hartsfield has not met his burden to show his trial counsel failed to perform an essential duty and was ineffective. We affirm the district court's denial of Hartsfield's postconviction relief application.

AFFIRMED.