

IN THE COURT OF APPEALS OF IOWA

No. 16-0758
Filed November 22, 2017

MICHAEL ALLEN JR.,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Robert B. Hanson,
Judge.

Michael Allen Jr. appeals from the denial of his application for
postconviction relief. **AFFIRMED.**

Jessica Maffitt of Benzoni Law Office, P.L.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, and Kevin Cmelik, Assistant Attorney
General, for appellee State.

Considered by Danilson, C.J., and Tabor and McDonald, JJ.

DANILSON, Chief Judge.

Michael Allen Jr. appeals from the denial of his application for postconviction relief (PCR). Allen contends he is entitled to a new criminal trial due to defense counsel's ineffective assistance, asserting defense counsel failed to investigate and call potential witnesses at trial. Because we find Allen has not established prejudice, his ineffective-assistance claim fails, and we affirm.

Following a jury trial in September 2011, Allen was convicted for four counts of first-degree robbery, in violation of Iowa Code sections 711.1 and 711.2 (2009). It was alleged Allen and another individual robbed four people at gunpoint. The other individual who participated in the robberies testified against Allen at trial. Allen maintained his innocence and claimed an individual known only by the name of "Little B" committed the robberies. Allen also claimed a person named Cody Duckworth knew Allen was not involved in the robberies and was aware of people who were involved, though Duckworth did not know all of their names.

Allen filed a PCR application asserting, among other claims, he was entitled to a new trial because defense counsel rendered ineffective assistance by failing to further investigate and call Little B and Duckworth at trial.

Because Allen's PCR application raises the constitutional claim of ineffective assistance of counsel, our review is *de novo*. *Castro v. State*, 795 N.W.2d 789, 792 (Iowa 2011).

To prevail on his ineffective-assistance claim, Allen must show that defense counsel failed to perform an essential duty and prejudice resulted. *State v. Clay*, 824 N.W.2d 488, 495 (Iowa 2012). "Unless a defendant makes both

showings, it cannot be said that the conviction . . . resulted from a breakdown in the adversary process that renders the result unreliable.” *Id.* (citations omitted).

The PCR court determined “even if [defense counsel] was ineffective—which [she] was not—Allen cannot possibly show prejudice.” To establish prejudice, Allen must show there is “a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *See id.* at 496 (citation omitted). Here, Allen has not proved defense counsel’s further investigation of Little B or Duckworth, even if reasonable, would have affected the outcome of the trial.

On appeal, Allen argues he was prejudiced by defense counsel’s alleged ineffective assistance because he “informed his trial counsel that Little B actually committed the robberies.” He continues, “Had the person who actually committed the offense been found and brought before the court, that would have been incredibly strong evidence of Allen’s innocence.” This argument presumes Little B could have been located upon further investigation and could have been shown to be the true perpetrator of the crime. Although PCR counsel was able to discover Little B’s true name, PCR counsel was unable to locate Little B to testify at the PCR trial. Here, Allen has not shown defense counsel’s investigation could have necessarily located Little B to testify at trial.¹ Moreover, without Little B’s testimony at the PCR trial and only Allen’s allegation that Little B truly committed the crime, there is nothing more than Allen’s speculation that calling Little B to testify at trial would have affected the outcome.

¹ Counsel was only informed that Little B spent time near an apartment parking lot at a specified address. Little B’s actual whereabouts at the time of the PCR hearing were unknown to Allen.

Similarly, Duckworth did not testify at the trial or the PCR hearing because he lacked personal knowledge of who was involved in the robbery. He did inform an investigator that he was with Allen at the time of the robbery but, contrary to Duckworth's statement, Allen himself admitted to an officer that he was at the scene but asleep in a vehicle.² Allen's general claims that defense counsel should have investigated and called these potential witnesses at trial do "not propose what an investigation would have revealed or how anything discovered would have affected the result obtained below." *Dunbar v. State*, 515 N.W.2d 12, 15 (Iowa 1994). Thus, Allen's claims do not establish the requisite prejudice.

We also find no prejudice because the State presented substantial evidence of Allen's guilt at trial. Allen admitted he was with the individuals who committed the robbery at a Quik Trip store shortly before the victims were robbed at a different location. Moreover, the PCR court held:

The State had a large amount of evidence, credible witnesses, and a cohesive, consistent theory of the crime. The State had multiple witnesses testifying that Allen committed the robbery, including both victims and codefendants. The witnesses' version of events was backed up by surveillance video The State had lawfully obtained physical evidence including items that had been stolen at the robbery and one victim's identification tag from a duffle bag belonging to Allen. . . . Even if "Little B" had testified at trial *and* his testimony matched Allen's . . . the State still had multiple witnesses and physical evidence backing its allegation that Allen perpetrated this crime.

We conclude Allen did not establish ineffective assistance of defense counsel and affirm the denial of Allen's PCR application.

AFFIRMED.

² Allen was also asked at the PCR hearing if he had an alibi witness, and he said yes—Mesha Taylor. Allen did not identify Duckworth as an alibi witness.