

**IN THE COURT OF APPEALS OF IOWA**

No. 0-010 / 09-0228  
Filed February 24, 2010

**ROBERT WESLEY WILLIAMS III,**  
Applicant-Appellant,

**vs.**

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

---

Appeal from the Iowa District Court for Woodbury County, Gary E. Wenell,  
Judge.

Robert Williams III appeals from the district court's ruling denying his  
petition for postconviction relief. **AFFIRMED.**

Dan T. McGrevey, Fort Dodge, for appellant.

Thomas J. Miller, Attorney General, Linda J. Hines, Assistant Attorney  
General, and Patrick J. Jennings, County Attorney, for appellee.

Considered by Vaitheswaran, P.J., and Potterfield and Mansfield, JJ.

**POTTERFIELD, J.**

Robert Williams III appeals from the district court's ruling denying his petition for postconviction relief. We affirm.

**I. Background Facts & Proceedings.**

Robert Williams, then nineteen years of age, was charged with two counts of sexual abuse in the second degree based on allegations involving his six-year-old half-sister. Williams was questioned by police and made incriminating statements that he intentionally picked up the girl, who was clothed, by grabbing her buttocks and vagina in such a way as to arouse himself. Following a trial to the court, Williams was convicted of one count of second-degree sexual abuse.<sup>1</sup> His conviction was affirmed on appeal. *State v. Williams*, No. 04-1316 (Iowa Ct. App. Aug.31, 2005) (holding the trial court did not err in concluding defendant's incriminatory statements were admissible at trial as having been made voluntarily).

Williams filed a petition for postconviction relief in the district court, contending his conviction should be reversed as he was unconstitutionally denied his rights to effective assistance of trial counsel and to a jury trial. The basis for his claims is that his trial counsel's failure to file a motion to suppress motivated counsel to urge Williams to waive jury trial. Williams asserts that his ignorance of trial counsel's motive resulted in an uninformed waiver of his right to trial by jury.

---

<sup>1</sup> The postconviction court erroneously stated Williams was convicted of two counts of sexual abuse in the second degree. As noted above, Williams was charged with two counts, but the trial court specifically found "the State has proven only one count of the trial information." This error in the postconviction court's ruling has no bearing on our analysis.

At the postconviction hearing, Williams's trial counsel testified he considered filing a motion to suppress Williams's statements. He also considered contrasting the victim's statements with those made by Williams during the interview. Counsel testified he missed the deadline for filing a motion to suppress. Counsel also testified he advised Williams to waive jury trial for several reasons, including his concern about the effect a young victim in a sexual abuse case would have on a jury and the effect Williams's prior offense might have on a jury. He also testified that, based on his experience with similar cases, Williams "would get a fairer result from a judge."

Williams testified that trial counsel had informed him he missed the deadline for filing a motion to suppress, but stated he could still file it. Williams also testified that when he waived his right to a jury trial he did not know the jury would not have heard his confession if trial counsel had filed a motion to suppress and the court had granted the motion. Williams testified that counsel informed him "it was best to test the legality of my statements with a judge instead of having a jury there." He further testified that he "didn't know the facts" and thus his decision to waive jury trial was not voluntarily, knowingly, and freely made. On cross-examination, Williams testified that at the time he waived jury trial, he knew his confession was part of the evidence of the State's case and that a motion to suppress had not been filed.

The district court denied Williams's petition for postconviction relief, finding Williams had not shown his waiver of jury trial was not freely, knowingly, and intelligently given. In ruling on Williams's motion for enlarged findings and conclusions, the postconviction court wrote:

Petitioner, on counsel's advice, executed a written waiver indicating he wished to waive his jury trial. Petitioner was thoroughly advised of the consequences of his decision by the court in his criminal trial, and the Petitioner indicated his desire was to proceed with a bench trial and to waive his right to a jury trial. This evidence is undisputed. Petitioner's sole argument regarding his waiver is that it was not a knowing an[d] intelligent waiver because his trial counsel failed to inform him that his Motion to Suppress may not have been heard . . . because it was not timely filed. The Court has concluded specifically that Petitioner has not proven that his trial counsel harbored ulterior motives in advising Petitioner to waive his right to a jury trial. Therefore, Petitioner's present argument depends entirely on the mere fact that this potential for suppression existed. The Court is not convinced that knowing a jury trial potentially may be more difficult for the Petitioner makes his decision to waive his right to a jury trial unintelligent or unknowing. Petitioner's argument is essentially that he may not have waived his right to a jury trial had he known more potential problems could have arisen in a jury trial. The Court rejects this argument as there has been no evidence that Petitioner's decision was impacted by this lack of knowledge. Petitioner did not testify that the purported additional knowledge would have impacted his decision, . . . . In this case, Petitioner argues he should be entitled to knowledge that could only bolster his decision to avoid a jury trial.

Williams now appeals.

## **II. Scope of Review.**

Postconviction relief proceedings are actions at law and are reviewed on error. *Osborn v. State*, 573 N.W.2d 917, 920 (Iowa 1998). But when the postconviction applicant asserts violations of constitutional safeguards, we make our own evaluation of the totality of the circumstances in a de novo review. *Id.* We thus apply de novo review to Williams's constitutional claims. *See id.*; *see also State v. Feregrino*, 756 N.W.2d 700, 705 (Iowa 2008).

## **III. Discussion.**

Williams contends his "trial counsel was ineffective and as a result, [his] waiver of jury trial was ineffective."

To establish an ineffective-assistance-of-counsel claim, a postconviction petitioner must typically show that (1) counsel failed to perform an essential duty and (2) prejudice resulted. See *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984). The ultimate test is whether under the entire record and totality of the circumstances counsel's performance was within the normal range of competency. *Meier v. State*, 337 N.W.2d 204, 206 (Iowa 1983). Improvident trial strategy, miscalculated tactics, or mistakes in judgment do not necessarily amount to ineffective assistance of counsel. *Osborn*, 573 N.W.2d at 922. The petitioner must overcome a strong presumption of counsel's competence and has the burden to prove by a preponderance of the evidence that counsel was ineffective. *Id.*

Williams must also prove the deficient performance was so prejudicial as to deprive him of a fair trial. *Id.* To prove prejudice, the petitioner must show that but for counsel's unprofessional errors, there is a reasonable probability the result of the proceeding would have been different. *Id.* If the petitioner makes an insufficient showing on either prong of the two-part test, we need not address both components. *Id.*

Williams argues trial counsel was ineffective in failing to communicate to him the effect of an untimely motion to suppress. In fact, Williams maintains his trial counsel's advice to waive jury trial "was an attempt to cover up" the effect of his failure to file a motion to suppress.

However, Williams's trial counsel testified that he advised his client to waive jury trial for cogent reasons, which have previously been determined to be within the range of normal competency. See *id.* at 924 (concluding counsel's

reasons for waiving the jury trial—the nature of the act, the potential for a life sentence, and that Osborn “might get a fairer shake with a judge rather than a jury”—were tactical decisions “immune from subsequent attack by an aggrieved defendant claiming ineffective assistance of counsel”); *accord Jasper v. State*, 477 N.W.2d 852, 857 (Iowa 1991) (finding trial counsel was not ineffective in recommending waiver of jury trial, which “was a calculated strategy designed to keep allegations of a ‘potentially inflammatory’ nature concerning an alleged act with a young girl away from a jury composed of lay persons”).

The postconviction court found no evidence that trial counsel urged his client to waive jury trial to “cover up” a prior mistake. Upon our de novo review, we agree. In any event, Williams testified that at the time he waived jury trial, he knew his confession was part of the evidence of the State’s case and that a motion to suppress had not been filed. Williams has failed to establish counsel was ineffective.

A trial by jury is required unless a criminal defendant “voluntarily and intelligently waives a jury trial in writing and on the record. . . .” Iowa R. Crim. P. 2.17(1). Rule 2.17 “requires the court to conduct an in-court colloquy with defendants who wish to waive their jury trial rights.” *State v. Liddell*, 672 N.W.2d 805, 811-12 (Iowa 2003). Here, Williams was found to have voluntarily and intelligently waived jury trial in writing and after a personal colloquy with the trial court. He knew at that time that no motion to suppress his confession had been filed, and obtained a ruling on the admissibility of the confession as part of his bench trial. We therefore affirm the denial of his petition for postconviction relief.

**IV. Conclusion.**

Trial counsel's recommendation to waive jury trial fell within the range of normal competency. Williams has failed to establish his decision to waive jury trial was not knowingly and voluntarily made. We therefore affirm the district court's denial of his petition for postconviction relief.

**AFFIRMED.**