

IN THE COURT OF APPEALS OF IOWA

No. 0-728 / 09-0497
Filed February 9, 2011

DARRELL ALLEN SHOWENS,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Scott County, Mark D. Cleve,
Judge.

An applicant appeals from the district court's dismissal of his application
for postconviction relief. **AFFIRMED.**

Steven J. Drahozal of Drahozal Law Office, P.C., Dubuque, for appellant.

Thomas J. Miller, Attorney General, Thomas W. Andrews, Assistant
Attorney General, Michael J. Walton, County Attorney, and Julie Walton,
Assistant County Attorney, for appellee State.

Considered by Vogel, P.J., and Doyle and Mansfield, JJ. Tabor, J., takes
no part.

VOGEL, P.J.

Darrell Showens appeals from the district court's dismissal of his application for postconviction relief. In December 2005, following a jury trial, Showens was convicted of attempted burglary in the second degree. Showens appealed, and this court affirmed in *State v. Showens*, No. 06-0025 (Iowa Ct. App. Dec. 28, 2006). In August 2007, Showens filed a postconviction relief application and a hearing was held. In March 2009, the district court dismissed Showens's application and Showens appeals.

Showens first asserts that his trial counsel was ineffective for failing to object to alleged irrelevant evidence—the victim's testimony (1) she saw a footprint on an air conditioner below her apartment window and (2) she saw a person matching Showens's description riding a bicycle and "dumpster diving" in the alley behind her apartment days before the attempted burglary. The State argues that the evidence was relevant and Showens fails to specifically articulate why the evidence should have been excluded under the Iowa Rules of Evidence.

We review ineffective-assistance-of-counsel claims de novo. *State v. Barse*, 748 N.W.2d 211, 214 (Iowa 2008). In order to prevail on an ineffective-assistance-of-counsel claim, an applicant must show (1) his trial counsel failed to perform an essential duty and (2) prejudice resulted. *Kirchner v. State*, 756 N.W.2d 202, 204 (Iowa 2008). We may resolve a claim on either prong. *Id.* We need not address whether trial counsel should have objected because Showens cannot prevail on the prejudice prong. The testimony at trial demonstrated that a woman heard noises outside her bathroom window and then saw someone outside her bedroom window trying to remove the window air conditioner. She

called 911 to report the attempted break-in, after which police officers arrived and essentially caught Showens in the act, standing outside the window looking in. Showens gave implausible statements concerning his presence at the apartment building and reasons for looking into the window. Underneath the window with the air conditioner was an upside-down chair that someone had been standing on, and Showens's fingerprints were found on the air conditioner. As the postconviction court found, "given the depth and breadth of other evidence of [Showens's] guilt that was introduced by the State at trial," the introduction of this particular evidence was not prejudicial to Showens.

Showens next asserts the postconviction court should have entered a default judgment against the State because the State did not file a response to his application within thirty days. On our review, we find the postconviction court did not abuse its discretion by refusing to enter a default judgment. See *Wilson v. Liberty Mut. Grp.*, 666 N.W.2d 163, 165 (Iowa 2003) ("A decision to grant or deny a motion for default judgment rests in the sound discretion of the trial court."); *Furgison v. State*, 217 N.W.2d 613, 617 (Iowa 1974) ("[D]efault procedures are inconsistent with and would serve no useful purpose in our postconviction review process."); *Thomas v. State Bd. of Parole*, 220 N.W.2d 874, 877 (Iowa 1974) ("[A postconviction relief proceeding] is not akin to a private suit on a note in which the plaintiff is entitled to his judgment if the defendant

defaults.”). Therefore, we affirm pursuant to Iowa Court Rule 21.29(1)(c), (d), and (e).¹

AFFIRMED.

¹ Showens also raised several claims in a pro se brief. Showens’s brief does not comply with the rules of appellate procedure, including not citing to authority in support of his arguments. See Iowa R. App. P. 6.903. Therefore, we deem his arguments waived. See *id.* (“Failure to cite authority in support of an issue may be deemed waiver of that issue.”). Further, we find his claims either were not raised before the district court or are without merit.