IN THE COURT OF APPEALS OF IOWA

No. 2-083 / 10-1429
Filed March 14, 2012

BRYAN GALLIMORE,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

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

Appeal from the district court's ruling denying postconviction relief. **AFFIRMED.**

James Nelsen of James Nelsen, P.L.C., West Des Moines, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney General, John P. Sarcone, County Attorney, and Mark Sandon, Assistant County Attorney, for appellee State.

Considered by Eisenhauer, C.J., and Danilson and Bower, JJ.

EISENHAUER, C.J.

Bryan Gallimore appeals from the district court's ruling denying his application for postconviction relief. He contends both his trial and postconviction counsel were ineffective, resulting in his wrongful conviction for burglary in the first degree,[1] stalking, and harassment in the second degree. Within each section of his appeal he makes multiple complaints about his attorneys' representation. We affirm.

I. Background Facts and Proceedings

This matter comes before us as an appeal from the district court's ruling on Gallimore's application for postconviction relief. On direct appeal in 2008, this court summarized the facts as follows:

> The defendant had a romantic relationship with Denetra Seymour from December 2002 until the summer of 2005. On August 25, 2005, Seymour obtained a Chapter 236 protective order against the defendant. The defendant violated the protective order twice. First, on September 17, 2005, Seymore noticed the defendant driving past her mobile home and called the police. The defendant was located, arrested, and found to be in violation of the protective order. Then, in the early morning hours of September 24, Seymour saw the defendant standing by her vehicle outside of her home and called the police. The police noticed that the gas tank lid was open but no damage was done to the vehicle. The defendant was located, arrested, and apparently found in violation of the protective order after this incident also. Despite the protective order, the parties called each other numerous times in October 2005.
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> On November 13, 2005, Seymour told the defendant if he contacted her anymore she would call the police. The following evening, on November 14, 2005, Seymour arrived at home around 10 p.m. and heard her dog barking loudly and saw a porch light was out. Upon inspection, she determined the bulb had been unscrewed. When inside, Seymour discovered no water would come out of the sink faucets. Seymour called the manager of the

[1] On appeal this court reduced the burglary conviction to second degree.

> trailer park. The manager came and crawled under the trailer to turn the water valve back on. Seymour told the manager she suspected the defendant may have turned the water off. Seymour then called the police.
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> As an officer was talking with Seymour and the manager, Seymour noticed the water had stopped working again. The manager went back under the trailer, turned the valve on, and rushed out, believing she saw someone moving under the trailer. The officer called for assistance and the police found the defendant under the trailer. They removed him and he was arrested. Under the trailer the police recovered a nylon bag, a pocket knife Seymour identified as the defendant's, a .177 caliber BB pistol, blue plastic twine, duct tape, gloves, and a spray bottle of herbicide.

State v. Gallimore, No. 06-1408 (Iowa Ct. App. Apr. 30, 2008). We preserved his ineffective-assistance claims for possible postconviction proceedings. *Id.*

In the postconviction proceeding, Gallimore alleged trial counsel was ineffective in ten particulars. In its detailed ruling, the district court set forth each claim and the evidence adduced in the hearing concerning the claim. The court then expressly discussed each claim and denied it. Gallimore appeals.

II. Standard of Review

We normally review postconviction proceedings for errors at law. *Everett v. State*, 789 N.W.2d 151, 155 (Iowa 2010). Applications for postconviction relief that allege ineffective assistance of counsel, however, raise a constitutional claim. *State v. Nitcher*, 720 N.W.2d 547, 553 (Iowa 2006). We review postconviction proceedings that raise constitutional infirmities de novo. *Ledezma v. State*, 626 N.W.2d 134, 141 (Iowa 2001). In asserting an ineffective-assistance-of-counsel claim, Gallimore must establish (1) his counsel failed to perform an essential duty and (2) prejudice resulted from such failure. *See State v. Utter*, 803 N.W.2d 647, 652 (Iowa 2011) (citing *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984)). Both

elements must be proved by a preponderance of the evidence. *Id.* The claim fails if either of the two elements is lacking. *State v. Braggs*, 784 N.W.2d 31, 34 (Iowa 2010). "We judge ineffective assistance of appellate counsel claims against the same two-pronged test utilized for ineffective assistance of trial counsel claims." *Ledezma*, 626 N.W.2d at 141.

III. Merits

Trial Counsel. Gallimore contends trial counsel was ineffective. The bulk of his argument relates to the legality of a chapter 236 consent order prohibiting any contact with Seymour. Violations of the no-contact order were used to establish an element of the class D felony level of stalking. He asserts the no-contact order was illegal because there was no finding of domestic abuse. *See* Iowa Code § 236.5 (2005). He contends trial counsel was ineffective in not objecting to admission of the no-contact order and in not investigating the validity of the order. He does not claim and provides no evidence he challenged the order in the chapter 236 proceeding that gave rise to it.

The district court concluded the order was not "illegal," even though there was not a finding of domestic abuse. The court also concluded,

> even if a finding of domestic abuse was required, the proper place to raise an objection would be in the 236 proceeding, not in the criminal trial or in this postconviction relief action. Here, the 236 order was entered, and the record does not show that there were any objections to the order's entry. Gallimore knew that he was subject to the no-contact order.

The court then reasoned counsel did not have grounds to object to admission of the order or to evidence Gallimore later violated it. Accordingly, trial counsel was not ineffective for failing to make a meritless objection or raise a meritless issue.

See State v. Graves, 668 N.W.2d 860, 881 (Iowa 2003) ("Trial counsel has no duty to raise an issue that has no merit."). We agree.

Gallimore knew he was subject to the no-contact order. A court order must be obeyed even if the order is erroneous. *Smith v. State*, 542 N.W.2d 567, 569 (Iowa 1996). This claim fails.

Gallimore next summarily lists "a multitude of failures on the part of his counsel" without any separate discussion or citation to authority. These claims of counsel's failures are waived. *See State v. Piper*, 663 N.W.2d 894, 913-14 (Iowa 2003) (concluding the defendant waived consideration of the merits of his claims on appeal, which were presented as one-sentence conclusions without analysis) *overruled on other grounds by State v. Hanes*, 790 N.W.2d 550, 555 (Iowa 2010).

Gallimore concludes his challenge to trial counsel's effectiveness with a claim of cumulative error. Having found no error in Gallimore's first claim and that his summary claims are waived, we reject this claim. *See Wemark v. State*, 602 N.W.2d 810, 818 (Iowa 1999) (finding no cumulative error where defendant received effective assistance).

Postconviction Counsel. Gallimore contends postconviction relief (PCR) counsel was ineffective in not presenting "available evidence to support the allegations" trial counsel was ineffective. He further contends PCR counsel "failed to raise issues that would have provided the Applicant with additional arguments in the criminal trial." Other than making these conclusory claims, Gallimore argues only two issues: failure to raise a double-jeopardy objection to the use of the September 24, 2005 violation of the no-contact order as evidence

of the "course of conduct" element of the stalking charge, and failure to present evidence of trial counsel's failure to challenge the underlying no-contact order.

We have already determined trial counsel was not ineffective in not challenging the prior no-contact order. Similarly, we conclude PCR counsel was not ineffective in not challenging the no-contact order. This claim fails.

Concerning Gallimore's double-jeopardy claim, he argues the PCR record is insufficient for us to address it. We disagree. The repeated contacts between Gallimore and Seymour in October 2005 were violations of the no-contact order and provide sufficient evidence of a course of conduct to support the stalking charge, even without considering the September 24 violation. Gallimore fails to show either a duty of postconviction counsel to raise this issue or prejudice.

As to the remaining conclusory claims, for which Gallimore seeks a new PCR trial to present additional evidence, we conclude they either lack merit or are too general to preserve them for further postconviction proceedings. *See Dunbar v. State*, 515 N.W.2d 12, 15 (Iowa 1994) (finding claims too general to address or to preserve for a second postconviction proceeding).

AFFIRMED.