

IN THE COURT OF APPEALS OF IOWA

No. 2-084 / 10-1819
Filed April 25, 2012

ESTEBAN VELAZQUEZ-RAMIREZ,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Crawford County, John D. Ackerman, Judge.

Esteban Velazquez-Ramirez appeals the denial of his application for postconviction relief. **AFFIRMED.**

Tod J. Deck of Deck Law, L.L.P., Sioux City, for appellant.

Thomas J. Miller, Attorney General, Thomas W. Andrews, Assistant Attorney General, Michael Mundt, County Attorney, and Roger Sailer, Assistant County Attorney, for appellee.

Heard by Vaitheswaran, P.J., and Doyle and Danilson, JJ. Tabor, J., takes no part.

VAITHESWARAN, P.J.

Esteban Velazquez-Ramirez, found guilty of first-degree murder in the shooting of his ex-girlfriend, had his judgment and sentence affirmed by this court and by the Iowa Supreme Court. See *State v. Valazquez-Ramirez*, No. 04-0728 (Iowa Dec. 30, 2005); *State v. Valazquez-Ramirez*, No. 04-0728 (Iowa Ct. App. Mar. 31, 2005). He subsequently filed an application for postconviction relief alleging his trial attorney was ineffective in: (1) bringing his undocumented status to the attention of the jury, (2) failing to properly investigate bias in the jury pool based on his undocumented status, (3) failing to request a change of venue based on prospective jurors' admissions of bias, and (4) "failing to raise the issue of compliance with Article 36 of the Vienna Convention on Consular Relations." The district court denied the application, and this appeal followed.

To prevail on his ineffective-assistance-of-counsel claims, Velazquez-Ramirez must show that (1) his trial attorney breached an essential duty and (2) prejudice resulted. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984). Velazquez-Ramirez's claims fail on the prejudice prong. *Id.* at 697, 104 S. Ct. at 2069, 80 L. Ed. 2d at 699 ("If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, which we expect will often be so, that course should be followed."). That prong requires proof of "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694, 104 S. Ct. at 2068, 80 L. Ed. 2d at 698. This standard is not satisfied if there is overwhelming evidence of guilt. *Id.* at 696, 104 S. Ct. at 2069, 80 L. Ed. 2d at 699 ("[A] verdict or conclusion only weakly supported by the record is

more likely to have been affected by errors than one with overwhelming record support.”).¹

The record reveals the following facts. Velazquez-Ramirez had a two-year relationship with a woman named Dora. That relationship ended, and Dora began dating another man. On the day of her death, Velazquez-Ramirez came to the Denison home of Dora’s relatives and attempted to talk to Dora. He was told to leave her alone.

Velazquez-Ramirez left town and drove to his hometown in Nebraska to retrieve a gun he had purchased a month earlier. He returned to Denison the same day, parked at Dora’s workplace, and waited for Dora to finish her evening shift.

After midnight, Dora and a friend came out of the plant and headed to their cars. As her friend got into his car and began driving out of the parking lot, he saw Dora arguing with someone. He asked her if she needed help. She said she did. He drove to her car, got out, and overheard Velazquez-Ramirez tell Dora he wanted to get back together with her. She said no and asked her friend to call the police.

¹ Citing *United States v. Cronin*, 466 U.S. 648, 659–60, 104 S. Ct. 2039, 2047, 80 L. Ed. 2d 657, 668 (1984), Velazquez-Ramirez contends prejudice should be presumed. In that case, however, the Court limited the presumption of prejudice to situations where “counsel was either totally absent, or prevented from assisting the accused during a critical stage of the proceeding.” *Cronin*, 466 U.S. at 659 n.25, 104 S. Ct. at 2047 n.25, 80 L. Ed. 2d at 668 n.25. The Court stated, “Apart from circumstances of that magnitude, however, there is generally no basis for finding a Sixth Amendment violation unless the accused can show how specific errors of counsel undermined the reliability of the finding of guilt.” *Id.* at n.26, 104 S. Ct. at 2047 n.26, 80 L. Ed. 2d at 668 n.26; see also *Lado v. State*, 804 N.W.2d 248, 252–53 (Iowa 2011) (finding presumption of prejudice appropriate where postconviction applicant was “constructively without counsel” by virtue of attorney’s failure to seek a continuance to prevent dismissal of a postconviction relief action). Velazquez-Ramirez has cited no authority authorizing a presumption of prejudice for the type of errors claimed here.

Just then, Dora's new boyfriend was seen driving through the parking lot. He was haled over and was asked to make the telephone call to police. As he started to do so, Velazquez-Ramirez pulled a gun from his clothing and shot Dora. Dora fell to the ground, and Velazquez-Ramirez took off running.

Immediately after the shooting, Velazquez-Ramirez drove to the police station, walked in, and said, "I shot a girl." The gun used to kill Dora was found in his car. At trial, Velazquez-Ramirez admitted he shot Dora.

Based on the overwhelming evidence of Velazquez-Ramirez's guilt, we conclude there is no reasonable probability the result would have changed had Velazquez-Ramirez's trial attorney dealt differently with the cited issues relating to his immigration status. For that reason, we affirm the denial of Velazquez-Ramirez's application for postconviction relief.

AFFIRMED.