

**IN THE COURT OF APPEALS OF IOWA**

No. 2-291 / 11-0695  
Filed June 13, 2012

**ANTHONY MCGEE,**  
Applicant-Appellant,

**vs.**

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

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Appeal from the Iowa District Court for Scott County, Gary D. McKenrick,  
Judge.

Anthony McGee appeals the denial of his application for postconviction  
relief. **AFFIRMED.**

Lori J. Kieffer-Garrison, Rock Island, Illinois, for appellant.

Thomas J. Miller, Attorney General, Elisabeth S. Reynoldson, Assistant  
Attorney General, Michael J. Walton, County Attorney, and Jay Sommers,  
Assistant County Attorney, for appellee.

Considered by Eisenhauer, C.J., and Potterfield and Mullins, JJ.

**MULLINS, J.**

In 2004, a jury found Anthony McGee guilty of sex abuse in the third degree and false imprisonment. See Iowa Code §§ 709.4(1), 710.7 (2003). McGee was also found to be a habitual offender and was sentenced to fifteen years' incarceration. *Id.* §§ 902.8, 902.9(3). McGee appealed his conviction, arguing his trial counsel provided ineffective assistance by failing to object to alleged prosecutorial misconduct. *State v. McGee*, No. 04-1512, 2005 WL 2508416, at 1 (Iowa Ct. App. Oct. 12, 2005). Although we found certain questions and comments made by the prosecutor during cross-examination of McGee and during closing argument violated the principles set forth in *State v. Graves*, 668 N.W.2d 860 (Iowa 2003), we nonetheless affirmed McGee's convictions finding the verdict had "overwhelming record support." *McGee*, 2005 WL 2508416 at \*4. Specifically, we noted the victim's testimony was consistent with what he told witnesses immediately after the incident, DNA evidence corroborated the victim's version of the incident, and McGee's had an "evolving story" of the incident. *Id.* at \*2.

In October 2006, McGee filed an application for postconviction relief raising several grounds of ineffective assistance by his trial counsel. The application came to hearings on September 30, 2010, and January 14, 2011. The district court issued a ruling denying McGee's claims on February 22, 2011.

McGee appeals arguing the district court erred in not finding his trial counsel rendered ineffective assistance for failing to strike a prospective juror, and for failing to move to suppress a video confession made at the police station

following his arrest as being made in violation of *Miranda v. Arizona*, 384 U.S. 436, 478-79 (1966).

Although we generally review an appeal from a denial of a postconviction relief application for correction of errors at law; because McGee asserts claims of a constitutional nature, we perform a de novo review. *Lado v. State*, 804 N.W.2d 248, 250 (Iowa 2011). To establish his claims of ineffective assistance of counsel, McGee must show by a preponderance of the evidence that his trial counsel failed to perform an essential duty, and prejudice resulted. *Id.* at 251.

Addressing McGee's claim that the jury foreperson should have been struck from the jury, the district court found:

The applicant also claims that his criminal defense attorney was ineffective for failing to remove for cause or strike a particular prospective juror who had been employed in a position with the Davenport Diocese of the Catholic Church. The prospective juror's employment duties encompassed working with claims of sexual abuse against the Church and its priests. No evidence has been presented to this Court from which this Court could conclude that any basis existed to challenge the prospective juror for cause. Even if such a challenge had been made, no basis existed for the challenge to be granted. Therefore, counsel could not have been ineffective for having failed to do so.

With respect to the issue of the exercise of the applicant's peremptory strikes, the record indicates that all the applicant's peremptory strikes were used. Therefore, the applicant must establish that one of the prospective jurors struck by criminal defense counsel would have been a more appropriate juror than the juror of whom the applicant now complains. No evidence has been presented to this Court concerning the appropriateness of any of the prospective jurors struck by the applicant's criminal defense counsel. Nor can this Court find on the record before it that no sound strategic basis existed for any of the peremptory strikes exercised on the applicant's behalf by his criminal defense attorney. The applicant's claim in this regard must be denied.

We agree with the district court's reasoning and adopt it as our own. We further note that the juror testified at the postconviction relief hearing that she completely disclosed her position, her role in that position, and the fact that she is an attorney. The juror further testified that she was unbiased, was "a fair and equitable juror," and could confidently state that her position with the church did not affect her ability to render a confident verdict. In addition, McGee has not provided a record of voir dire in order for us to determine whether counsel's judgment in not striking the juror member complained of was unreasonable in light of the other possible juror members actually struck. *State v. Oetken*, 613 N.W.2d 679, 689 (Iowa 2000).

McGee also argues his trial counsel was ineffective for failing to seek suppression of his confession because he was not apprised of his *Miranda* rights. On this claim, the district court determined:

The credible evidence before the Court establishes that the applicant was informed of his rights under *Miranda* and that he waived them. The applicant has failed to establish the contrary proposition by a preponderance of the evidence. Counsel could not have been ineffective in failing to seek suppression of admissible evidence.

We agree with the district court's conclusions. According to the police report attached to the minutes of testimony, both the arresting officer and the interrogating officer advised McGee of his *Miranda* rights, and McGee told them he understood his rights. Both officers testified in accordance with their reports at the original criminal trial.

We find McGee has failed to prove a breach of an essential duty or prejudice for both of his claims of ineffective assistance by his trial counsel.

Accordingly, we affirm the district court's ruling denying his application for postconviction relief.

**AFFIRMED.**