

IN THE COURT OF APPEALS OF IOWA

No. 2-359 / 10-1834
Filed July 11, 2012

ANTHONY ROBINSON,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Scott County, Mark J. Smith,
Judge.

Anthony Robinson appeals the district court's denial of his application for
postconviction relief. **AFFIRMED.**

Sally H. Peck, Iowa City, for appellant.

Thomas J. Miller, Attorney General, Bridget A. Chambers, Assistant
Attorney General, Michael J. Walton, County Attorney, and Rob Cusack,
Assistant County Attorney, for appellee.

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

MULLINS, J.

Anthony Robinson appeals the denial of his application for postconviction relief arguing his postconviction relief counsel rendered ineffective assistance on two grounds: (1) by failing to have the postconviction court rule upon his claim that his original appellate counsel was ineffective for failing to raise and argue the trial court erred by denying a requested impeachment instruction, and (2) by failing to call an expert witness to determine whether an uncertified interpreter correctly translated the victim's testimony at his original criminal trial. Because we find the record is inadequate on appeal, we preserve both claims for further possible postconviction relief proceedings.

I. Background Facts and Proceedings.

In November 2005, following a jury trial, Robinson was convicted of first-degree robbery and willful injury resulting in bodily injury. Robinson was sentenced to a term of incarceration of twenty-five years on the robbery conviction and five years on the willful injury conviction, to be served concurrently. Robinson appealed his convictions challenging the sufficiency of the evidence showing serious injury or use of a dangerous weapon necessary to sustain his robbery conviction. *State v. Robinson*, No. 06-0050, 2007 WL 257623 (Iowa Ct. App. Jan. 31, 2007). Our court rejected the argument as meritless stating:

The evidence shows Robinson punched the victim, stepped on him, rammed him into a vehicle, and stabbed him in the abdomen. A witness called the police because she thought the victim was "about to die." Although the district court concluded the injuries sustained by the victim were not serious, there is ample evidence that Robinson attempted to inflict a serious injury on the victim.

Id.

On May 9, 2007, Robinson filed a pro se application for postconviction relief alleging his trial counsel provided ineffective assistance by: (1) failing to move to exclude prior inconsistent and contradictory statements by the victim, (2) improperly and inadequately advising him not to testify, (3) failing to interview a potential witness to impeach the victim's testimony, and (4) inadequately arguing his motion for judgment of acquittal. Robinson further asserted his appellate counsel was ineffective for: (1) failing to raise and argue that the district court erred in not giving a requested impeachment instruction, and (2) failing to raise and argue that his trial counsel was ineffective for withdrawing an objection to the qualifications of an interpreter used for the victim's testimony at trial.

On March 3, 2010, Robinson, through court-appointed counsel, filed an amendment to his postconviction relief application. In the amendment, Robinson claimed his trial counsel was ineffective for: (1) withdrawing his objection to the use of an uncertified interpreter, (2) failing to require opening and closing statements be recorded, (3) failing to properly cross-examine the victim on his inconsistent statements, and (4) failing to argue in a motion for new trial that the State failed to prove he purposely inflicted or attempted to inflict a serious injury, or was armed with a dangerous weapon. In the closing paragraph of the application, Robinson "restate[d] and reaffirme[d] all other information and allegations in his original petition as if fully stated herein."

Following a hearing on Robinson's applications, the postconviction court filed a ruling denying his claims on October 13, 2010. Robinson appeals this ruling arguing his postconviction relief counsel provided ineffective assistance.

II. Standard of Review.

Postconviction proceedings are generally reviewed for correction of errors at law. *Lado v. State*, 804 N.W.2d 248, 250 (Iowa 2011). However, when the issues raised are of a constitutional nature, such as claims of ineffective assistance of counsel, we perform a de novo review. *Id.*

III. Analysis.

To prevail on his claims of ineffective assistance by postconviction relief counsel, Robinson must show that "his attorney's performance fell outside a normal range of competency and that the deficient performance so prejudiced him as to give rise to the reasonable probability that, but for counsel's errors, the result of the proceeding would have been different." *Dunbar v. State*, 515 N.W.2d 12, 15 (Iowa 1994).

Robinson first argues his postconviction relief counsel was ineffective for failing to have the postconviction court rule upon his claim that his original appellate counsel was ineffective for failing to raise and argue the denial of his requested impeachment instruction. The State concedes that this issue was raised in the pro se application, and not ruled upon by the postconviction court. See *Jones v. State*, 731 N.W.2d 388, 392 (Iowa 2007) (holding an applicant for postconviction relief may raise additional pro se claims not raised by counsel, and the district court should rule upon them). Robinson's postconviction counsel

failed to file a motion to enlarge or expand the postconviction court's ruling so the issue could be addressed. See Iowa R. Civ. P. 1.904(2). Because the underlying criminal file was not made part of the record by way of an exhibit or judicial notice, we find the record on appeal is inadequate for this court to determine whether an impeachment instruction was appropriate in his original trial. Therefore, we preserve this claim for further possible postconviction relief proceedings.

Robinson next argues his postconviction counsel rendered ineffective assistance by not hiring an expert to determine whether the uncertified interpreter correctly translated the victim's testimony. Given the status of the record on appeal, we find we are simply unable to address this issue. It is also preserved for further possible postconviction relief proceedings. Robinson's brief on appeal failed to cite authorities or make argument on the remaining sub-issues listed under the heading for this argument. Accordingly, those sub-issues are deemed waived, and the postconviction court should be affirmed. See Iowa Rs. App. P. 6.903(2)(g) ("The argument section shall be structured so that each issue raised on appeal is addressed in a separately numbered division."); 6.903(2)(g)(3) ("Failure to cite authority in support of an issue may be deemed waiver of that issue.").

AFFIRMED.