

IN THE COURT OF APPEALS OF IOWA

No. 2-554 / 11-1918
Filed August 8, 2012

FLYNN LINDSEY,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Dubuque County, Monica Ackley,
Judge.

Flynn Lindsey appeals from the denial of his application for postconviction relief. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Theresa R. Wilson,
Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Richard J. Bennett, Assistant Attorney
General, Ralph Potter, County Attorney, and Robert Richter, Assistant County
Attorney, for appellee State.

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

DANILSON, J.

Flynn Lindsey appeals from the denial of his application for postconviction relief. Because Lindsey fails to establish the department of corrections acted arbitrarily or that postconviction counsel was ineffective, we affirm.

I. Facts.

On June 4, 2009, Lindsey pleaded guilty to the offense of domestic abuse assault causing injury, second offense, in violation of Iowa Code section 708.2A(3)(b) (2007).¹ The plea agreement required Lindsey to complete a batterers' education program (BEP).² The court imposed sentence, stating in part: "Defendant shall attend and successfully complete" and "pay fees" of "batterers' education class."

Lindsey was not enrolled in a BEP while imprisoned. He was advised that he would not be placed in a BEP because he could not complete it before he was to be discharged. Lindsey wrote a letter to the sentencing judge seeking aid to complete the program while incarcerated. In response, the sentencing judge filed a document entitled, "advice to the department of corrections [(DOC)] re: programming for defendant," acknowledging the court's inability to control the DOC's programming, but urging the DOC that the defendant be allowed to complete BEP while in custody. The district court concluded, "If the defendant is unable to complete the [BEP] while serving his sentence, the defendant shall

¹ This was a lesser included offense of the original charge of domestic abuse assault causing injury, third offense.

² Batterers' education is statutorily required upon conviction of this offense. See Iowa Code § 708.2A(9) (providing in part, "In addition to the mandatory minimum term of confinement imposed by subsection 6, paragraph "a", the court shall order a person convicted under subsection 2 or 3 to participate in a batterers' treatment program as required under section 708.2B").

contact the BEP coordinator . . . within 30 days of release from prison to arrange programming.”

On July 15, 2010, Lindsey filed an application for postconviction relief, asserting, among other things, the DOC’s decision not to place him in BEP was arbitrary and capricious; denying him BEP while incarcerated “runs afoul of the Equal Protection Clause” of the federal and state constitutions; and Iowa Code section 708.2B, which allows different counties to assess different BEP fees, violates federal and state equal protection guarantees. A hearing was held on June 22, 2011, after which the court denied relief.

On appeal, Lindsey asserts postconviction counsel was ineffective.

II. Discussion.

Lindsey’s statutory right to counsel in postconviction proceedings necessarily implies a right to effective assistance of postconviction counsel. *Dunbar v. State*, 515 N.W.2d 12, 14 (Iowa 1994); see also *Lado v. State*, 804 N.W.2d 248, 251 (Iowa 2011).³ We review Lindsey’s claims de novo. *Lado*, 804 N.W.2d at 251.

To prevail on his claim of ineffective assistance of counsel, [the applicant] must ultimately 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. Representation is presumed competent and a[n applicant] has the burden to prove by a preponderance of the evidence that counsel was ineffective.

. . . .
When complaining about the adequacy of an attorney’s representation, it is not enough to simply claim that counsel should

³ A postconviction relief applicant has no federal or state constitutional right to effective assistance of counsel. *Coleman v. Thompson*, 501 U.S. 722, 756-57 (1991); *Fuhrmann v. State*, 433 N.W.2d 720, 722 (Iowa 1988).

have done a better job. The applicant must state the specific ways in which counsel's performance was inadequate and identify how competent representation probably would have changed the outcome.

Dunbar, 515 N.W.2d at 15.

Lindsey first contends postconviction counsel was ineffective in failing to present evidence that various judicial districts do, in fact, charge different fees; and in failing to present evidence of the DOC's standards for placing prisoners into a BEP program. He contends that without such evidence, his claims necessarily failed and prejudice must be presumed. Lindsey also contends postconviction counsel was ineffective in failing to allege an equal protection violation in the treatment of incarcerated versus non-incarcerated individuals required to enter a BEP because some offenders are not required to pay the BEP fee. He asks that we vacate the order dismissing his postconviction application and remand for a new hearing. We decline.

Equal protection under the United States and Iowa Constitutions guarantees that all people will be treated similarly in similar circumstances and conditions. *State v. Haines*, 360 N.W.2d 791, 795 (Iowa 1985) (citing *Lunday v. Vogelmann*, 213 N.W.2d 904, 907 (Iowa 1973), *overruled on other grounds by Miller v. Boone Cnty. Hosp.*, 394 N.W.2d 779 (Iowa 1986)). "Unless a suspect class or a fundamental right is at issue, equal protection claims are reviewed under the rational basis test." *King v. State*, ___ N.W.2d ___, 2012 WL 1366597, at *17 (Iowa 2012). Here, both parties agree that the claims do not impact a suspect class or a fundamental right. Therefore, equal protection permits a State to pass laws applicable to persons within a class if such classification is

reasonable and not arbitrary. *Haines*, 360 N.W.2d at 795. Equal protection is not denied because in practice some inequality exists. *Id.* “[P]ractical problems of government permit rough accommodations; and the classification will be upheld if any state of facts reasonably can be conceived to justify it.” *Lunday*, 213 N.W.2d at 907.

Both parties acknowledge that BEP is operated and administered by the various judicial districts in the state rather than a single state-administered program. Iowa Code § 708.2B. Even assuming there is some variance in fees charged in different districts or counties for a BEP (and Lindsey does not contend any variance is substantial) or between incarcerated and non-incarcerated defendants, Lindsay does not assert the variance, if any, is unreasonable or arbitrary. And, there is no irrationality in not placing an inmate in a program if the inmate is incarcerated for less time than a program runs. Moreover, the fact that Lindsey discharged his prison sentence does not absolve him of other terms imposed in his sentencing order including the mandatory BEP. See Iowa Code § 708.2B.

Postconviction counsel was not required to raise or support meritless claims. See *State v. Dudley*, 766 N.W.2d 606, 620 (Iowa 2009). We affirm the district court’s denial of Lindsey’s his application for postconviction relief.

AFFIRMED.