

IN THE COURT OF APPEALS OF IOWA

No. 2-886 / 10-0397
Filed November 29, 2012

GREGORY JORDAN,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Black Hawk County, Thomas N. Bower, Judge.

Applicant seeks postconviction relief from his convictions for possession of marijuana and possession of cocaine, third offense. **AFFIRMED.**

Bradley T. Boffeli of Kurt Law Office, P.C., Dubuque, for appellant.

Gregory E. Jordan, Newton, pro se.

Thomas J. Miller, Attorney General, Thomas W. Andrews, then Kevin Cmelik, Assistant Attorneys General, Thomas J. Ferguson, County Attorney, and Kimberly Griffith, Assistant County Attorney, for appellee State.

Considered by Doyle, P.J., Mullins, J., and Huitink, S.J.* Tabor and Bower, JJ., take no part.

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

HUITINK, S.J.**I. Background Facts & Proceedings.**

Gregory Jordan was charged with possession of a controlled substance (cocaine), third offense, and possession of a controlled substance (marijuana), third offense, both in violation of Iowa Code section 124.401(5) (2001). The State additionally alleged he was a habitual offender. After a trial he was convicted of these offenses and with being a habitual offender. Jordan was sentenced to a term of imprisonment not to exceed fifteen years on each charge, to be served concurrently. His direct appeal of his convictions was dismissed as frivolous under Iowa Rule of Appellate Procedure 6.1005.

Jordan filed an application for postconviction relief, claiming he received ineffective assistance of counsel. At the postconviction hearing Jordan testified he told his first defense counsel he was suffering from a mental illness, paranoid schizophrenia. As to his second defense counsel who conducted the criminal trial, he testified, "I always discuss my mental health with my attorneys. I always mention it." He asserted the issue of his mental health was not properly investigated, resulting in a less than complete investigation of his possible defenses.

The district court denied Jordan's application for postconviction relief. The court found Jordan did not present any proof of mental illness and failed to show any prejudice resulting from his attorneys' actions. The court also denied Jordan's other claims of ineffective assistance of counsel. Jordan now appeals the court's ruling.

II. Standard of Review.

We review claims of ineffective assistance of counsel de novo. *Ennenga v. State*, 812 N.W.2d 696, 701 (Iowa 2012). To establish a claim of ineffective assistance of counsel, an applicant must show (1) the attorney failed to perform an essential duty and (2) prejudice resulted to the extent it denied applicant a fair trial. *State v. Carroll*, 767 N.W.2d 638, 641 (Iowa 2008). “In determining whether an attorney failed in performance of an essential duty, we avoid second-guessing reasonable trial strategy.” *Everett v. State*, 789 N.W.2d 151, 158 (Iowa 2010). In order to show prejudice, an applicant must show that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. *State v. Madsen*, 813 N.W.2d 714, 727 (Iowa 2012).

III. Ineffective Assistance.

A. Jordan contends he received ineffective assistance because his defense counsel and postconviction relief counsel failed to present any evidence relating to his mental health.¹ He claims the condition of his mental health was not properly investigated, leading to a less than complete investigation of all possible defenses. He also claims if he had obtained mental health counseling, his counselor could have assisted during sentencing.

We conclude Jordan has failed to show he was prejudiced by counsels’ performance. See *Ledezma v. State*, 626 N.W.2d 134, 142 (Iowa 2001) (noting if

¹ The State asserts Jordan’s claims here and in his pro se brief concerning postconviction counsel have not been preserved. In support of this argument the State asks to have *Dunbar v. State*, 515 N.W.2d 12 (Iowa 1994), overruled. As the State acknowledges, however, the Iowa Court of Appeals does not have the authority to overrule Iowa Supreme Court precedent, and therefore, we do not address this issue. See *State v. Hastings*, 466 N.W.2d 697, 700 (Iowa Ct. App. 1990).

a claim lacks prejudice, it can be decided on that ground alone). Jordan does not contend he was legally insane, see section 701.4, or was not competent to stand trial, see section 812.3. Furthermore, a defense of diminished responsibility would not negate general criminal intent. *Anfinson v. State*, 758 N.W.2d 496, 502 (Iowa 2008). Evidence of a mental impairment which falls short of insanity is precluded “in cases requiring proof only of guilty knowledge or general criminal intent accompanying a prohibited act.” *Id.* 503. We believe the offense of possession of a controlled substance under section 124.401(5) requires only general criminal intent.

We additionally conclude Jordan’s vague statements about raising possible defenses, without detailing what those defenses could be, or stating that his mental health condition could have been a factor at sentencing, without detailing how or in what manner that would have occurred, is not sufficient for us to fully address the issues. See *Dunbar v. State*, 515 N.W.2d 12, 15 (Iowa 1994) (“When complaining about the adequacy of an attorney’s representation, it is not enough to simply claim that counsel should 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.” (citation omitted)).

B. In a pro se brief, Jordan raises twelve additional issues in which he claims he received ineffective assistance of counsel.² Iowa Rule of Appellate

² Jordan contends he received ineffective assistance because his defense counsel failed to: (1) prepare for trial or put on any defense; (2) put on a defense to the charge of being a habitual offender; (3) obtain his consent to withdraw a motion to suppress; (4) fully and accurately advise him about the enhancement provision in a plea

Procedure 6.903(2)(g)(3) provides that appellate briefs must contain “[a]n argument containing the appellant’s contentions and the reasons for them with citations to the authorities relied on and references to the pertinent part of the record in accordance with rule 6.904(4).” Jordan has not provided any citation to the record to support his contentions, or any citation to legal authorities. “Failure to cite authority in support of an issue may be deemed waiver of that issue.” Iowa R. App. P. 6.903(2)(g)(3). We conclude Jordan has waived these claims on appeal. See *State v. Root*, 801 N.W.2d 29, 30 n.1 (Iowa Ct. App. 2011) (finding defendant waived issues due to failure to follow rules of appellate procedure).

We affirm the decision of the district court denying Jordan’s application for postconviction relief.

AFFIRMED.

offer; (5) object to the State’s exhibits, which had evidence tags attached; (6) sufficiently inform him about a plea agreement; and (7) seek dismissal under speedy indictment rules. He claimed his appellate counsel was ineffective for failing to: (1) raise the issue of ineffective assistance of trial counsel; (2) raise the issue that the district court erred in overruling his motion to suppress; and (3) object to a reference to a failed plea attempt in the ruling on the motion to suppress. Jordan claimed he received ineffective assistance from his postconviction relief attorney for (1) failing to call additional witnesses and (2) failing to challenge his conviction for possession of marijuana, third offense.