

IN THE COURT OF APPEALS OF IOWA

No. 3-1050 / 13-0054
Filed December 18, 2013

JENNIFER JANSSEN,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Robert A. Hutchison,
Judge.

Jennifer Janssen appeals the district court's denial of her application for
postconviction relief. **AFFIRMED.**

Joseph G. Bertogli, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Heather Quick, Assistant Attorney
General, John P. Sarcone, County Attorney, and Anastasia Hurn and Olu Salami,
Assistant County Attorneys, for appellee State.

Considered by Danilson C.J., and Vaitheswaran and Potterfield, JJ.

VAITHESWARAN, J.

Jennifer Janssen appeals the district court's denial of her application for postconviction relief following the entry of a judgment for the simple-misdemeanor crime of third-degree harassment. Janssen contends her trial attorney was ineffective in failing to "adequately present [her] mental health condition to the court as a defense on the issue of specific intent."

I. Background Facts and Proceedings

Janssen saw a dentist for tooth pain. She and the dentist subsequently had several cell phone communications. Eventually, the dentist elected to end the dentist-patient relationship. Janssen responded with written epithets including the following: "You have chosen to piss off the wrong person!!"

The State charged Janssen with third-degree harassment, a specific intent crime. See Iowa Code § 708.7(1)(a)(1) (2007) ("A person commits harassment when, with intent to intimidate, annoy, or alarm another person, the person . . . [c]ommunicates with another by . . . writing . . . without legitimate purpose and in a manner likely to cause the other person annoyance or harm."); *State v. Evans*, 671 N.W.2d 720, 724 (Iowa 2003) ("[H]arassment is a specific intent crime."). In defense, Janssen's attorney asserted his client's telephonic and written comments were made for the legitimate purpose of addressing her dental care. The district court accepted that defense in conjunction with Janssen's telephonic communications but not in conjunction with her written comments. Based on the written comments, the court found Janssen guilty as charged.

Janssen unsuccessfully appealed the decision to the district court. Her application for discretionary review by the Iowa Supreme Court was denied.

Janssen then filed an application for postconviction relief. Following a hearing, the district court denied the application. Janssen appealed.

II. Ineffective Assistance of Counsel

Janssen contends her trial attorney failed “to propound evidence of ‘diminished responsibility’ on the issue of the specific intent required to find [her] guilty of harassment.” To prove her claim, Janssen must establish the breach of an essential duty and prejudice. See *Strickland v. Washington*, 466 U.S. 668, 687 (1984).

Janssen’s attorney testified that Janssen made him “aware of her mental health, emotional, behavioral issues” and he reviewed “mental health records” in his file before deciding “a diminished capacity defense or diminished responsibility defense was [not] appropriate.” He acknowledged Janssen wanted him to call her mental health service provider as a witness but stated, after visiting “with [the service provider] in advance of trial to see if that would be beneficial,” he “decided the information [she] had would not be beneficial at trial.” Based on his review, he elected to pursue a justification defense rather than a diminished responsibility defense.

On our de novo review, we are persuaded that Janssen’s trial attorney made a strategic decision not to pursue a defense based on Janssen’s mental health history. See *Anfinson v. State*, 758 N.W.2d 496, 501 (Iowa 2008) (“[R]easonable strategic considerations may justify the rejection of one theory of defense in favor of another theory reasonably perceived by counsel to be in the accused’s best interest.”). That decision was supported by an investigation of the relevant facts and law. See *Ledezma v. State*, 626 N.W.2d 134, 143 (Iowa

2001) (“The accompanying investigation must be reasonable under the circumstances.”). As the district court stated, “This is not a situation where defense counsel ignored a potential defense and refused to investigate it, but rather a situation where the attorney did investigate the possible defense and chose to go another way.”

We conclude the attorney did not breach an essential duty in pursuing an alternate strategy. *Pettes v. State*, 418 N.W.2d 53, 56 (Iowa 1988) (“[T]o overcome the presumption of his attorney’s competency, Pettes cannot rely on hindsight; he must show more than the fact that his attorney’s strategy backfired or that another attorney would have used the diminished capacity defense.”). Accordingly, Janssen’s ineffective assistance claim fails. *See Anfinson*, 758 N.W.2d at 499 (stating a claim of ineffective assistance of counsel fails if either element is lacking).

We affirm the district court’s denial of Janssen’s postconviction relief application.

AFFIRMED.