

IN THE COURT OF APPEALS OF IOWA

No. 3-716 / 12-1728
Filed October 2, 2013

RODNEY JACKSON,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Woodbury County, Jeffrey A. Neary, Judge.

Appeal from the dismissal of an application for postconviction relief.

AFFIRMED.

Mark C. Smith, State Appellate Defender, and Stephan J. Japuntich, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Kyle Hanson, Assistant Attorney General, Patrick Jennings, County Attorney, and Terry Ganzel, Assistant County Attorney, for appellee.

Considered by Potterfield, P.J., and Mullins and Bower, JJ.

BOWER, J.

Rodney Jackson appeals from the district court's dismissal of his application for postconviction relief. He contends the court erred in dismissing his application, which claimed his guilty plea was not knowing, voluntary, and intelligent because he was intoxicated at the time of the plea and his attorney coerced him into pleading guilty. We affirm.

Pursuant to a written plea agreement, Jackson entered a guilty plea to theft in the first degree. He later filed an application for postconviction relief, which included a claim his plea was not knowing and voluntary because he was intoxicated and his attorney coerced him into entering the plea. The application was summarily dismissed. On appeal of the dismissal, this court reversed "the portion of the district court order summarily dismissing Jackson's postconviction claim of ineffective assistance relating to the knowing and voluntary nature of his plea and remand for an evidentiary hearing on the merits of this claim."

On remand, the court held an evidentiary hearing at which Jackson and his trial attorney, Patrick Parry, testified. The court reviewed the transcript of the plea proceeding, reviewed the court file, and considered the testimony. The court stated, "Mr. Parry was a credible witness and the Court finds him credible. This is especially so when the Court reviews the record and the court file documents surrounding the claims made by the Applicant."

Citing to the two prongs of an ineffective assistance claim, failure to perform an essential duty and resulting prejudice, set forth in *State v. Straw*, 709 N.W.2d 128, 133 (Iowa 2006), the court made the following ruling:

Here, there has been no showing that Mr. Parry failed to perform an essential duty and likewise, there is no showing of prejudice. An Applicant establishes prejudice by showing “there is a reasonable probability that, but for the counsel’s unprofessional errors, the result of the proceeding would have been different.” . . . In this context the Applicant must show there is a reasonable probability that without counsel’s error (assuming for the sake of argument there is one) he would not have pled guilty. An Applicant’s conclusory claim that they would have insisted on going to trial is not enough to show prejudice. Accordingly the Court must look at the objective evidence against the Applicant. The Court may weigh the evidence against the Applicant and his chance of succeeding at trial in order to determine whether he was prejudiced. Here the evidence reveals the Applicant’s admission or confession and corroborating accounts from the victim and eyewitnesses who found the stolen watch on the Applicant’s person. The Applicant has failed to meet his burden to establish both prongs of the proof required by a preponderance identified in *Straw* above. That failure is fatal to his claim of ineffective assistance of counsel herein.

(citations omitted)

We review denials of applications for postconviction relief for correction of errors at law. *Goosman v. State*, 764 N.W.2d 539, 541 (Iowa 2009). However, applications that allege ineffective assistance of counsel raise a constitutional issue that is reviewed de novo. *Castro v. State*, 795 N.W.2d 789, 792 (Iowa 2011).

The district court’s ruling dismissing Jackson’s application for postconviction relief for failure to prove his trial attorney was ineffective identified and carefully considered all of the issues presented. The court weighed the evidence and the credibility of the witnesses and made express credibility findings. On de novo review, we approve of the findings, reasoning, and conclusions in the district court’s ruling and affirm. See Iowa Ct. R. 21.26(1)(d).

AFFIRMED.

