

**IN THE COURT OF APPEALS OF IOWA**

No. 3-831 / 12-2034  
Filed September 18, 2013

**JOHN LAMONT CARTER,**  
Applicant-Appellant,

**vs.**

**STATE OF IOWA,**  
Respondent-Appellee.

---

Appeal from the Iowa District Court for Clinton County, Gary D. McKenrick, Judge.

John Carter appeals from the denial of his application for postconviction relief. **AFFIRMED.**

John L. Carter, Clarinda, appellant pro se.

John J. Wolfe, Clinton, for appellant.

Thomas J. Miller, Attorney General, Thomas S. Tauber, Assistant Attorney General, and Michael L. Wolf, County Attorney, for appellee State.

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

**POTTERFIELD, P.J.**

John Carter appeals from the denial of his application for postconviction relief. He argues his counsel was ineffective in failing to investigate a defense of intoxication or insanity, in failing to advise him regarding the evidence, in failing to advise him to testify, and in not pursuing plea negotiations. We affirm, finding Carter has failed to demonstrate prejudice for any of his claims.

**I. Facts and Proceedings.**

On February 20, 2008, John Carter robbed a convenience store. Carter obscured his face with a stocking cap pulled over his eyes and nose, with a hole cut out for his eyes. He entered the store, asked for the money in the cash register drawer, and attacked the clerk with a large mallet or sledgehammer. The clerk defended himself with a garbage can lid. Carter struck the cash register several times with the weapon and fled when the clerk told him he had sounded the alarm for police. A security camera filmed Carter's actions inside the store.

February 22, 2008, Carter was charged with first-degree robbery. Carter was arrested and questioned by police. He admitted to the robbery, stating he did not know why he asked for money and that his actions were more about scaring someone than wanting money. Carter pleaded not guilty, demanded a speedy trial, and the case proceeded to trial before a jury on April 28, 2008. This trial ended in mistrial; a second jury trial was held May 12–13, 2008. The cashier along with several other witnesses testified. The State offered into evidence the security footage showing the robbery, which was admitted without objection. Carter did not testify and did not present any evidence. Carter's counsel engaged Carter in an inquiry before the court that demonstrated Carter's

understanding of his decision not to testify and not to put forth evidence. The jury found Carter guilty.

The court was given a presentence investigation report prior to sentencing. The report noted Carter did not feel he was suffering from any mental health or emotional problems, and that he admitted to using crack cocaine prior to entering the convenience store. He was sentenced to the mandatory period of incarceration not to exceed twenty-five years. See Iowa Code §§ 711.2 (defining first-degree robbery as a class “B” felony); 902.3 (requiring imposition of indeterminate term); 902.9 (defining maximum sentence for a class “B” felony as twenty-five years).

Carter filed a notice of appeal. Appellate counsel filed a motion to withdraw under Iowa Rule of Appellate Procedure 6.1005(2), noting Carter’s arguments pertained to the effectiveness of counsel and would be best addressed by postconviction proceedings. The appeal was dismissed and procedendo issued April 30, 2009.

Carter applied for postconviction relief in April 2010. A hearing was held October 3, 2012. Carter’s trial counsel testified stating, among other things, that he chose not to take depositions believing they are largely more helpful to the State than the defendant, the trial strategy was to show Carter’s purpose was to intimidate the clerk rather than commit a theft, his contacts with Carter revealed no indication of diminished capacity or insanity, Carter’s testimony would have likely hurt his case more than helped it, and no plea negotiations were made prior to trial. Carter also testified, stating among other things that individuals (not a doctor or physician) had told him he had an intermittent explosive disorder, he

was never asked about taking depositions, and counsel did not discuss with him whether to testify on his own behalf. The court denied Carter's application for postconviction relief, finding he had failed to prove his claims of ineffective representation. Carter appeals, arguing his counsel was ineffective in failing to investigate a defense of intoxication or insanity, in failing to advise him regarding the evidence, in failing to advise him to testify, and in not pursuing plea negotiations.

## II. Analysis.

We review claims of ineffective assistance of counsel de novo. *Anfinson v. State*, 758 N.W.2d 496, 499 (Iowa 2008). In order to establish he was provided with ineffective assistance of counsel, Carter must show both that his trial counsel failed to perform an essential duty and that he was prejudiced by the failure. See *id.* If either prong is lacking, we affirm. *Id.* In order to establish prejudice, Carter must show that there is a reasonable probability that, but for his counsel's error, the outcome of the proceeding would have been different. *Id.* This probability must be sufficient to undermine confidence in the outcome of the proceedings. *Id.*

Carter only argues that he was prejudiced by two of the five claims of ineffective representation he assigns his prior counsel.<sup>1</sup> He argues he was prejudiced by his counsel's failure to present evidence he had consumed crack

---

<sup>1</sup> We are limited to the issues raised in the briefs; therefore, because prejudice is required to make a finding of ineffective assistance, we limit our review to the two issues properly argued before us. See *Aluminum Co. of America v. Musal*, 622 N.W.2d 476, 480 (Iowa 2001) ("Issues not raised in the appellate briefs cannot be considered by the reviewing court."); see also Iowa R. App. P. 6.903(g)(3) ("Failure to cite authority in support of an issue may be deemed waiver of that issue.").

cocaine before he entered the convenience store, and by his counsel's recommendation he not testify. Carter states that had he "testified that he unfortunately he was high on crack cocaine, a drug with which he was not personally familiar, and that he was unable to explain his conduct, coupled with an apology to [the victim], the jury might well have returned a not guilty verdict." He states that had evidence of his crack cocaine use been presented, it "could explain an entry into [the convenience store] to scare [someone] who was not there."

This kind of mere speculation does not rise to the level of undermining our confidence in the verdict, especially when we consider the overwhelming evidence presented against Carter. *See State v. Tejada*, 677 N.W.2d 744, 755 (Iowa 2004). Because Carter cannot show he was prejudiced by his counsel's decisions, we affirm the denial of postconviction relief. *See Anfinson*, 758 N.W.2d at 499.

**AFFIRMED.**