

IN THE COURT OF APPEALS OF IOWA

No. 6-097 / 05-0504
Filed May 10, 2006

BOBBY BAILEY,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

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

Bobby Bailey appeals from the denial of his application for postconviction
relief. **AFFIRMED.**

Jeffrey T. Mains of Mains Law Office, P.L.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Karen Doland, Assistant Attorney
General, John P. Sarcone, County Attorney, and George Karnas, Assistant
County Attorney, for appellee-State.

Considered by Huitink, P.J., and Vaitheswaran and Eisenhauer, JJ.

VAITHESWARAN, J.

A jury found Bobby Bailey guilty of first-degree murder, first-degree robbery, and second-degree theft. Our court affirmed the convictions but preserved the following two issues for postconviction relief: (1) whether trial counsel was ineffective in failing to object to the State's improper impeachment of a defense witness, and (2) whether trial counsel was ineffective in failing to move for a new trial on the ground that the murder and robbery verdicts were against the weight of the evidence. *State v. Bailey*, No. 02-0197 (Iowa Ct. App. Sept. 24, 2003).¹

Bailey filed a postconviction relief application raising the two preserved issues. The case was submitted to the court on stipulated facts and exhibits, which included a deposition transcript of defense counsel's testimony. The district court rejected both ineffective-assistance-of-counsel claims and dismissed the application. This appeal followed.

I. Impeachment

The case arose from the death of an eighty-two-year-old man. At trial, Bailey testified that the man solicited him for sex but, after the sex act was performed, refused to pay him the promised sum of money. Bailey acknowledged he subsequently struck the man, but contended his acts were in self-defense.

To support his version of events, Bailey called witness Ray Clark. Clark testified about a similar incident involving the mention of sex and subsequent insistent behavior by the deceased. On cross examination, the State attempted

¹ We also vacated the sentences in part and remanded for resentencing.

to impeach Clark with a 1981 operating while intoxicated conviction as well as questions about a suspended license, an arrest for possession of crack cocaine that did not result in a conviction, a 1978 conviction for carrying a concealed weapon, and public intoxication convictions. We agree with the district court's conclusion that this impeachment was improper. However, there is no reasonable probability that the outcome would have changed had defense counsel objected to this line of questioning. First, Clark's credibility was properly impeached with evidence of prior theft convictions. Second, as the district court noted, Bailey's own admissions were "devastating to the theory of self-defense." We summarized those admissions and other evidence contradicting Bailey's self-defense theory in our prior opinion. On our de novo review, we conclude Bailey failed to satisfy either prong of the *Strickland* test. See *Strickland v. Washington*, 466 U.S. 668, 690, 104 S. Ct. 2052, 2066, 80 L. Ed. 2d 674, 695 (1984) (requiring a showing of counsel's failure to perform an essential duty and resulting prejudice).

II. Motion for New Trial

Following trial, Bailey's attorney moved for a new trial but did not assert that the verdict was against the weight of the evidence. See *State v. Ellis*, 578 N.W.2d 655, 659 (Iowa 1998) (altering standard for review of certain new trial motions). At his deposition, defense counsel stated he could not recall if he had read *Ellis*. Bailey contends a reasonably competent attorney would have known of the *Ellis* standard and would have asserted it in his motion for new trial.

The district court again concluded that Bailey could not establish prejudice. On our de novo review of the record, and particularly Bailey's trial testimony, we agree.

III. Disposition

We affirm the district court's dismissal of Bailey's postconviction relief application.

AFFIRMED.