

IN THE COURT OF APPEALS OF IOWA

No. 6-570 / 05-1093
Filed January 18, 2007

DARNELL JAMILLE WILLIAMS,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Cerro Gordo County, James M. Drew, Judge.

Darnell Jamille Williams appeals from the district court's denial of his application for postconviction relief. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Patricia Reynolds, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Richard J. Bennett, Assistant Attorney General, Paul L. Martin, County Attorney, and Douglas D. Hammerand, Assistant Attorney General – Area Prosecutions Division, for appellee.

Heard by Sackett, C.J., and Zimmer and Eisenhauer, JJ.

EISENHAUER, J.

Darnell Jamille Williams appeals from the district court's denial of his application for postconviction relief. He contends the district court erred in ruling he was fairly apprised of the State's theory of the case, in concluding trial counsel was not ineffective because he did not move to enforce the plea agreement, and in concluding he was not prejudiced by trial counsel's failure to adequately advise him on whether to testify in his defense. He also contends his postconviction counsel was ineffective. We affirm.

I. Background Facts and Proceedings. Williams was convicted of first-degree murder and first-degree robbery for his role in the death of Bruce Vrochta. Vrochta was shot and killed in his home on the morning of July 27, 1998. In separate trials, Michael Williams and Mark Grieman were also convicted of crimes related to the events of that morning.

At around 1:00 a.m. on July 27, 1998, Darnell Williams and his brother, Michael Williams, visited the home of Vanette Taylor. Her sister, Velenda Taylor, was at the home at the time. Velenda testified Michael Williams only stayed a short time and Darnell Williams left almost immediately after Michael Williams left. She further testified Darnell Williams was wearing black clothes.

At approximately 1:44 the same morning, Darnell and Michael Williams entered Vrochta's home with the intention of robbing him. Mark Grieman waited outside. They discovered Vrochta watching television with his son, Shelley. Darnell Williams watched Shelley while Michael Williams took Vrochta into another room to get money. Two shots were fired, killing Vrochta. The men then fled the house. Vrochta's neighbor, Robert Sansgaard, came out of his house,

and Michael Williams fired his gun at Sansgaard. Sansgaard testified at trial that the African-American male leaving the house who did not fire the gun had the same physical build as Darnell Williams.

Darnell and Michael Williams are African-American. Shelley Vrochta did not see the face of the man who watched him while his father was killed, but testified he was African-American because he saw the back of his neck. Shelly Vrochta also testified that he knew Darnell Williams from high school and that the man who stayed in the room with him had the same skin coloring and build as Darnell Williams. Both men wore black clothing.

Sheyanne Oudekerk testified that at approximately 2:00 a.m., Michael Williams, Mark Greiman, and Darnell Williams, came to her home asking for a ride. She took them to the home of Guy Fischer, where the murder weapon was later recovered.

Two of Darnell Williams's fingerprints were found in Vrochta's home. At trial, Williams's attorney claimed the fingerprints were left in the home on an earlier occasion when he was buying marijuana from Vrochta. Counsel argued Williams was not the third man involved in the robbery, but that it was a case of mistaken identity.

On July 7, 1999, following a jury trial, Williams was convicted of first-degree robbery and first-degree murder. On August 13, 1999, he was sentenced to life in prison on the first-degree murder charge and a twenty-five-year indeterminate sentence on the first-degree robbery charge. The sentences were ordered to be served concurrently. Williams's convictions were affirmed by this court on direct appeal. *State v. Williams*, No. 99-1312 (Iowa Ct. App. Dec. 13,

2000). Several claims of ineffective assistance of counsel were preserved for postconviction relief.

Williams filed a timely pro se application for postconviction relief. After counsel was appointed to represent him, two amended applications for postconviction relief were filed. The postconviction court denied all three applications.

II. Scope and Standard of Review. We typically review postconviction relief proceedings on error. *Ledezma v. State*, 626 N.W.2d 134, 141 (Iowa 2001); *Osborn v. State*, 573 N.W.2d 917, 920 (Iowa 1998). However, when the applicant asserts a claim of constitutional nature, such as ineffective assistance of counsel, we evaluate the totality of the circumstances in a de novo review. *Ledezma*, 626 N.W.2d at 141.

III. Theory of the Case. Williams first contends the trial court instructed the jury on alternate theories for which he was not properly apprised. He contends the postconviction court erred in failing to conclude both his trial and appellate counsel were ineffective in failing to object to this error.

To prevail on a claim of ineffective assistance of counsel, Williams must show that his attorney's performance fell outside the normal range of competency, and the deficient performance so prejudiced his case as to give rise to a reasonable probability that, but for counsel's alleged errors, the outcome of the proceedings would have been different. *Dunbar v. State*, 515 N.W.2d 12, 15 (Iowa 1994). There is a strong presumption counsel performed competently, and the claimant has the burden to prove counsel was ineffective. *Id.* An ineffective assistance of counsel claim may be dismissed if the defendant fails to prove

either prong. *State v. Cook*, 565 N.W.2d 611, 614 (Iowa 1997). Williams argues his attorneys were ineffective in failing to object to the submission of the theories of aiding and abetting, joint criminal conduct, and felony-murder because the defense was not given sufficient notice of those theories prior to trial.

The purpose of an indictment or trial information is to apprise the defendant of the crime charged so the defendant may have the opportunity to prepare a defense. *State v. Grice*, 515 N.W.2d 20, 22 (Iowa 1994). If the State specifies one way of committing a crime the offense must be proved to have been committed in the way charged. *Id.* at 22-23. However, a trial information need not detail the manner in which the offense was committed. *Id.* at 22. Iowa courts also consider the minutes of testimony when determining the adequacy of the allegations to apprise the accused of the crime charged. *Id.* at 23.

Here, Williams was charged in the trial information with murder in the first degree in violation of Iowa Code section 707.2 (1997) and robbery in the first degree in violation of section 711.2. The State did not specify in its trial information whether it would proceed on theories of felony-murder, aiding and abetting, or joint criminal conduct. However, this was not required. See *Kyle v. State*, 322 N.W.2d 299, 307 (Iowa 1982) (“The State was under no obligation to specify in the information whether it would proceed on a theory of felony-murder or premeditation.”); *State v. Rydel*, 262 N.W.2d 598, 601 (Iowa 1978) (“To have charged defendant as an aider and abettor in the county attorney's information would have been surplusage.”). Because the theories of felony murder, joint criminal conduct, and aiding and abetting were supported by the evidence, the court properly submitted these theories to the jury. *Kyle*, 322 N.W.2d at 307.

To the extent Williams contends his postconviction counsel was ineffective in failing to claim trial counsel was ineffective for failing to object to the jury instructions on the basis that the State improperly amended the trial information to allege a new and different charge, we deny this claim for the reasons stated above.

IV. Enforcement of the Plea Agreement. Williams next contends his trial counsel was ineffective in failing to seek enforcement of the plea agreement after the State withdrew from the agreement.

The performance of a plea bargain agreement must be mutual. *State v. Aschan*, 366 N.W.2d 912, 917 (Iowa 1985). When a defendant fails to uphold his end of a plea bargain, the State has no obligation to provide defendant the anticipated benefits of that bargain. *Id.* Here, the plea agreement was contingent upon Williams providing a truthful proffer of testimony for the State's review. Numerous letters were exchanged attempting to finalize the plea agreement. Williams's attorney summarized the evidence he would provide on behalf of the State. If it was determined Williams was not being truthful in the proffer, the agreement would be "null and void." The State determined that Williams was not being truthful, specifically citing his claim all three men were in the Vrochta home, he only went in the kitchen and living room, and that he didn't know Michael Williams had a gun. Because Williams did not comply with the terms of the plea agreement, the State withdrew the plea offer. We, like the trial court, also reject the contention that Williams detrimentally relied on the plea offer. He claims information disclosed to the prosecution during the plea negotiations prohibited him from using alibi as a defense. However, nothing

supports this claim. His attorney denies the claim and other statements he made to the police during the investigation effectively eliminated alibi as a defense. Accordingly, trial counsel did not breach an essential duty in failing to seek to enforce the plea agreement.

V. Waiver of Right to Testify. Williams contends his trial counsel was ineffective in failing to adequately advise him on whether to testify.

An accused has a constitutional right to testify. *State v. Reynolds*, 670 N.W.2d 405, 411 (Iowa 2003). Like other constitutional rights, the right to testify may be waived if done so “voluntarily, knowingly, and intelligently.” *Id.* Although trial strategy plays a large role in whether a defendant testifies, the decision is for the defendant-not defense counsel-to make. *Id.* Trial counsel’s role is simply to provide advice to the defendant to enable the accused to make a well-informed decision. *Id.*

We, like the trial court, conclude Williams’s waiver of his right to testify was not knowingly, voluntarily, and intelligently made. Neither of his trial attorneys discussed the issue with him, each assuming the other had. Accordingly, counsel failed to perform an essential duty.

However, we agree with the postconviction court’s assessment that prejudice for this failure has not been proven. The trial court stated:

The court concludes that the outcome of the case would not have been different had Williams testified and thus he did not suffer prejudice. Mr. Lapointe was likely correct in his assessment that Williams would have been “crucified” on cross-examination due to statements he made to Special Agent Basler. In particular, Williams presented an alibi to Basler that was shown to be untrue. Furthermore, Williams’s necklace was in the car that was used to go to and from the crime scene. Additionally, his fingerprints were found at the crime scene. Finally, when told that Mark Grieman had been charged with first-degree murder, Williams had a strong

reaction and made statements to the effect that if he was going to prison he had better start lifting weights and wondered out loud what educational opportunities would be available to him in prison. There is no reasonable possibility that had Williams testified he would have been able to overcome the evidence against him.

We adopt these findings as our own. We also note Williams's presence with his brother and Grieman both immediately before and after the crime. Accordingly, we affirm the district court's denial of Williams's application for postconviction relief. To the extent Williams argues his postconviction counsel was ineffective in failing to have him testify at the postconviction hearing on this matter, we conclude Williams was not prejudiced for the reasons stated above.

VI. Ineffective Assistance of Postconviction Counsel. Finally, Williams contends his postconviction counsel was ineffective in several respects. On appeal, an applicant may raise a claim of ineffectiveness of postconviction counsel. *State v. Dunbar*, 515 N.W.2d 12, 14-15 (Iowa 1994). The applicant must state specifically how counsel was inadequate and identify how competent representation probably would have changed the outcome. *Id.* at 15.

Williams contends his postconviction counsel was ineffective for introducing in the postconviction proceedings a transcript of a statement he previously made. The statement was given by Williams to his trial attorneys before his trial and was never given to the State. The statement, amounting to a confession, was used in the deposition of one of Williams's trial attorneys in preparation for the postconviction hearing. It was used to develop the issue of whether counsel should have sought to enforce the plea agreement. There is no indication the postconviction court relied on the statement in its ruling and Williams does not state how he was prejudiced by the admission of the

confession at the postconviction hearing, as required by *Strickland v. Washington*, 466 U.S. 668, 687-88, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984).

Williams also argues postconviction counsel was ineffective in failing to subpoena and depose Mark Greiman regarding a handwritten statement in which Greiman allegedly stated Williams was not present on the night of the robbery and murder. Williams argues the statement could have provided exculpatory evidence in the form of newly discovered evidence. Whether this evidence would exonerate Williams is a matter of speculation. Trial counsel testified at the postconviction hearing that he had never seen the writing before. At the time of trial, he was informed by Greiman's trial counsel that Greiman would invoke his privilege against self-incrimination if called to testify. Accordingly, Williams is unable to show how the result of the postconviction proceeding would have been different if Greiman had been deposed or testified.

Because Williams has failed to prove trial, appellate, or postconviction counsel was ineffective, we affirm.

AFFIRMED.