

**IN THE COURT OF APPEALS OF IOWA**

No. 6-868 / 05-1949  
Filed December 13, 2006

**DAVID STOVER,**  
Applicant-Appellant,

**vs.**

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

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Appeal from the Iowa District Court for Black Hawk County, Alan L. Pearson, Judge.

David Wayne Stover appeals the district court's denial of his claim for postconviction relief. **AFFIRMED.**

Laura Langenwalter of Langenwalter Law Firm, Waterloo, for appellant.

Thomas J. Miller, Attorney General, Karen Doland, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Kimberly Griffith and James Katcher, Assistant County Attorneys, for appellee State.

Considered by Huitink, P.J., Vogel, J., and Brown, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2005).

**HUITINK, P.J.**

David Wayne Stover appeals the district court's denial of his claim for postconviction relief. We affirm.

***I. Background Facts and Proceedings.***

David Wayne Stover was convicted, following a jury trial, of second-degree robbery for robbing the Farmers State Bank in Waterloo. Stover appealed and we affirmed his convictions. See *State v. Stover*, No. 02-0400 (Iowa Ct. App. Mar. 12, 2003). Stover's claim that trial counsel was ineffective was preserved for postconviction proceedings. Stover subsequently filed an application for postconviction relief, which was denied. On appeal from that ruling, Stover raises the following issue:

- I. Whether the trial court erred in denying the petitioner's request for post-conviction relief based on his ineffective assistance of counsel claim (counsel's failure to file a motion for a new trial following robbery conviction).

***II. Standard of Review.***

We review claims of ineffective assistance of counsel de novo. *Collins v. State*, 588 N.W.2d 399, 401 (Iowa 1998).

***III. Merits.***

A defendant receives ineffective assistance of counsel when (1) trial counsel fails in an essential duty and (2) prejudice results. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984). In assessing counsel's conduct we note that "[i]mprovident trial strategy, miscalculated tactics, and mistakes in judgment do not necessarily amount to ineffective assistance of counsel." *State v. McKettrick*, 480 N.W.2d 52, 55 (Iowa

1992). We generally presume counsel is competent, and we are reluctant to subject a reasonable trial strategy to a critique based on hindsight. *State v. Wissing*, 528 N.W.2d 561, 564 (Iowa 1995).

Stover bears the burden of demonstrating ineffective assistance of counsel, and both prongs of the claim must be established by a preponderance of the evidence before relief can be granted. *Ledezma v. State*, 626 N.W.2d 134, 142 (Iowa 2001). To prove prejudice from an alleged breach, Stover must convince us “that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Strickland*, 466 U.S. at 694, 104 S. Ct. at 2068, 80 L. Ed. 2d at 698. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Id.* If Stover fails to meet his burden with respect to either prong, his claim is without merit, and will be dismissed. *Id.* at 697, 104 S. Ct. at 2069, 80 L. Ed. 2d at 699.

Trial courts have broad discretion in deciding motions for new trial. *State v. Atley*, 564 N.W.2d 817, 821 (Iowa 1997). A trial court may grant a new trial “[w]hen the verdict is contrary to law or evidence.” Iowa R. Crim. P. 2.24(2)(b)(6). “Contrary to the evidence” means “contrary to the weight of the evidence.” *State v. Ellis*, 578 N.W.2d 655, 659 (Iowa 1998). Weight of the evidence refers to a determination by the trier of fact “that a greater amount of credible evidence supports one side of an issue or cause than the other.” *Id.* at 658 (quoting *Tibbs v. Florida*, 457 U.S. 31, 37-38, 102 S. Ct. 2211, 2216, 72 L. Ed. 2d 652, 658 (1982)).

We have reviewed the evidence and find that it preponderates in favor of the jury's verdict. We specifically note identification testimony by Stover's wife implicating Stover as the person seen on a surveillance video robbing the bank. In addition, the record fails to disclose any cross-examination, impeachment, or rebuttal testimony that diminishes the credibility of her testimony. The record also contains evidence of Stover's dubious explanations for a large amount of cash he acquired at or near the time the bank was robbed. We accordingly conclude that there is no reasonable probability that the trial court would have granted a motion for a new trial even if counsel had made such a motion. Because Stover was not prejudiced by counsel's failure to move for a new trial, we need not decide whether counsel breached an essential duty.

**AFFIRMED.**