

IN THE COURT OF APPEALS OF IOWA

No. 6-959 / 06-0446
Filed February 28, 2007

MIGUEL ANGEL CARRILLO,
Applicant-Appellant,

vs.

STATE OF IOWA
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Donna L. Paulsen,
Judge.

Miguel Carrillo appeals the denial of his postconviction relief application.

AFFIRMED.

Edward Bull of Bull Law Office, P.C., Des Moines, and Susan R.
Stockdale, Colo, for appellant.

Thomas J. Miller, Attorney General, Sheryl A. Soich, Assistant Attorney
General, John P. Sarcone, County Attorney, and Susan Cox and Joseph P.
Weeg, Assistant County Attorneys, for appellee.

Considered by Mahan, P.J., and Miller and Vaitheswaran, JJ.

VAITHESWARAN, J.

A jury found Miguel Carrillo guilty of one count of second-degree sexual abuse, one count of indecent contact with a child, and one count of assault with intent to commit sexual abuse. Carrillo appealed his convictions. Our court affirmed, preserving a single issue for postconviction relief: trial counsel's claimed failure to strike one or two female jurors who acknowledged they had been sexually abused. *State v. Carrillo*, No. 02-0022 (Iowa Ct. App. Aug. 27, 2003).

Carrillo filed an application for postconviction relief raising several issues, including the juror claim. Following an evidentiary hearing, the district court denied the application.

On appeal from that ruling, Carrillo only challenges the district court's resolution of the juror issue. Because he raised his claim under an ineffective-assistance-of-counsel rubric, we review the record de novo. *Ledezma v. State*, 626 N.W.2d 134, 141 (Iowa 2001). Carrillo must show (1) the failure to perform an essential duty, and (2) resulting prejudice. *Strickland v. Washington*, 466 U.S. 668, 690, 104 S. Ct. 2052, 2066, 80 L. Ed. 2d 674, 695 (1984).

Carrillo specifically contends that the district court acted inappropriately in giving more credence to the prosecutor's testimony on the juror issue than to his own testimony. We disagree. It is the district court's prerogative to assess credibility. *Ledezma*, 626 N.W.2d at 141. Although the court did not explicitly find the prosecutor more credible, the court thoroughly weighed both individuals' testimony before concluding that Carrillo failed to prove his claim.

On our de novo review, we are convinced that the court accurately assessed the witnesses' testimony. Unlike Carrillo, the prosecutor recalled details of voir dire. She testified that a questionnaire was given to potential jurors and five or six individuals responded affirmatively to questions regarding sexual abuse. These individuals were questioned in chambers. The prosecutor vividly remembered one juror's disclosure of sexual abuse and she recalled that the juror was excused from service on Carrillo's jury. The prosecutor also offered the court her jury chart, which contained notations about individual jurors, including crimes that were committed against them. She testified that if a person had mentioned sexual abuse, she would have noted it on the chart. No one on the chart was listed as a victim of sexual abuse. When specifically asked about the jury's composition, the prosecutor testified, "As far as I know, no one sat on that jury that were victims of sexual abuse."

In contrast to this detailed testimony, Carrillo contradicted himself on the number of potential jurors who were called into chambers. He also could not remember the name of the juror who, in his view, should have been stricken and he had a limited recollection of her physique. Based on these deficiencies, we conclude Carrillo did not prove that trial counsel breached an essential duty in failing to strike a juror. Accordingly, the district court appropriately denied his application for postconviction relief.

AFFIRMED.