

**IN THE COURT OF APPEALS OF IOWA**

No. 7-354 / 05-1666  
Filed August 22, 2007

**CHARLES CRAWLEY,**  
Applicant-Appellant,

**vs.**

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

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Appeal from the Iowa District Court for Black Hawk County, John J. Bauercamper, Judge.

Charles Crawley appeals from the district court's denial of his application for postconviction relief. **AFFIRMED.**

Jeffrey L. Garland of Garland Law Office, Grinnell, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Kimberly A. Griffith, Assistant County Attorney, for appellee.

Considered by Mahan, P.J., and Eisenhauer and Baker, JJ.

**EISENHAUER, J.**

Charles Crawley appeals from the district court's denial of his application for postconviction relief. He contends his trial and appellate counsel were ineffective in several respects. We review his claims de novo. See *Ledezma v. State*, 626 N.W.2d 134, 141 (Iowa 2001). In order to prevail, Crawley must prove by a preponderance of the evidence deficient performance and prejudice. See *id.* at 142.

Crawley was convicted of first-degree robbery, first-degree theft, and possession of a firearm. The events leading to his conviction were summarized by this court in affirming the convictions on direct appeal:

On September 29, 1999, a man robbed a Kwik Star store in Waterloo at gunpoint. Later that day, the Waterloo police received an anonymous tip suggesting Charles Crawley was the robber. A photographic lineup that included a nine-month-old photo of Crawley was then shown to Julie Broten and Rhonda Myers, the two Kwik Star clerks who were at the store during the robbery. Neither of the clerks identified any of the six men in the lineup as the Kwik Star robber.

The police later learned Crawley had been an inmate at the Black Hawk County jail from December 1998 until thirteen days before the Kwik Star robbery. The store's surveillance videotape was shown to three deputies who had worked at the jail during that nine-month period. Each deputy, after separately viewing the videotape, identified Crawley as the robber in the videotape--only one of the deputies knew he was looking for Crawley. Their identifications led to Crawley's arrest on October 11, 1999.

Broten and Myers were then shown another photographic lineup that included a new photo of Crawley. Broten identified Crawley from the lineup as the Kwik Star robber and identified him again at trial. Myers was unable to identify Crawley from the lineup, but identified him at a February 2000 suppression hearing and at the April 2000 jury trial.

*State v. Crawley*, No. 00-0906 (Iowa Ct. App. July 31, 2001). Crawley brought three claims of ineffective assistance of counsel on direct appeal, none of which were preserved for a possible postconviction relief action. *Id.*

On July 4, 2002, Crawley filed a pro se application for postconviction relief, in which he claimed twenty-three grounds for relief. Following a hearing, the district court denied relief on all grounds, finding no prejudice could be established on any claims of ineffective assistance of counsel due to “overwhelming evidence of guilt.”

On appeal, Crawley contends his original appellate counsel was ineffective in failing to argue trial counsel was ineffective in failing to (1) present an alibi defense, (2) impeach prosecution witnesses, (3) challenge two of the prosecutor’s remarks made during closing argument, and (4) investigate and obtain videotape of the first lineup. By way of pro se brief, Crawley raises the following issues:

1. Trial Judge Stigler erred by reading the wrong trial information stating to the entire jury pool that Mr. Crawley is a felon.
2. Failing to object [sic] consolidation of possession of a firearm by a felon with Robbery and Theft.
3. Trial Judge Stigler erred by letting Deputies testify.
4. Prosecutor misconduct for misrepresenting the law in closing arguments.
5. Prosecutor misconduct for improper bolstering.
6. Trial Judge K.D. Briner erred in the suppression hearing by not suppressing Rhonda Myers identification.
7. Prosecutor committed misconduct by suppressing Exculpatory [sic] Evidence.
8. Failure to present alibi defense.

We first address Crawley’s claim that counsel was ineffective in failing to present an alibi defense. Specifically, Crawley argues that he gave his trial counsel the names of numerous witnesses who could have testified he was not at the convenience store at the time of the robbery. When trial counsel was unable to locate the witnesses, he contacted former counsel who informed him that he had located and interviewed one witness who he did not believe would

have assisted in Crawley's defense. Trial counsel testified that he then contacted some of the witnesses via telephone and they did not corroborate Crawley's claims. Trial counsel believed calling these witnesses would have been harmful to Crawley's defense. His decision to not call the witnesses was reasonable trial strategy and cannot be the basis for a claim of ineffective assistance of counsel. See *State v. Ondayog*, 722 N.W.2d 778, 786 (Iowa 2006).

Nor do we conclude trial counsel was ineffective in failing to impeach the testimony of the sheriff's deputies who identified him on the surveillance video. Crawley argues the fact he filed a 42 U.S.C. section 1983 claim in 1999 against the deputies that was later dismissed gave the officers motive to falsely identify him in the surveillance video. Trial counsel testified at the postconviction hearing that he did not want to impeach the deputies in that way because he thought so doing would turn the trial into a "circus" and would hurt Crawley more than help him. Even had counsel used the evidence to attempt to impeach the witnesses, Crawley cannot show how the result would have changed. Two of the three deputies did not know they were looking for Crawley when they were shown the video. Because he cannot show prejudice, the district court properly denied the claim.

Crawley next contends his appellate counsel was ineffective in failing to raise as an issue in his direct appeal trial counsel's failure to object to two statements the prosecutor made during closing argument. The prosecutor stated that all toy guns have red dots on them and therefore the gun used in the robbery was not a toy gun. Crawley argues this statement should have been objected to

because there was no evidence in the record to support the claim. However, there was testimony from the store clerks regarding the gun's appearance from which the jury could have found the gun used in the robbery was real. Accordingly, Crawley was not prejudiced by any failure of counsel to object to the statement.

Crawley also claims trial counsel should have objected to an alleged statement that people possess a constitutional right not to have guns stuck in their faces. Even if the prosecutor made such a statement, we are unable to find how it prejudiced Crawley in light of the evidence of his guilt.

Crawley also contends his appellate counsel was ineffective in failing to raise on direct appeal the issue of trial counsel's failure to investigate, discover, and obtain the prosecution's videotape of the first lineup presented to the store clerks. However, testimony at Crawley's trial summarized the contents of the alleged video. The evidence was merely cumulative and therefore any failure to discover and present it was not prejudicial. *Taylor v. State*, 352 N.W.2d 683, 685 (Iowa 1984).

Of the eight issues raised in Crawley's pro se brief, only two relate to questions of ineffective assistance of counsel. One of those issues, whether trial counsel erred in failing to present an alibi defense, we have already disposed of. The other issue is whether counsel erred in failing to object to the consolidation of the possession of a firearm by a felon charge with the robbery and theft charges. On direct appeal, this court determined that counsel was not ineffective in failing to file a motion to sever the possession charge from the robbery and theft charges, finding there was no reasonable probability that the outcome would

have been different even if such a motion had been filed. See *State v. Crawley*, No. 00-0906 (Iowa Ct. App. July 31, 2001). Accordingly, we deny Crawley's claim.

Crawley's remaining claims are not appropriately raised in a postconviction relief action. Crawley has the burden of showing sufficient reasons why any ground for relief asserted in a postconviction relief petition was not previously asserted on direct appeal. See *Bugley v. State*, 596 N.W.2d 893, 896 (Iowa 1999). Because Crawley has failed to show sufficient reason for not raising the remainder of his claims on direct appeal, we will not consider them in a postconviction relief action.

We affirm the district court's denial of Crawley's petition for postconviction relief.

**AFFIRMED.**