

IN THE COURT OF APPEALS OF IOWA

No. 7-535 / 06-0154
Filed August 22, 2007

QUINCY J. EDWARDS,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Black Hawk County, Thomas N. Bower, Judge.

Defendant appeals district court decision denying his petition for postconviction relief. **AFFIRMED.**

Dawn Wilson, Cedar Rapids, for appellant.

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

Considered by Huitink, P.J., and Vogel and Baker, JJ.

HUITINK, P.J.

Quincy Edwards appeals the district court decision denying his petition for postconviction relief. We affirm.

I. Background Facts and Prior Proceedings

Shortly after midnight on November 21, 1996, a man approached Thomas Mark Clark while Clark parked his van near his home in Waterloo. The man asked Clark for directions to Minnesota. After Clark gave him the directions, the man pulled out a gun and said “give me your billfold and I won’t shoot you.” Clark complied, and the man jumped in a car and sped away.

Clark reported the incident to the police. A week later, Clark saw Edwards and recognized him as the man who had held him at gunpoint. Clark called the police, and Edwards was eventually charged with first-degree robbery. A jury trial was held in April, 1997. Clark, the primary witness for the State, identified Edwards as the man who held him at gunpoint. Edwards did not challenge whether the incident occurred; instead, his defense focused on mistaken identity. At the end of trial, the jury received the following instruction for robbery in the first degree:

The State must prove all of the following elements of Robbery in the First Degree:

1. That on or about the 21st day of November, 1996, the defendant had the specific intent to commit a theft.
2. To carry out this intention or to assist in escaping from the scene, with or without the stolen property, the defendant:
 - (a) committed an assault upon Thomas Mark Clark or,
 - (b) threatened Thomas Mark Clark with or purposefully put Thomas Mark Clark in fear of immediate serious injury or,
 - (c) threatened to commit immediately the forcible felony of Willful Injury or Murder; to commit a theft.
3. The defendant was armed with a dangerous weapon, to wit: a firearm.

If the State has proved all of the elements, the defendant is guilty of Robbery in the First Degree. If the State has failed to prove any one of these elements, the defendant is not guilty of Robbery in the First Degree and you will then consider the charge of Robbery in the Second Degree as explained in Instruction No. 14.

The jury also received instructions defining the terms “serious injury,” “bodily injury,” and “assault,” but did not receive any instructions defining the terms “willful injury” or “murder.”

The jury found Edwards guilty of first-degree robbery. Edwards’s conviction was affirmed on appeal, but his ineffective assistance of counsel claim was preserved for postconviction relief. Edwards’s application and amended application for pro se relief alleged, among other things, that his trial counsel was ineffective because she failed to request a definition for willful injury or murder. After a full hearing, the district court denied the application for postconviction relief, finding his trial counsel had an appropriate strategic reason for not requesting instructions for either term.

Edwards appeals, claiming the trial court erred in finding his trial counsel was not ineffective for failing to request these definitional jury instructions. He also claims, for the first time, that “the trial court erred in failing to find the defendant’s constitutional rights were violated” because he was not present for the jury instruction hearing.

II. Standard of Review

Iowa appellate courts typically review postconviction relief proceedings on error. *Ledezma v. State*, 626 N.W.2d 134, 141 (Iowa 2001). However, where the applicant asserts claims of a constitutional nature, our review is de novo. *Id.*

III. Merits

To establish a claim of ineffective assistance of counsel, a defendant has the burden to prove (1) counsel failed in an essential duty and (2) prejudice resulted from counsel's failure. *State v. Buck*, 510 N.W.2d 850, 853 (Iowa 1994). "To prove the first prong, the defendant must overcome the presumption that counsel was competent." *Id.* To prove the second prong, the defendant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result would have been different." *State v. Artzer*, 609 N.W.2d 526, 531 (Iowa 2000). If the defendant is unable to prove either prong, the ineffective-assistance claim fails. *Bear v. State*, 417 N.W.2d 467, 472 (Iowa Ct. App. 1987).

Definitional Instructions. At the postconviction relief hearing, Edwards's trial counsel testified that she made a strategic decision not to instruct the jury on the definition of these two terms. She believed the jury would be more likely to convict him if they had the jury instruction than if they went on their own understanding of the term. She noted that this particular jury was not highly educated, and she did not want to further educate them because "unanimity is not a good thing on a jury for a defense attorney" and "if they all believed the same thing then he probably would have been convicted. It would have been better to have them not agreeing [on set definitions]."

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). We require more than that trial strategy backfired or that another attorney would have prepared and tried the case somewhat differently. *Bear*, 417 N.W.2d at 472. The real issue is whether counsel's actions were "justifiable." *Johnson v. State*, 495 N.W.2d 528, 533 (Iowa Ct. App. 1992).

As indicated in her postconviction testimony, the thrust of trial counsel's strategy was that Edwards was not the man who held Clark at gunpoint. If the jury rejected this defense, her only hope was that the jury would be unable to reach a unanimous decision because they were unable to agree on the appropriate meaning of some terms in the jury instructions. We cannot find that trial counsel's strategy was unreasonable, and we will not second guess this strategy on appeal. See *Fryer v. State*, 325 N.W.2d 400, 413 (Iowa 1992) ("When counsel makes a reasonable tactical decision, this court will not engage in second-guessing.") Therefore, we conclude trial counsel did not fail to perform an essential duty by not requesting jury instructions for these two terms.

Even if we assume, *arguendo*, that Edwards's trial counsel breached an essential duty by not requesting further definitional instructions, we conclude Edwards failed to prove resulting prejudice. Edwards claims he was prejudiced because the jury "could have reasonably found that Edwards did not commit an assault on Tom Clark or that he did not put Clark in fear of immediate serious injury, leaving only the undefined terms for the jury to work with."

Clark's testimony that his attacker pointed a gun at him and said "give me your billfold and I won't shoot you" was not disputed at trial. Even though the terms "murder" and "willful injury" were left undefined, we find no merit to

Edwards's claim that a reasonable juror could find this was not an assault or threat to commit serious injury, but was a threat to commit a willful injury or murder. We find no prejudice here.

Presence During Jury Instructions. Edwards did not allege in his original appeal, his petition for postconviction relief, or his amended petition for postconviction relief that his constitutional rights were violated or that his counsel was ineffective because he was not present during the jury instructions portion of his trial. Not surprisingly, the court did not address this argument in its order denying his application for postconviction relief, and Edwards did not file a post-ruling motion asking the court to address this issue. We will not address it for the first time on appeal. See *Meier v. Senecaut*, 641 N.W.2d 532, 540-41 (Iowa 2002).

In summary, we have reviewed all of the record and find no merit in Edwards's contentions and no prejudice to his right to a fair trial. We affirm the postconviction court's denial of postconviction relief.

AFFIRMED.