IN THE COURT OF APPEALS OF IOWA

No. 7-896 / 06-2036
Filed February 13, 2008

FREDERICK RICHARD WILLIAMS,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Johnson County, Robert E. Sosalla, Judge.

Frederick Williams appeals from the district court ruling denying his application for postconviction relief. **AFFIRMED.**

Jon M. Kinnamon, Cedar Rapids, for appellant.

Thomas J. Miller, Attorney General, Thomas Andrews and Bridget A. Chambers, Assistant Attorneys General, Janet M. Lyness, County Attorney, and Anne M. Lahey, Assistant County Attorney, for appellee.

Considered by Huitink, P.J., and Miller and Eisenhauer, JJ.

EISENHAUER, J.

Frederick Williams appeals from the district court ruling denying his application for postconviction relief. He contends the court erred because his trial counsel was 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, Williams must prove by a preponderance of the evidence deficient performance and prejudice. *See id.* at 142. Williams may establish prejudice by showing a reasonable probability that, but for counsel's errors, the result of the proceeding would have differed. *State v. Atwood,* 602 N.W.2d 775, 784 (Iowa 1999). We may dispose of his claims if he fails to prove either prong. *State v. Query,* 594 N.W.2d 438, 445 (Iowa Ct. App. 1999).

Williams was convicted of third-degree sexual abuse and indecent exposure on July 8, 2003. On direct appeal, this court summarized the facts leading to his conviction as follows:

> On December 3, 2002, Lexi, a student at the University of Iowa, had a meeting with a teaching assistant, Frederick Williams, at his office. Lexi asked Williams if she could do extra work in the class and stated she would do anything to bring up her grade. Williams stated he would allow Lexi to retake the quizzes in his class. He then stated that if they cheated on her grade, she would need to do something to prove herself to him. He started asking Lexi questions of a personal nature.
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> Eventually, Williams nudged Lexi to a back room, where he dropped his pants and underwear and began to masturbate. He asked Lexi to watch. Williams then handed Lexi a white handkerchief and placed her hand, holding the handkerchief, on his penis until he ejaculated. Lexi told Williams the incident was disgusting. She then returned to her dormitory, where she broke down crying and told two friends, Morgan and Jamie, what had happened.

State v. Williams, No. 03-1343 (Iowa Ct. App. Aug. 26, 2004). Williams raised

seven allegations of ineffective assistance of counsel and this court disposed of six on direct appeal, only preserving for postconviction relief the issue of whether counsel was ineffective in failing to object to alleged statements made by the prosecutor during closing arguments. *Id.* His convictions were affirmed. *Id.*

On October 5, 2005, Williams filed an application for postconvicton relief, which he amended on May 15, 2006. The district court held a hearing on the application, which it denied on November 15, 2006. Williams appeals, arguing his trial counsel was ineffective in four respects. Finding no merit to these claims, we affirm.

Williams first argues trial counsel was ineffective in failing to object to jury instruction number nine on the grounds that it omitted the definition of a "sex act" which violated his right against ex post facto application of the law. Although he made a slightly different argument on direct appeal, this court found Williams could not prove he was prejudiced by counsel's failure to object to the submission of the jury instruction. A postconviction relief applicant is barred from relitigating a claim which was finally adjudicated on direct appeal. *Armento v. Baughman*, 290 N.W.2d 11, 12 (Iowa 1980). Because we previously decided he cannot show prejudice, Williams's claim fails.

Williams next claims his trial counsel was ineffective in failing to object to the omission of the general intent element from the marshalling instruction for third-degree sexual abuse. In a separate instruction, the jury was informed that Williams was not guilty of third-degree sexual abuse if the State failed to prove either specific or general intent. Instructions are to be read as whole. *State v.*

Simpson, 528 N.W .2d 627, 632 (Iowa 1995). When a single jury instruction is challenged, it will be judged in context with all the other instructions. *State v. Stallings*, 541 N.W.2d 855, 857 (Iowa 1995). The trial court's jury instructions adequately state the law when read as a whole. *See State v. Uthe*, 542 N.W.2d 810, 815 (Iowa 1996) ("It is well settled that a trial court need not instruct in a particular way so long as the subject of the applicable law is correctly covered when all the instructions are read together."). We conclude Williams's trial counsel had no duty to object to the instructions.

Williams also claims his trial counsel was ineffective in failing to object to alleged prosecutorial misconduct and in failing to introduce favorable evidence. The alleged misconduct is asking two leading question regarding how bodily fluids are stored as evidence and why. The favorable evidence is a lab report showing no semen was found on items tested. Even assuming trial counsel was deficient in his performance, Williams is unable to show how he was prejudiced by any failure. Because other evidence, properly admitted, overwhelmingly proved Williams was guilty of third-degree sexual abuse and indecent exposure, there is no reasonable probability the verdicts would have been different if Williams's counsel had objected to the testimony at issue. Objecting to leading questions and the introduction of the lab report would not have affected the outcome of the trial.

Finally, Williams argues trial counsel was ineffective in failing to challenge the jury instruction on assault as not including the lesser included offense of battery. On direct appeal, this court determined that Williams failed to prove counsel was ineffective in objecting to the instruction because it did not include

all the possible means of committing assault. Accordingly, we will not revisit this issue. *Armento*, 290 N.W.2d at 12.

AFFIRMED.