

**IN THE COURT OF APPEALS OF IOWA**

No. 7-898 / 07-0026  
Filed December 28, 2007

**EDWARD RALPH ZIEGLER,**  
Applicant-Appellant,

**vs.**

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

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Appeal from the Iowa District Court for Mahaska County, Daniel P. Wilson,  
Judge.

Edward Ziegler appeals from the denial of his postconviction relief  
application. **AFFIRMED.**

Michael Carpenter, Ottumwa, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney  
General, and Rose Anne Mefford, County Attorney, for appellee State.

Considered by Sackett, C.J., and Vaitheswaran and Baker, JJ.

**BAKER, J.**

Edward Ziegler was convicted of conspiracy to manufacture methamphetamine, in violation of Iowa Code section 124.401(1)(c)(6) (2003). We affirmed his conviction in his direct appeal, rejecting claims that the trial court erred in denying his motion to suppress and that trial counsel was ineffective in failing to move for judgment of acquittal on grounds of the insufficiency of the conspiracy evidence. *State v. Ziegler*, No. 03-2037 (Iowa Ct. App. Feb. 24, 2005). Because we adequately set forth the facts of this case in that opinion, we do not further state them here.

On July 1, 2005, Ziegler filed an application for postconviction relief. Following a trial on the application, the court denied Ziegler's claims. Among other issues, the court rejected the following claims: (1) that counsel incompetently executed a theory of defense with regard to the conspiracy theory, and (2) that counsel provided ineffective assistance in failing to move to sever his trial with that of a co-defendant. Ziegler appeals from this ruling.

We typically review postconviction relief proceedings on error. *Ledezma v. State*, 626 N.W.2d 134, 141 (Iowa 2001). However, when the applicant asserts a claim of constitutional nature, such as ineffective assistance of counsel, we evaluate the totality of the circumstances in a de novo review. *Id.* A person claiming he or she received ineffective assistance of counsel must prove by the preponderance of the evidence that (1) counsel failed to perform an essential duty, and (2) prejudice resulted from the error. *State v. Doggett*, 687 N.W.2d 97, 100 (Iowa 2004).

We first address the claim counsel was ineffective in failing *to even consider* moving to sever. Ziegler makes clear and stresses that he believes counsel's ineffective assistance lies in his "failure to even consider" moving to sever, as opposed to simply counsel's failure to make the motion.

The general rule is that defendants who are indicted together are tried together. *State v. Belieu*, 288 N.W.2d 895, 897 (Iowa 1980). Severance may be warranted by any of the following factors:

(1) if admission of evidence in a joint trial would have been inadmissible and prejudicial if a defendant was tried alone, (2) if a joint trial prevents one defendant from presenting exculpatory testimony of a codefendant, (3) if consolidation will produce a trial of such complexity and length that the jury will be unable to effectively compartmentalize the evidence against each defendant, and (4) if defenses presented by different defendants conflict to the point of being irreconcilable and mutually exclusive.

*State v. Williams*, 525 N.W.2d 847, 849 (Iowa 1994).

We conclude the postconviction court properly determined Ziegler could not have suffered any prejudice by virtue of counsel's failure to consider moving to sever. Whether the issue is should Zeigler's counsel have made a motion to sever or should he have even considered it, the result is the same. Significantly, Ziegler presents no evidence or argument that would support any of these four factors warranting severance. We find the trial was not particularly complex, no exculpatory evidence was thereby excluded, and the co-defendants' defenses were not mutually exclusive or irreconcilable. There is no likelihood the trial court would have severed Ziegler's trial from that of his co-defendant's even if counsel had considered the issue.

We next address the claim trial counsel “incompetently defended Ziegler from the charges of conspiracy.” Ziegler admits this is a *general* claim of incompetent assistance, which he asserts deprived him of a fair trial. The postconviction court rejected this claim, concluding Ziegler’s underlying complaint is simply that counsel’s strategy “backfired.”

We agree with the postconviction court. Counsel executed a defense theory of attacking the State’s evidence in order to cast doubt on the elements of conspiracy. Counsel cross-examined the State’s witnesses with the goal of showing the arresting officers did not know what Ziegler and his accomplice were doing or thinking prior to their arrest.

“Improvident trial strategy, miscalculated tactics, mistake, carelessness or inexperience do not necessarily amount to ineffective counsel.” *State v. Aldape*, 307 N.W.2d 32, 42 (Iowa 1981). A defendant is not entitled to perfect representation, but rather only that which is within the range of normal competency. *State v. Artzer*, 609 N.W.2d 526, 531 (Iowa 2000). When complaining of the adequacy of an attorney’s representation, it is not enough simply to claim counsel should have done a better job. Ziegler must demonstrate the specific ways in which better performance would have changed the outcome. See *Dunbar v. State*, 515 N.W.2d 12, 15 (Iowa 1994). He falls far short of meeting this burden, and we therefore affirm the denial of his postconviction relief application.

**AFFIRMED.**