

IN THE COURT OF APPEALS OF IOWA

No. 8-264 / 06-1539

Filed April 30, 2008

THOMAS BOSTON JOHNSON,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Richard G. Blane II,
Judge.

Defendant seeks post-conviction relief claiming ineffective assistance of
counsel. **AFFIRMED.**

Shane Michael, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Robert P. Ewald, Assistant Attorney
General, John P. Sarcone, County Attorney, and Stephan K. Bayens, Assistant
County Attorney, for appellee.

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

EISENHAUER, J.

In June 2003 police executed a search warrant on Thomas Boston Johnson's apartment and he was subsequently charged with two drug offenses. In August 2003 Johnson's counsel, John Wellman, filed a motion to suppress the results of the search. After a hearing, Johnson's motion to suppress was denied in September 2003. Thereafter Johnson waived his right to a jury trial, was tried on the minutes of testimony and was found guilty. He was sentenced as a second offender.

In November 2003, Johnson appealed his conviction and sentence. In January 2005, the Iowa Supreme Court granted Johnson's attorney permission to withdraw and entered an order dismissing the appeal as frivolous.

In March 2005 Johnson filed a pro se application for postconviction relief. In June 2005 Johnson's counsel filed an amended application. Johnson alleged his trial attorney was ineffective for failing "to file a motion to suppress statements attributed to Defendant at the residence that Petitioner claims were made prior to Miranda warnings and after Defendant was in custody." After a hearing, the district court made detailed credibility findings and concluded Johnson's issue was meritless because he had never told his attorney of the claim and trial counsel "cannot be deemed ineffective for failing to pursue a meritless issue." Additionally, the court concluded Johnson failed to establish prejudice due to the "overwhelming evidence of his guilt."

After our de novo review of the record, we adopt the findings and conclusion of the district court and affirm.

AFFIRMED.