

IN THE COURT OF APPEALS OF IOWA

No. 8-619 / 08-0007
Filed September 17, 2008

EDGAR M. CARDONA,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Pottawattamie County, Timothy O'Grady, Judge.

A defendant appeals a district court ruling dismissing his application for postconviction relief, contending that trial counsel was ineffective in failing to ensure that he was receiving accurate translations by a qualified interpreter.

AFFIRMED.

Susan Stockdale, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney General, Matthew Wilbur, County Attorney, and Margaret Popp Reyes, Assistant County Attorney, for appellee State.

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

VAITHESWARAN, J.

Edgar Cardona was found guilty of first-degree robbery. Iowa Code §§ 711.1–.2 (2003). After his direct appeal from the judgment and sentence was dismissed as frivolous, Cardona sought postconviction relief. A native Spanish speaker, he argued that his trial attorney failed to ensure he received accurate translations from a qualified interpreter. The district court concluded that Cardona did not prove counsel’s breach of an essential duty or resulting prejudice. See *Strickland v. Washington*, 466 U.S. 668, 690–92, 104 S. Ct. 2052, 2066, 80 L. Ed. 2d 674, 695–96 (1984). We only find it necessary to address the breach of duty prong of Cardona’s ineffective-assistance claim. See *State v. Martin*, 704 N.W.2d 665, 669 (Iowa 2005) (citation omitted) (stating failure to prove either prong is fatal to ineffective assistance of counsel claim). Our review is de novo. *Id.* at 668.

I. Accuracy/Completeness of Translations

“When an intermediary, such as an interpreter, is the only means of communication for a defendant and his attorney, any deficient conduct on the part of the intermediary can be imputed to the attorney as ineffective assistance.” *Ledezma v. State*, 626 N.W.2d 134, 149 (Iowa 2001) (citing *Chacon v. Wood*, 36 F.3d 1459, 1464 (9th Cir. 1994)). Deficient conduct includes an interpreter’s inaccurate and incomplete translations of attorney-client communications. *Id.*

Cardona failed to prove that the interpreter’s translations were inaccurate or incomplete. Cardona’s attorney testified by deposition that Cardona did not indicate he was having problems understanding the interpretations. The attorney

also denied that the interpreter failed to interpret Cardona's statements as fully as it appeared Cardona was saying them. Finally, counsel testified:

[Cardona] seemed to perfectly understand what I was trying to say and seemed like he was making reasonable responses to what I was asking him when I -- you know, his responses to the interpreter. And the interpreter's replies seemed to be reasonable concerning what I was asking.

The interpreter, also testifying by deposition, did not recall that Cardona lacked an understanding of the translations. He did not recall any specific problems with the interpretation and did not remember anything out of the ordinary during the proceedings.

Cardona testified otherwise, stating that his interpreter did not always translate everything Cardona said; the interpreter sometimes laughed and talked to defense counsel without translating the substance of those conversations; and the interpreter's translations at trial did not always make sense. Cardona stated that he told his interpreter of his difficulties and the interpreter simply responded that the interpretation "was right." Cardona acknowledged, however, that he did not apprise the court or his attorney of his difficulties. While the record supports his contention that he was not sufficiently proficient in written or oral English to communicate his dissatisfaction in that language, he failed to convey his concerns by other means such as non-verbal cues.¹ In the absence of evidence that Cardona's attorney was aware of a translation problem, we conclude he did not breach an essential duty in failing to correct the problem. See *Thongvanh v.*

¹ An attorney asked him, "At any time did you raise an issue with-did you wave your hands? Did you somehow say, I have a question, I'm not understanding?" Cardona responded, "Yes, but I did tell the interpreter that he wasn't telling the attorney."

State, 494 N.W.2d 679, 683 (Iowa 1993) (noting applicant did not complain to his attorneys about quality of translation).

II. Interpreter Qualifications

Cardona also contends defense counsel was ineffective in failing to object to his interpreter's qualifications. He suggests the interpreter lacked "a minimum level of competence." He argues the standards to assess that minimum level of competence may be gleaned from court rules concededly adopted after Cardona's trial.

Even if those standards were relevant to Cardona's proceedings, Cardona has not explained which of them was not satisfied. Therefore, he has waived error on this issue. See Iowa R. App. P. 6.14(1)(c). Additionally, certain administrative rules that he claims were in effect at the time of his proceedings, and that he asserts "closely mirror" the current rules, state only that the Latino Affairs Division "shall prepare and continually update the listing of qualified and available interpreters for the legal setting." 433 Iowa Admin. Code r. 2.6(1) (2003).

We conclude Cardona did not prove that his trial attorney breached an essential duty by failing to challenge the interpreter's qualifications.

We affirm the dismissal of Cardona's postconviction relief application.

AFFIRMED.