

IN THE COURT OF APPEALS OF IOWA

No. 9-015 / 07-2159
Filed March 11, 2009

BLUE JAY KALAR,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

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

Postconviction relief applicant appeals from the ruling of the district court
denying relief. **AFFIRMED.**

Michael O. Carpenter of Webber, Gaumer & Emanuel, P.C., Ottumwa, for
appellant.

Thomas J. Miller, Attorney General, Bridget A. Chambers, Assistant
Attorney General, and Mark Tremmel, County Attorney, for appellee State.

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

MAHAN, P.J.

Blue Jay Kalar was convicted of four counts of second-degree sexual abuse for abusing his girlfriend's six-year-old daughter. In this postconviction relief action, Kalar contends trial counsel rendered prejudicial ineffective assistance in failing to seek the aid of an expert.

Because a claim of ineffective assistance of counsel implicates constitutional rights, our review of those claims is de novo. *State v. Carter*, 602 N.W.2d 818, 820 (Iowa 1999).

We review ineffective-assistance-of-counsel claims de novo. To establish ineffective assistance of counsel, a claimant must demonstrate by a preponderance of the evidence (1) his trial counsel failed to perform an essential duty, and (2) this failure resulted in prejudice. We may affirm the district court's rejection of an ineffective-assistance-of-counsel claim if either element is lacking. To establish prejudice, a claimant must demonstrate there is a reasonable probability that, but for the counsel's unprofessional errors, the result of the proceeding would have been different. The probability of a different result must be sufficient to undermine confidence in the outcome.

Anfinson v. State, 758 N.W.2d 496, 499 (Iowa 2008) (internal quotations and citations omitted).

The petitioner must overcome a strong presumption of counsel's competence, and a postconviction applicant has the burden to prove by a preponderance of the evidence that counsel was ineffective. *Osborn v. State*, 573 N.W.2d 917, 922 (Iowa 1998). Absent evidence to the contrary, we assume the attorney's conduct falls within the wide range of reasonable professional assistance. *State v. Hepperle*, 530 N.W.2d 735, 739 (Iowa 1995). It is not enough for a postconviction applicant to assert that defense counsel should have done a better job. *Dunbar v. State*, 515 N.W.2d 12, 15 (Iowa 1994). "The

applicant must state the specific ways in which counsel's performance was inadequate and identify how competent representation probably would have changed the outcome." *Id.*

Kalar asserts defense counsel's performance was deficient for failing to seek the assistance of a child psychologist. He argues counsel should have sought the assistance of a person with "expertise in the psychology and development of children" who could "explain to the jury the potential pitfalls of relying on the literal statements of a child." Kalar does not, however, set forth what he believes such an expert could have found, or how it would have differed from the testimony presented by the State's expert.

Kalar contends the case against him "turned on the accusatory statements" of the victim and "only scant other evidence of guilt" was presented by the State. To the contrary, in his prior appeal, this court found "overwhelming evidence supporting defendant's guilt." *State v. Kalar*, No. 05-0298 (Iowa Ct. App. May 10, 2006).

In any event, Kalar has not stated how the assistance of a defense expert would have changed the outcome of the case. See *Rivers v. State*, 615 N.W.2d 688, 690 (Iowa 2000). He states that "if the expert returned only unfavorable indications, Kalar would simply decline to have the expert testify." An applicant must "propose what an investigation would have revealed or how anything discovered would have affected the result obtained below." *Dunbar*, 515 N.W.2d at 15. Kalar has not demonstrated there is a reasonable probability that had he obtained the assistance of a child psychologist, the result of the proceeding would have been different.

The district court correctly rejected this claim of ineffective assistance. We affirm the decision of the district court denying Kalar's petition for postconviction relief.

AFFIRMED.