

IN THE COURT OF APPEALS OF IOWA

No. 9-147 / 08-0430
Filed May 6, 2009

DANIEL KING,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Linn County, Nancy A. Baumgartner, Judge.

Daniel King appeals an action denying him postconviction relief.

AFFIRMED.

Wallace Taylor, Cedar Rapids, for appellant.

Thomas J. Miller, Attorney General, Bridget Chambers, Assistant Attorney General, Harold Denton, County Attorney, and Todd D. Tripp, Assistant County Attorney, for appellee State.

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

VOGEL, P.J.

Daniel King appeals from the district court's order denying him postconviction relief following his conviction for sexual abuse in the third degree under Iowa Code section 709.4 (2005).¹ He claims that trial counsel was ineffective for failing to (1) adequately investigate and challenge the DNA evidence; (2) present additional witnesses at trial; and (3) present evidence of the victim's alleged motives to falsely accuse King. We review ineffective-assistance-of-counsel claims de novo. *State v. Bearnse*, 748 N.W.2d 211, 214 (Iowa 2008).

To establish ineffective assistance of counsel, a claimant must demonstrate by a preponderance of the evidence that "(1) his trial counsel failed to perform an essential duty, and (2) this failure resulted in prejudice." *State v. Straw*, 709 N.W.2d 128, 133 (Iowa 2006) (quoting *Strickland v. Washington*, 466 U.S. 668, 687-88, 104 S. Ct. 2052, 2065, 80 L. Ed. 2d 674, 693 (1984)). We may affirm the district court's rejection of an ineffective-assistance-of-counsel claim if either element is lacking. *State v. Greene*, 592 N.W.2d 24, 29 (Iowa 1999).

The district court found that King did not establish by a preponderance of the evidence that his trial counsel failed to perform an essential duty which caused him prejudice. First, trial counsel acknowledged he lacked expertise in the area of DNA, and therefore hired and relied on a well-qualified expert. While

¹ King was convicted under Iowa Code section 709.4(2)(c)(4) (a person who is four or more years older performs a sex act with another person who is fourteen or fifteen years of age) and sentenced to an indeterminate term not to exceed twenty-five years, pursuant to Iowa Code section 901A.2(3).

there may have been theory for the expert to challenge the reliability of the DNA evidence, such a theory was admittedly not known to defense counsel, and therefore could not be attributed to his ineffectiveness. *Ledezma v. State*, 626 N.W.2d 134, 143 (Iowa 2001) (stating that counsel’s strategic decisions must be based on reasonable investigation under the circumstances in order to withstand an ineffectiveness claim).²

Next, we find that trial counsel was not ineffective for failing to call additional witnesses, as King did not show that a different outcome would have resulted. *Taylor v. State*, 352 N.W.2d 683, 687 (Iowa 1984) (reasoning that a petitioner must show that there is a reasonable probability that the outcome would have been different if his counsel had presented the testimony of additional witnesses). Finally, counsel was not ineffective for failing to present evidence of false motives. We agree with the district court that regardless of the victim’s motives, “the sole issue was whether King and the victim had sex,” and there is substantial physical evidence to show that this occurred, thus negating false claims motives. The district court set forth a very thorough recitation of the relevant facts and applied the appropriate law; thus we affirm pursuant to Iowa Court Rule 21.29 (1)(d) and (e).

AFFIRMED.

² In a motion for new trial, this claim was presented to, but rejected, by the district court.