

**United States Court of Appeals  
FOR THE EIGHTH CIRCUIT**

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No. 00-3680

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Thomas Mark Zinna,

Appellant,

v.

Dave Dormire, Superintendent,  
Jefferson City Correctional Center,

Appellee.

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Appeal from the United States  
District Court for the Eastern  
District of Missouri.

[UNPUBLISHED]

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Submitted: April 10, 2001

Filed: April 18, 2001

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Before BOWMAN and FAGG, Circuit Judges, and PIERSOL,\* District Judge.

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PER CURIAM.

Thomas Mark Zinna was convicted of second-degree burglary, stealing firearms, and second-degree property damage in Missouri state court. He was sentenced as a persistent offender to imprisonment for forty years and six months. After exhausting

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\*The Honorable Lawrence L. Piersol, United States District Judge for the District of South Dakota, sitting by designation.

his state court remedies, Zinna filed a federal habeas petition. The district court\*\* denied relief, but granted a certificate of appealability on one claim: whether trial counsel was ineffective in failing to call coperpetrator Billy Long as a witness. During a state postconviction hearing, Long testified he would have told the jury Zinna was not involved in the robbery because he was sleeping at a motel at the time. At the same hearing, Zinna's trial attorney testified that several days before trial, Long told him, "I am going to hurt you. I am not going to help you." The state postconviction court found the attorney discussed the possibility of Long testifying with Zinna and he chose not to call Long as a witness as a matter of trial strategy. The court also heard Long's testimony and found he lacked credibility.

On appeal, Zinna concedes the record supports the attorney's testimony at the postconviction proceeding, but argues Long's testimony there rendered counsel's decision not to call Long at trial unreasonable. We conclude the state courts did not unreasonably apply federal law in denying Zinna postconviction relief because the performance of Zinna's attorney was not deficient. See 28 U.S.C. § 2554(d)(1); Strickland v. Washington, 466 U.S. 668, 689-90 (1984). Besides, Zinna cannot establish the allegedly deficient performance prejudiced him, given the overwhelming evidence of his guilt. See id. at 694-95. We thus affirm the district court's denial of Zinna's habeas petition.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

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\*\*The Honorable Jean C. Hamilton, United States District Judge for the Eastern District of Missouri.