IN THE SUPREME COURT OF IOWA
Supreme Court No. 19-1837

ANNA SOTHMAN,
Applicant–Appellant,

vs.

STATE OF IOWA,
Respondent–Appellee.

APPEAL FROM THE IOWA DISTRICT COURT
FOR MARION COUNTY
THE HONORABLE MICHAEL K. JACOBSEN, JUDGE

APPELLEE'S BRIEF

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ROUTING STATEMENT

This case can be decided based on existing legal principles. Transfer to the Court of Appeals would be appropriate. Iowa R. App. P. 6.1101(3).

STATEMENT OF THE CASE

Nature of the Case

The applicant/defendant, Anna Sothman, appeals the denial of postconviction relief. Her application was denied following a bench trial in the Marion County District Court, the Hon. Michael Jacobsen presiding.

Course of Proceedings

The State accepts the defendant's course of proceedings as adequate and essentially correct. Iowa R. App. P. 6.903(3).

Facts

The defendant left her 14-month old daughter in the bath tub unattended and the child drowned. PCR Ruling, p. 1; App. 55.[1] The defendant initially told police that she left her daughter alone for only two or three minutes, but "[t]he evidence and potential witness testimony was inconsistent with this short of [a] time frame." PCR

[1] The PCR Ruling does not include text pagination; references here correspond to .PDF pagination.

Ruling, p. 2; App. 56. The defendant eventually pled guilty to child endangerment resulting in death and admitted that the time she left her daughter alone in the bath tub was more like 30 minutes. PCR Ruling, p. 2; App. 56.

During the criminal prosecution, the defendant was represented by Wesley Chaplin, an experienced criminal defense attorney. PCR Ruling, p. 2; App. 56. Chaplin met with the defendant "shortly" after the crime and represented her in extensive plea negotiations with the Marion County Attorney. PCR Ruling, p. 2; App. 56.

The county attorney chose not to pursue other charges in exchange for the defendant's plea to child endangerment resulting in death. PCR Ruling, p. 3; App. 57. The county attorney also agreed to write a letter to the Board of Parole favorable to the defendant. PCR Ruling, p. 5; App. 59.

The plea was taken in chambers before the Hon. Martha Mertz. PCR Ruling, p. 5; App. 59. Neither party objected to the hearing location as non-public. *See generally* 8/5/2016 plea hrg tr. Chaplin and the plea court correctly informed the defendant that there was no mandatory minimum and she would be immediately eligible for

parole. PCR Ruling, pp. 3–4; App. 57–58.[2] Specifically regarding parole, the judge told the defendant "it is up to the parole board to determine when and if you will be eligible for parole. They make those decisions, the Court does not." PCR Ruling, p. 4; App. 58 (brackets and alteration omitted).

After accepting the defendant's plea, proceedings returned to the courtroom and the defendant was later sentenced to a fifty-year indeterminate sentence. PCR Ruling, p. 6; App. 60. She was then transferred to the Mitchellville women's prison. PCR Ruling, p. 6; App. 60.

During initial meetings at the prison, the defendant's counselor said the prison would not support the defendant's parole at this time and the counselor suggested the defendant should expect that parole be denied for the first several years. PCR Ruling, p. 6; App. 60. As expected, the Board denied the defendant parole in 2017 and 2018. PCR Ruling, p. 6; App. 60.

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[2] At first, the county attorney also agreed that the defendant could seek reconsideration of this sentence, after she was initially sentenced. PCR Ruling, pp. 3–5; App. 57–59. This was legally erroneous, as child endangerment resulting in death is a forcible felony. PCR Ruling, pp. 3–5; App. 57–59. Although discussed in the proceedings below, the defendant has abandoned any claim about reconsideration on appeal.

At the PCR trial, the defendant testified that two of her primary motivations in accepting the plea deal were that (1) she thought it was her best chance at quickly resolving the matter and hopefully being released via parole and (2) she wanted to avoid putting her other children through a trial and separation from their father and a guilty plea would result in less trauma and faster reunification for the children. PCR Ruling, p. 7; App. 61. She also acknowledged, at least in hindsight, that pleading guilty allowed her to avoid listening to the testimony of the medical examiner and viewing crime-scene photographs at trial. PCR Ruling, p. 7; App. 61.

ARGUMENT

I. The defendant was correctly informed that she was immediately "eligible" for parole. Her unrealistic expectation that she would be quickly released, despite letting her child drown in the bath tub, is no basis for relief.

Preservation of Error

The State does not contest error preservation on the knowing-and-voluntary plea issue.

Standard of Review

Review is de novo. *State v. Wills*, 696 N.W.2d 20, 22 (Iowa 2005).

Merits

The defendant first argues counsel was ineffective, and her plea was unknowing or involuntary, because she was told that she was immediately "eligible" for parole and now claims that she understood this to mean she would be paroled quickly. Defendant's Proof Br. at 29. The PCR court correctly denied this claim, recognizing that the defendant was adequately informed throughout the process that the sole arbiter of parole determinations is the Board of Parole. PCR Ruling, p. 11–12; App. 65–66. Specifically, the defendant was correctly told that she was immediately "eligible" for parole, but that was no guarantee of immediate release. PCR Ruling, pp. 11–12; App. 65–66. During the plea colloquy, the judge similarly reminded the defendant that "it is up to the parole board to determine when and if you will be eligible for parole. They make those decisions, the Court does not." PCR Ruling, p. 4; App. 58 (brackets and alteration omitted). There was no breach of duty, as the defendant knew there were "no guarantees" on her "parole request" and that "[t]he ultimate decision [wa]s out of [her] hands." PCR Ruling, p. 11; App. 65.

But even if the defendant could prove breach, she has failed to prove prejudice. The PCR court correctly found the defendant "never

testified … that she would have insisted on taking the case to trial." PCR Ruling, p. 12; App. 66. This is fatal to her claim on the prejudice prong. *See State v. Straw*, 709 N.W.2d 128, 136 (Iowa 2006) (citing *Hill v. Lockhart*, 474 U.S. 52, 59 (1985)). And even if the defendant had testified that she would have demanded a trial, the available evidence cuts against the claim: the defendant admitted the State's evidence against her was strong and her "focus at the time leading up to the guilty plea revolved around avoiding publicity, quick resolution to the case, and return of her children to their home with their father." PCR Ruling, p. 12; App. 66; PCR tr. p. 46, lines 2–7. A guilty plea furthered the defendant's goals; a trial did not.

Although it is a bit collateral to the thrust of the defendant's complaints, the defendant's appellate brief casts aspersions on defense counsel for informing the defendant that the "average time served for this type of offense was 4.6 years." Defendant's Proof Br. at 36. In a footnote, the defendant's appellate brief cites different publications and seems to suggest that defense counsel had no factual basis for the 4.6 years relayed to the defendant. Defendant's Proof Br. at 37 n.2. Contrary to the defendant's claims, defense counsel's assertion was correct and the source remains publicly available.

During the 2016 legislative session, the General Assembly amended the penalty for certain alternatives of child endangerment resulting in death. *See* 2016 Iowa Acts, ch. 1104 (86th Gen. Assemb). Although the legislation did not take effect until after the crime at issue here, a fiscal note dated April 18, 2016, specifies that "the average length of stay for a person convicted of child endangerment resulting in the death of a child or minor under current law is 55.4 months, or 4.6 years." Holly Lyons, Legislative Services Agency, Fiscal Note — House File 2064 (April 18, 2016), *available at* https://www.legis.iowa.gov/docs/publications/FN/782436.pdf. In all likelihood, this was the basis of defense counsel's advice to the defendant. *See* PCR tr. p. 79, line 23 — p. 80, line 15 (defense counsel testifying that the Legislature had recently amended the statute and he "located a Legislative Services Study"). LSA is a reputable source and the defendant's complaints about advice regarding the average sentence are misplaced.

At core, the defendant's complaints are less about her attorney's conduct than they are about her unrealistic expectation that she deserved immediate parole after letting her child drown in the bath tub, as well as her dislike of certain rules or operating procedures

employed by the Board of Parole and Department of Corrections. *See* Defendant's Proof Br. at 29–39. Unrealistic expectations are no basis for legal relief. And a challenge to agency procedures is not properly before the Court. This ends the inquiry.

II. Controlling precedent requires proof of prejudice to obtain relief on an unpreserved public-trial claim. The defendant cannot prove she would have insisted on a trial rather than plead guilty, if she had pled in public.

Preservation of Error

The State does not contest error preservation on the public-trial issue.

Standard of Review

Review is de novo. *State v. Wills*, 696 N.W.2d 20, 22 (Iowa 2005).

Merits

The second claim in the defendant's brief is a complaint that the plea hearing was held in Judge Mertz's chambers, rather than in the public courtroom. Defendant's Proof Br. at 40–65. It is undisputed that no one—not the State, the defense, or the court—raised any objection or concern about the location of the plea at the time. The claim is solely raised as an allegation of ineffective-assistance. Defendant's Proof Br. at 40–65.

A threshold issue in resolving this claim turns on the distinction between preserved trial error and unpreserved allegations of ineffective assistance. "These differences justify a different standard for evaluating a structural error depending on whether it is raised on direct review or raised instead in a claim alleging ineffective assistance of counsel." *Weaver v. Massachusetts*, 137 S. Ct. 1899, 1912 (2017).

In this PCR appeal, the defendant wants the benefit of a preserved-trial-error prejudice standard, basically claiming that a structural error warrants vacating her plea. *See* Defendant's Proof Br. at 52–63. But the defendant did not preserve error on this claim in the criminal trial proceedings; instead she stood mute while the plea was taken in chambers, rather than in public. Had she objected, the error could have been easily remedied by having the parties walk back into the district courtroom. *See Weaver*, 137 S. Ct. at 1912.

The defendant instead waited to lodge this objection until postconviction relief proceedings, in which she asserts her trial lawyer was ineffective. Raising the claim at this late juncture "deprive[s the trial court] of the chance to cure the violation either by opening the courtroom or explaining the reasons for closure." *Weaver*, 137 S. Ct.

at 1912. Because the error can no longer be easily corrected, "the costs and uncertainties of a new trial are greater" and the State's "finality interest is more at risk." *Weaver*, 137 S. Ct. 1899 at 1912. As a result, the defendant is not entitled to the benefit of preserved-trial-error prejudice, and instead must prove prejudice. *Id.*

Weaver undoubtedly controls resolution of this question under federal law. While the defendant cites a dissent in his brief, this Court lacks authority to depart from the majority holdings of the United States Supreme Court. Defendant's Proof Br. at 56–57. There is no meaningful distinction between the procedural posture of this case and *Weaver*, despite the defendant's undeveloped assertion to the contrary: the distinctions between standards of review, discussed in *Weaver*, all apply to claims raised for the first time as allegations of ineffective assistance in a postconviction action, for the reasons set forth above. *See* 137 S. Ct. 1899 at 1912. Moreover, as the defendant concedes, Iowa courts have already rejected any attempt to evade *Weaver*, applying that case specifically to ineffective-assistance claims. Defendant's Proof Br. at 59 (citing *Goods v. State*, No. 18-1986, 2020 WL 1548483, at *4 (Iowa Ct. App. Apr. 1, 2020) and *State v. Levy*, No. 18-0511, 2020 WL 567696 (Iowa Ct. App. Feb. 2, 2020)).

With a claim foreclosed by federal precedent, the defendant shifts gears to the Iowa Constitution. Defendant's Proof Br. at 59–63. This Court need look no further than the defendant's brief: "It appears no other states, in consideration of its own state constitution, have declined to follow *Weaver* in a denial of a public trial where error was not preserved." Defendant's Proof Br. at 61. The defendant offers little to no analysis that would justify a groundbreaking departure from every other court to consider the question. Defendant's Proof Br. at 61–63. Her only real assertion is that she believes requiring her to prove prejudice "would essentially provide no remedy for violating this important right." Defendant's Proof Br. at 62. But that isn't true: the defendant could have objected at the time of the plea, she could have objected in a motion in arrest of judgment, and she could have objected on direct appeal, had she taken one. Her failure to object until this late stage is why *Weaver* controls and the defendant must prove prejudice to obtain relief. *See Weaver*, 137 S. Ct. 1899 at 1912.

There is no good reason for the Iowa Constitution to differ from *Weaver* and every other court to consider the question. The defendant offers no compelling argument regarding her development

of the claim below, constitutional text, constitutional history, decisions of sister states, or practical consequences that would warrant a stark departure from settled law. Absent any argument grounded in neutral interpretive principles—rather than result-oriented self-interest—the defendant's underdeveloped claim has not earned serious consideration. *Cf. State v. Gaskins*, 866 N.W.2d at 1, 50–56 (Waterman, J., dissenting) (quoting the State's brief and explaining the importance of neutral interpretive principles and avoiding result-oriented state-constitution decisions).

Having established the defendant must prove prejudice, controlling case law dictates that she must specifically prove that, "but for counsel's errors, [s]he would not have pleaded guilty and would have insisted on going to trial." *State v. Straw*, 709 N.W.2d 128, 136 (Iowa 2006) (citing *Hill v. Lockhart*, 474 U.S. 52, 59 (1985)). On this point, the PCR court found the defendant "has not proven that a public hearing on the record would have had a reasonably different result, that it was so serious as to render the sentencing hearing fundamentally unfair, nor … that she would have insisted on going to trial." PCR Ruling, p. 14; App. 68. The record supports that conclusion. This bars relief. *Straw*, 709 N.W.2d at 136.

At one point, the defendant's appellate brief vaguely asserts that she "would not have continued with the guilty plea" if the plea had been in public, Defendant's Proof Br. at 39, but the record does not actually establish that fact. The only arguable evidence the defendant's brief marshals in support of this claim is the defendant's self-serving speculation that perhaps her father would have said something to advise her not to continue with the plea, had the plea not happened in chambers. Defendant's Proof Br. at 41–42. This falls far short of the defendant's burden to prove necessary facts by a preponderance of the evidence or prove a reasonable probability that she would have demanded a trial. *See Straw*, 709 N.W.2d at 136. She is not entitled to relief.

CONCLUSION

This Court should affirm the denial of postconviction relief.

REQUEST FOR NONORAL SUBMISSION

This case can be decided on the briefs.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because:

- This brief has been prepared in a proportionally spaced typeface using Georgia in size 14 and contains **2,571** words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

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