

IN THE COURT OF APPEALS OF IOWA

No. 23-0206
Filed March 6, 2024

TRACY ADAM THOMPSON,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Black Hawk County,
Richard D. Stochl, Judge.

Tracy Adam Thompson appeals the denial of his application for
postconviction relief. **AFFIRMED.**

Denise M. Gonyea of McKelvie Law Office, Grinnell, for appellant.

Brenna Bird, Attorney General, and Kyle Hanson (until withdrawal) and
Benjamin Parrott, Assistant Attorneys General, for appellee State.

Considered by Tabor, P.J., and Badding and Chicchelly, JJ.

CHICCHELLY, Judge.

Tracy Adam Thompson appeals the denial of his application for postconviction relief (PCR). He contends he is entitled to PCR because his trial counsel provided ineffective assistance by allowing him to plead guilty to possession of methamphetamine without full knowledge of the consequences. Because Thompson has not shown he received ineffective assistance from his trial counsel, we affirm the denial of PCR.

Thompson pled guilty to a charge of possession of methamphetamine, third or subsequent offense,¹ after reaching a plea agreement with the State at the close of evidence in his trial but before the jury began deliberation. The State agreed that it would recommend a five-year prison sentence and Thompson could request probation. The parties also agreed that Thompson's sentences for six unrelated misdemeanor convictions would run concurrent with the felony sentence. After accepting Thompson's guilty plea, the court imposed the five-year sentence.²

Thompson applied for PCR. He claimed the trial court imposed an illegal sentence by disregarding the plea agreement. He also claimed his plea was defective because he was not informed of the consequences through ineffective assistance of his trial counsel. The PCR court denied his application. Thompson

¹ The charge is a class "D" felony.

² Thompson moved in arrest of judgment alleging "he was not fully advised by his attorney and [that] his attorney made various procedural errors throughout her representation of him, during the trial and during the plea process," but he withdrew the motion before sentencing. The supreme court dismissed his direct appeal from his conviction under Iowa Code sections 814.6(1)(a)(3) (stating a defendant has no right to appeal a conviction following a guilty plea without good cause) and 814.7 (Supp. 2021) (stating ineffective-assistance-of-counsel claims cannot be decided on direct appeal).

appeals, claiming he is entitled to PCR because he was prejudiced by his trial counsel's failure to explain the consequences of his guilty plea.

We review PCR proceedings for correction of errors at law. *Linn v. State*, 929 N.W.2d 717, 729 (Iowa 2019). We review claims of ineffective assistance of counsel de novo. *Goode v. State*, 920 N.W.2d 520, 523 (Iowa 2018). To succeed on a claim of ineffective assistance of counsel, a PCR applicant must show (1) trial counsel failed to perform an essential duty and (2) that failure prejudiced the applicant. See *Lado v. State*, 804 N.W.2d 248, 251 (Iowa 2011). A breach of duty occurs when "counsel's representation [falls] below an objective standard of reasonableness." *Id.* (alteration in original) (quoting *Strickland v. Washington*, 466 U.S. 668, 688 (1984)). Prejudice occurs if there is "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." See *id.* (quoting *Strickland*, 466 U.S. at 694). In the context of a guilty plea, prejudice occurs if "there is a reasonable probability that, but for counsel's errors, [the applicant] would not have pleaded guilty and would have insisted on going to trial." *Doss v. State*, 961 N.W.2d 701, 709 (Iowa 2021) (citation omitted). We may affirm if the applicant fails to prove either a breach of duty or prejudice. See *Lado*, 804 N.W.2d at 251.

Before addressing the merits of Thompson's ineffective-assistance claim, we must determine its basis. But the claim is difficult to parse. Thompson struggled to explain it at the PCR trial, but his testimony focused on a short exchange his attorney had with the court at the plea hearing. During that exchange, his attorney asked that the court "bind itself" to the plea agreement. After noting that the plea agreement allowed it to choose between probation and

incarceration, the court said it would follow the agreement regarding concurrent sentencing. Trial counsel raised Thompson's concern about the exchange at the sentencing hearing, telling the court that Thompson wanted to challenge his plea based on it.³

[DEFENSE COUNSEL]: . . . I'm not sure what he means by binding, but he did not know that there was a binding process which existed until after he pled guilty. The only binding I know is if you—we agree that you be bound to the plea that we could argue for probation, that all his outstanding cases which he pled guilty to would run concurrent to this case and the State was free to argue for prison.

Then I leaned over and I whispered binding something. He did not understand it. And then I asked the judge, "Would you like to bind something?" which he also did not understand.

THE DEFENDANT: No, the judge, the judge asked you.

[DEFENSE COUNSEL]: If I would like to bind something. So he's saying he does not understand any of that. He is stating on the record here today that it would have affected his decision to take—to take a plea, that he would not have pled guilty, that he did not agree with binding concurrent sentences, which if he wants his sentence—I don't know if he's saying he was agreeing that the State can argue for all the sentences to run consecutively, I'm not understanding, and he was not given full disclosure to the plea he was agreeing to and, therefore, he thinks there was ineffective assistance of counsel and he wants to file a motion in arrest of judgment.

Thompson's PCR counsel also struggled with understanding the nature of Thompson's complaint. Thompson tried to explain it in his own words in his PCR testimony:

So my issue here is, you know, when I pled—agreed to plead guilty and I pled guilty before [the] judge, I didn't know there was a binding process and catch to this. Nobody explained it to me or how it worked or, one, that it even existed. So at the time when I pled voluntarily and intelligently guilty to this, I mean, I didn't knowingly know all the details to what I was pleading to because I did not know there was such thing as a binding thing to it. . . .

³ Thompson's attorney noted that Thompson wanted to file another motion in arrest of judgment based on the "binding" claim, but the deadline had passed.

Q. . . . [L]et me stop you there and ask you a few questions related to that, okay, Mr. Thompson. And so when—when you're talking about a binding process, you mean that—a process by which you could bind the court to the plea agreement at the time you're entering your plea; is that right? A. Yes.

Q. And that the court would then be bound by that at the time of sentencing; is that correct? A. Correct.

Q. . . . [I]s it your testimony that the plea agreement would have been pleading to this class "D" felony, and the other underlying probation matters or cases you had open would be run concurrent to this class "D" felony? A. To my understanding that's what she was binding to the court, yes.

Q. All right. And so at the time of your sentencing, is it your belief that [the sentencing court] did not run those concurrent? A. Right. Yeah, and later on at sentencing he also did not bind—I mean run anything concurrent, correct, and I didn't—I originally didn't want it to because I didn't want to come to prison on multiple charges when all my smaller charges were being pled out to time served. So I didn't want to go to prison with this whole rap sheet of charges making me be this bad person when those are all took care of.

Now if I go to prison, I'm only going to prison on . . . one charge, five-year sentence. That's it, not multiple charges all ran with it. So I can agree with [my trial attorney] on that even afterwards, but I didn't know at what point I would object to her, you know, binding or anything because I didn't know . . . what the binding process was until after I had already pled. So, you know—so I said, I mean, there's a couple things I didn't agree with that—

. . . .

Q. Mr. Thompson, . . . what is it that you did not agree with or . . . that did not follow with your plea agreement? A. All right. I don't feel that I intelligently took—voluntarily, knowingly took a plea that I didn't—I don't think I knew all the boundary—I didn't know what I was pleading in to. . . . I knew what part of the plea was, but I didn't know the whole plea.

I didn't know—I wasn't aware of a binding—I wasn't aware of that. I wouldn't have agreed. Even though at sentencing—at the later date of sentencing, she didn't—[my trial attorney] didn't even ask the judge to honor the binding, and the judge didn't . . . run the charges concurrent. But still it's the law, and there's still procedures that—I mean, I suppose that must happen according to the law. You know what I mean.

After acknowledging that he served his other sentences concurrent with his five-year sentence, Thompson tried to explain how counsel's "breach" prejudiced him:

I didn't agree—I mean, I wouldn't have wanted the—I guess, it's hard for me to—I saw inside out of how it was supposed to go. I mean, sort of, like, I didn't— All right. So when I'm taking care of my misdemeanor charges, I'm thinking those are going away. Those ain't going to be attached to my felony in no type of way.

I thought that it would have to be on the other side of the felony case would have to—the judge would have to—would have to—under sentence—at sentencing, it would have to on the record announce that I would be—that those would be ran concurrent into it. Do you know what I'm saying? That those would be run concurrent into that, but he didn't—

Q. All right. A. —I mean, the judge didn't—at the time the judge didn't run anything concurrent to it. It was like the . . . attorneys for the smaller charges were running it into that, into the bigger charge.

The PCR court interjected, asking Thompson if he understood his sentences ran concurrently and he would not serve any time beyond his five-year sentence. Thompson replied that he understood but was troubled by his attorney waiting “until after [he] pled guilty to tell [him] about the binding.”⁴

I mean, would have I agreed to it [] if I had known that there was a binding before or that [my attorney] was going to attach a binding to it? . . . I would've probably disagreed with her. And I did file a motion in arrest of judgment, and she took it home, the menu or whatever. I didn't even have it. So, I mean, there was a lot of things I didn't agree with her and how she handled my case, you know.

Thompson's testimony then resumed with his PCR counsel asking him “to explain to the court why you would not have agreed to this plea agreement based off the binding process.” He answered,

Because . . . at the time, I didn't want the charges to be run with it. . . . [I]f I went to prison, I wanted to go to prison simply on one . . . charge, one case number, nothing underlining, concurrent. So I wouldn't have agreed with her. I would . . . have . . . debated with her about not doing so before I pled to it, and I would have—

. . . .

⁴ In fact, trial counsel raised the issue after the court's colloquy but before Thompson pled guilty.

A. If she—if she would have asked—told me about the binding and she—and I was aware that she was going to, you know, ask for a binding of a concurrent sentence, I would not have—I would have debated with her against doing so for—and use that to my advantage of not taking the plea or not to have taken place.

Q. So, Mr. Thompson—and I'm going to try to put this into terminology that may be a little bit better understandable. Your—your complaint is that by having this run concurrent and the court being bound to it, it took away your ability to have your misdemeanor discharges effectively agreed to or disposed of under a time-served status; is that correct? A. I don't know.

Q. Okay. And is it your belief that because when you entered Oakdale, having more numbers attached to you would adversely affect—I'm sorry, sir? A. It may influence the parole's board decisions on multiple, oh, this is a pretty bad record, you know, on the percent of time I might have to do or be laid down, you know, or have to do a certain amount of time before I'm eligible for parole. It might have influence if I would go in on a soft nickel to a soft nickel with thirty other charges because parole board might say, hey, he might need to do this, this and this now, you know, as opposed to, all right, he's down on one charge and now let him out.

...

Q. Okay. All right. And so, sir, just to clarify for the court, you believe the prejudice that you suffered was having those additional cases attached to you at the time you went to prison; is that correct? A. I'm not—I'm not sure. Because I wasn't—had I known the binding process existed, I would have asked—I would have really debated to [my trial attorney] on whether taking a plea or letting the verdict come back. Because they were in deliberations deliberating a verdict. So in the middle of that that's when the agreement came in, and I said, "Yeah, okay."

But had I known that, you know, she wanted to do that—add that to it—and it sounds like a good deal. It did. It would, you know, but it's not—my experience of being in trouble has—you know, I've made myself, like, aware of certain things—little—little things that, you know, that I do agree with and things I don't agree with, and that's one of the things I wouldn't have agreed with, and I may have let a verdict come back and went and—and took the verdict. Who knows what that would have been, but, you know, it's too late now.

When his attorney asked if there was anything else he would like to tell the court about his claim, Thompson said, "[N]o, I believe that's it."

On cross-examination, the State reviewed Thompson's misdemeanor convictions and sentences and asked Thompson how long he would have been incarcerated if the court imposed consecutive sentences.

Q. Okay. So if you had—if the court or the prosecutor had stacked those other simple and serious misdemeanors, you would have had an extra three years and 190 days that could have been imposed; right? A. Yes. That's why I pled. That's why I didn't wait for the verdict.

Q. Okay. So you got the benefit of concurrent sentences on all of that. So instead of eight years and 190 days, you ended up with just five years, and all of it got run concurrent. Is that fair? A. Yeah.

Thompson provides little elaboration in his appellate brief. Beyond reciting defense counsel's duty to ensure a criminal defendant's guilty plea is knowing and intelligent by ensuring the defendant understands the consequences of pleading guilty, see *State v. Meron*, 675 N.W.2d 537, 542 (Iowa 2004) (holding that "it is fundamental that a plea of guilty is valid only if it is given voluntarily, knowingly, and intelligently"), Thompson's argument is limited. He makes a general claim that counsel breached a duty by failing to "clearly explain . . . the consequences of his felony guilty plea," citing his PCR testimony that he "didn't know what [he] was pleading in to." Thompson states this breach resulted in prejudice because he would not have pled guilty if he had known he would "go to prison with this whole rap sheet of charges," which hurts his parole eligibility. He also cites the portion of his testimony in which he stated that he would not have agreed with his trial counsel about "the binding process" because he "wanted to go to prison simply on one . . . charge, one case number, nothing underlining, concurrent."

Thompson's claim of ineffective assistance of counsel fails. The result he wanted, serving a sentence for only one conviction, was impossible. The

convictions that Thompson believes were “bound” to his conviction for possession stem from unrelated criminal cases. This case does not involve a global plea agreement; Thompson entered into an agreement and pled guilty to felony possession separate from the other cases. The court’s agreement to be “bound” by the parties’ plea agreement has no more bearing on the existence of those other convictions as a decision to run the sentences consecutively would have. The only thing the court’s agreement to abide by the parties’ plea deal affected is how long Thompson serves for his sentences. As the State noted, Thompson served less time with concurrent sentences. There is no reasonable probability that Thompson would have insisted on a jury verdict if he understood he was guaranteed the shortest possible prison term. Even so, Thompson testified that if he understood the consequences of his plea, he “may have let a verdict come back . . . and took the verdict. Who knows what that would have been, but, you know, it’s too late now.” His testimony that he *may* have insisted on a verdict falls short of a reasonable probability.

Because Thompson has not met his burden of proving ineffective assistance of counsel, we affirm the denial of his PCR application.

AFFIRMED.