IN THE COURT OF APPEALS OF IOWA

No. 16-0689
Filed November 22, 2017

GUSTAVO SIERRA,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Louisa County, Mary Ann Brown (summary disposition) and Michael J. Schilling (postconviction trial), Judges.

Gustavo Sierra appeals the summary dismissal of his application for postconviction relief. **AFFIRMED**.

Eric D. Tindal of Keegan & Farnsworth, Iowa City, for appellant.

Thomas J. Miller, Attorney General, and Kyle P. Hanson, Assistant Attorney General, for appellee.

Considered by Vaitheswaran, P.J., and Doyle and Bower, JJ.

VAITHESWARAN, Presiding Judge.

Gustavo Sierra appeals the partial summary disposition of his application for postconviction relief. He contends he raised a genuine issue of material fact as to (1) whether his plea attorney was ineffective in failing to request a second competency hearing and (2) whether the district court neglected its obligation to consider competency issues.

I. Background Facts and Proceedings

Sierra was charged with several crimes in connection with the death of his wife. He moved to suspend the proceedings on the ground that he was not competent to stand trial. The district court granted the motion and committed Sierra to the Iowa Medical and Classification Center for a competency evaluation. At a subsequent hearing, the district court found him competent to stand trial.

In 2007, Sierra pled guilty to second-degree murder and first-degree burglary. This court affirmed his conviction and sentence. *See State v. Sierra*, No. 07-1913, 2008 WL 2752111, at *3 (Iowa Ct. App. July 16, 2008).

Sierra filed a postconviction relief application and multiple amendments to the application, raising several claims. The postconviction court granted the State's motion for summary disposition of four ineffective-assistance-of-counsel claims. The court ultimately dismissed the remaining claims on the merits. This appeal followed.[1]

[1] Sierra appealed following the court's final disposition of all the claims. This was appropriate. *See Workman v. State*, No. 13-0201, 2014 WL 3511740, at *3 (Iowa Ct. App. July 16, 2014) ("The PCR trial court's grant of partial summary judgment disposed of only one of Workman's ineffective assistance claims, and was thus an interlocutory ruling, not a final judgment for purposes of appeal." (citations omitted)).

II. Analysis

Sierra takes issue with the court's summary disposition of his claims that his plea attorney was ineffective in failing to request a second competency hearing and in failing to file a motion in arrest of judgment on this basis. He contends a psychiatrist's letter he submitted more than four years after the plea proceeding raised a genuine issue of material fact on his competency at the time of the plea proceeding.

"[W]hen claims of ineffective assistance of counsel are properly raised in a postconviction relief application, 'an evidentiary hearing on the merits is ordinarily required.'" *See Manning v. State*, 654 N.W.2d 555, 562 (Iowa 2002) (quoting *Foster v. State*, 395 N.W.2d 637, 638 (Iowa 1986)). However, "the court may grant a motion by either party for summary disposition of the application, when it appears from the [record] that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Iowa Code § 822.6 (2016). A postconviction relief applicant alleging ineffective assistance of counsel must make the required showing of both deficient performance and sufficient prejudice. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). We review ineffective assistance claims de novo. *Castro v. State*, 795 N.W.2d 789, 792 (Iowa 2011).

The postconviction court had the benefit of an extensive record on which to rule on summary disposition. Attached to the State's motion for summary disposition was this court's opinion on direct appeal, a report from one of Sierra's attorneys summarizing the proceedings and recounting Sierra's concession that he was competent to stand trial, a transcript of the 2007 guilty plea proceeding, and a psychiatrist's letter, written before the plea hearing, that essentially found

Sierra competent to stand trial. Sierra's resistance also incorporated the guilty-plea transcript and the psychiatrist's letter on which the finding of competency to stand trial was based and included another 2012 psychiatric letter purporting to controvert the competency finding. Although the district court did not allow Sierra to testify, the summary-disposition record included a transcript of his deposition taken four-and-a-half years after the plea proceeding. The record also included certain medical records Sierra asked the court to consider.

The record is far more extensive than the record found inadequate in *Manning v. State*, 654 N.W.2d 555, 562 (Iowa 2002). There, the State moved for summary dismissal of a postconviction relief application on error preservation and waiver grounds. *Manning*, 654 N.W.2d at 557-58. The postconviction relief applicant filed a resistance to the motion and asked for time to obtain discovery supporting his claims. *Id*. at 558. The district court scheduled the matter for hearing but failed to properly notify the applicant "that he would need to present proof on any issue other than what was alleged in the State's motion to dismiss." *Id*. at 561. The district court summarily denied the application on the merits. *Id*. at 558. In reversing the decision, the Iowa Supreme Court concluded the summary disposition record was not fully developed and "[w]ithout a fully developed record, there is no clear cut way to determine whether Manning can establish" certain ineffective assistance of counsel claims. *Id*. at 561. Here, the State's motion for summary disposition was premised on the absence of evidence supporting the need for a second competency hearing. Sierra responded to the State's motion and provided evidence arguably refuting the State's assertion.

On this record,[2] and after informing the parties its decision would be based on "the pleadings, depositions, answers to interrogatories, and admissions and agreements of fact, together with any affidavits submitted," the postconviction court concluded Sierra failed to generate an issue of material fact on the question of his competency at the time of the plea proceeding. The court reasoned, "The inference that [Sierra] herein seeks to establish that his competency to stand trial has deteriorated is speculative and without the support of a medical expert."

In reviewing the court's conclusion and reasoning, we begin with the proposition that a competency evaluation generally is required only if information in the record would lead a reasonable person to believe there is a substantial question of the defendant's competence. *Jones v. State*, 479 N.W.2d 265, 270 (Iowa 1991). There must be a preliminary allegation of specific facts showing the "defendant is suffering from a mental disorder which prevents the defendant from appreciating the charge, understanding the proceedings, or assisting effectively in the defense." Iowa Code § 812.3.

The 2007 guilty plea transcript is instructive. The plea-taking court questioned Sierra and his attorney about Sierra's mental illness and medication regimen. Sierra's attorney informed the court he had referred his client to a county mental health center to have his prescription renewed. He said "those medications were for depression." He explained Sierra "was also at one point receiving a

[2] The parties took additional depositions and introduced additional evidence following entry of the summary-disposition order. Although our review is de novo, we decline to consider this evidence in assessing whether there was a genuine issue of material fact precluding summary disposition of the claims Sierra is now contesting. However, if we were to consider that evidence, it only confirms our conclusion that summary disposition of the ineffective assistance claim was warranted.

medication for schizophrenia, and those were prescribed when he was at Iowa and [sic] Medical Classification Center at Oakdale for a competency evaluation." When asked if Sierra was "presently taking medication for either depression or schizophrenia," he responded, "I believe he is still taking medication for depression. I'm not sure if he's taking medication for schizophrenia." At this point, Sierra interjected, "No. Only for depression." He stated he "never had a side effect" from the depression medication. The court asked Sierra when he last took medication for schizophrenia. Sierra responded, "When I was in Oakdale, three months ago." He did not state he was hearing voices or exhibiting other symptoms associated with schizophrenia nor did he suggest or imply he was being denied medication or treatment for schizophrenia. *See Strickland*, 466 U.S. at 691 ("The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions."). In the face of Sierra's silence about schizophrenia, his belated deposition allusions to hearing voices the night before the plea proceeding ring hollow. *Id.* at 690 (noting "a court deciding an actual ineffectiveness claim must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct"). In sum, virtually nothing in the 2007 plea record would have led Sierra's attorney to question Sierra's competency to proceed with the guilty plea.

We turn to the 2012 psychiatrist's letter attached to Sierra's summary-disposition resistance. The letter was authored four-and-a-half years after Sierra pled guilty. The psychiatrist did not meet with Sierra. He simply reviewed "a large volume of medical records," Sierra's trial information, and Sierra's amended

postconviction application. He admitted "competency is established at a given point in time" and he did "not find any specific records" addressing Sierra's "mental state on or around the date of his plea proceeding." Nor did he find records documenting the medications or dosages Sierra was taking at that time. He merely assumed the medications were the same as those prescribed three months earlier.

This psychiatrist's ultimate opinion on Sierra's competency was conditional and equivocal: "*If* [Sierra] truly was not taking antipsychotic medication, *and* his diagnosis of schizophrenia/psychosis is valid, then he *likely* would have suffered a decline in his mental state such that his competency *could be* questioned." (emphasis added). He cautioned, "It seems *unlikely* he was not taking his medication during that period of time because he was confined, and I assume his medication compliance was checked, but I have no way of knowing this for certain." (emphasis added). And, he stated, "For now, I can only speculate that if he was not taking his antipsychotic medication and was noted to have psychotic symptoms at that time, likely his competency to stand trial and/or assist in his defense could be questioned for entering into a plea arrangement with the court." Finally, while acknowledging Sierra's multiple mental health diagnoses, he noted Sierra "was also thought to be malingering at times" and, given "the assertion about his likely malingering, some doubt has to be cast upon the validity of his self-reported history." As the postconviction court found, the opinion was too speculative to generate an issue of material fact on Sierra's competency at the time of the plea proceeding. *See Castro*, 795 N.W.2d at 795 ("An inference to create a triable issue in response to a motion for summary judgment cannot be based on conjecture or speculation.").

Based on the summary disposition record and our de novo review of this ineffective assistance claim, we conclude counsel did not breach an essential duty in failing to request a second competency hearing. The district appropriately dismissed this claim as well as the related claim that counsel was ineffective in failing to file a motion in arrest of judgment on this basis.

Sierra next contends, "[T]he trial court ha[d] a sua sponte obligation to hold a competency evaluation where [his] trial counsel failed to request one." He concedes, "PCR counsel did not expressly raise [this] issue in the pleadings although the argument is suggested." For that reason, he asks us to review the claim under an ineffective-assistance-of-PCR-counsel rubric. But, if plea counsel did not have an obligation to request a competency hearing, the same facts would dictate that the district court did not have an obligation to suspend proceedings for a second competency evaluation and hearing. We conclude there was no duty on the part of plea counsel to bring the competency issue to the court's attention and no breach of duty on the part of postconviction counsel in failing to raise the plea-taking court's obligations concerning competency evaluations.

We affirm the postconviction court's summary disposition of Sierra's ineffective-assistance-of-counsel claims relating to his competency at the plea proceeding.

AFFIRMED.