

IN THE COURT OF APPEALS OF IOWA

No. 0-461 / 09-1506
Filed August 11, 2010

MATTHEW MCGUIRE,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Woodbury County, Jeffrey A. Neary, Judge.

Appellant appeals the district court's ruling denying his application for postconviction relief. **AFFIRMED.**

Tod Deck, Sioux City, for appellant.

Thomas J. Miller, Attorney General, Sharon Hall, Assistant Attorney General, Patrick Jennings, County Attorney, and Jill Esteves, Assistant County Attorney, for appellee State.

Considered by Vogel, P.J., and Potterfield and Danilson, JJ. Tabor, J., takes no part.

VOGEL, P.J.

Matthew McGuire appeals the district court's ruling denying his application for postconviction relief. On appeal, McGuire claims the district court erred in not finding his trial counsel was ineffective for (1) failing to accurately advise him regarding a plea agreement offer and the penalties if convicted of the crimes charged; and (2) failing to inform him regarding the right to a jury trial on the existence of a prior conviction. We affirm.

I. Background Facts and Proceedings

In January 2003, McGuire was charged with one count of second-degree sexual abuse in violation of Iowa Code section 709.3(2) (2003) and two counts of indecent contact with a child in violation of Iowa Code section 709.12, all three carrying enhanced penalties because of a prior conviction for a "sexually predatory offense" pursuant to Iowa Code section 901A.2(1) and (5). In September 2003, the State filed a notice of intent to admit evidence of McGuire's prior conviction of second-degree sexual abuse, a class "B" felony. McGuire waived his right to a jury trial, and after a bench trial in November 2003, the court found him guilty on all three counts. The court imposed a life sentence for count one, and concurrent terms of up to four years for both counts two and three. On direct appeal, this court affirmed his convictions but preserved one ineffective-assistance-of-counsel claim for possible postconviction relief proceedings. *State v. McGuire*, No. 04-0187 (Iowa Ct. App. Dec. 22, 2004).

In April 2005, McGuire filed an application for postconviction relief raising several grounds upon which he sought relief. The State responded and in April 2007, filed a motion for summary judgment supported by an affidavit by

McGuire's trial counsel. The district court subsequently granted the State's motion in part, but overruled it as to the claim that counsel was ineffective for failing to advise McGuire of the imposition of a life sentence should he be convicted as charged on the Class "B" felony. Following a postconviction hearing in August 2009, the court denied relief on the remaining ground. McGuire appeals.

II. Standard of Review

We typically review postconviction relief proceedings for errors at law. *Ledezma v. State*, 626 N.W.2d 134, 141 (Iowa 2001). However, we review ineffective-assistance-of-counsel claims de novo. *Id.* "[W]e give weight to the lower court's findings concerning witness credibility." *Id.*

In order to succeed on a claim of ineffective assistance of counsel, a defendant must prove by a preponderance of evidence that (1) counsel failed to perform an essential duty and (2) prejudice resulted. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984). A claim may be resolved on either prong. *Kirchner v. State*, 756 N.W.2d 202, 204 (Iowa 2008).

III. Plea Offer

McGuire contends the district court should have found that his trial counsel was ineffective for failing to advise him regarding a plea agreement and possibility of a life sentence if convicted on the charges brought against him. See *Kirchner*, 756 N.W.2d at 205 ("[I]n order to prove prejudice, an applicant who previously rejected a plea offer in favor of going to trial must show that, but for counsel's advice, he would have accepted the plea. The applicant must present

some credible, non-conclusory evidence that he would have pled guilty had he been properly advised.”). The thrust of McGuire’s argument on appeal is that the postconviction testimony of his trial counsel was so inconsistent that the court erred in its findings. To that end, he urges us to reject the postconviction court’s credibility findings which strongly favored McGuire’s trial counsel.

At the postconviction hearing, McGuire’s trial counsel produced a substantial amount of evidence demonstrating that McGuire was aware of the possibility of receiving a life sentence. Counsel testified to a clear recollection of events, including his discussion with McGuire regarding the plea offer, stating, “I would have talked with him about the plea offer, discussed the sentencing that he was facing, discussed what the plea offer offered him. I . . . would have suggested to him that he needs to think very seriously about the plea offer.” Counsel produced the State’s plea offer, which also contained his handwritten note stating, “discussed [with McGuire] 2d time on 9-9, rejected, [McGuire said to] put where the sun doesn’t shine.” Trial counsel also produced his copy of the Iowa Code, which contained his handwritten notes identifying research pursuant to sentencing statutes applicable to McGuire.

Moreover, the sentencing colloquy corroborates McGuire’s understanding of the sentence he faced prior to trial. At the sentencing hearing, the court began by consulting with both defense counsel and the prosecutor regarding the sentencing enhancement. The court then directly addressed McGuire to confirm he understood the sentence, stating “you understand that pursuant to section 901A.2(5) it’s the Court’s opinion that that’s applicable and therefore would require upon a finding that you have been previously convicted of a violation of

section 709.3(2) a life sentence.” The court explained the sentencing enhancement to McGuire, confirmed that he understood the current conviction, informed him of his right to pause and speak with his attorney privately at any time, and finally questioned and obtained McGuire’s admission of his prior conviction.

The postconviction court found,

The Court finds the Exhibit shows Jones [McGuire’s counsel] was aware of the statute that resulted in Applicant’s life sentence. . . . It is illogical that Jones would advise the Applicant to consider a plea while not including relevant information to support his advice. There is no testimony that Jones wished to try the case despite applicant’s wishes, or that Jones would have any ulterior motive for not informing Applicant of the possible sentence. . . . Since the court finds the credible testimony establishes Jones was aware of the law and discussed the plea agreement with Applicant, the Court also finds credible Jones’s testimony that included the possibility of the life sentence in these meetings.

Furthermore, the transcript shows that at the sentencing hearing, Applicant was questioned by the trial judge regarding his understanding of the life sentence. . . . At no point did he inform the court of any surprise at the possibility of a life sentence. . . . The Applicant asked no questions nor did he indicate any disagreement on the record.

We agree with the postconviction court that trial counsel’s notes and testimony support the finding that counsel knew that the sentencing enhancement would result in a life sentence for McGuire if he was convicted of sexual abuse in the second degree, and that counsel shared the terms of the State’s fourteen-year offer to McGuire, as well as the life sentence he faced if he declined the plea offer. McGuire’s knowledge of the life sentence is further supported by his response to the court’s inquiry during sentencing, when McGuire said he understood the applicability of the life sentence and did not express surprise or concern when given the opportunity to make a statement to

the court. Further, we have no reason to not defer to the postconviction court's credibility assessment, and find the record supports trial counsel's recollection of his advice to McGuire. See *Cox v. State*, 554 N.W.2d 712, 714–15 (Iowa Ct. App. 1986) (deferring to the postconviction court's credibility findings). We find, as did the postconviction court, that this claim fails as McGuire cannot establish a breach of duty nor prejudice. See *Kirchner*, 756 N.W.2d 202 (finding the applicant's ineffective-assistance-of-counsel claim failed because trial counsel did not erroneously advise the defendant regarding a plea offer and that there was no evidence defendant would have accepted the plea offer).

IV. Prior Conviction

Next, McGuire essentially asserts his trial counsel was ineffective because McGuire admitted his prior conviction, rather than making the State meet the burden of proving it to a jury.¹ The postconviction court dismissed this claim on summary judgment.² Before sentencing, the court conducted a colloquy with McGuire, which included informing him of the impact of his prior conviction on the imposition of his current sentence. Moreover, the State made an offer of proof of the prior conviction during McGuire's bench trial, and McGuire admitted to having committed the prior offense during his trial. He therefore cannot prevail on the

¹ McGuire states in his brief, [A] more correct statement of the issues from the facts in the record appears to be that counsel was ineffective in advising Mr. McGuire regarding his rights as they pertained to proof or admission of his prior offense and in failing to object to the contents of the colloquy between Mr. McGuire and the court regarding his prior offense.

² See Iowa Code § 822.6 (2007) ("The court may grant a motion by either party for summary disposition of the application, when it appears from the pleadings, depositions, answers to interrogatories, and admissions and agreements of fact, together with any affidavits submitted, that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.").

prejudice prong of this ineffective-assistance-of-counsel claim.³ See *Ledezma*, 626 N.W.2d at 143 (“*Strickland* establishes that prejudice exists when ‘there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.’”).

We affirm the postconviction court’s grant of summary judgment for the State as well as affirm the dismissal of the remaining claim at the postconviction hearing.

AFFIRMED.

³ The State argues McGuire waived error by not resisting its motion for summary judgment, but failed to cite case law in support of this argument.