

IN THE COURT OF APPEALS OF IOWA

No. 0-463 / 09-1595
Filed July 28, 2010

STATE OF IOWA,
Plaintiff-Appellee,

vs.

LONNIE WADE SIGLER,
Defendant-Appellant.

Appeal from the Iowa District Court for Humboldt County, Kurt L. Wilke (guilty plea proceedings) and Thomas J. Bice (sentencing), Judges.

Lonnie Sigler appeals from his convictions and sentences for two counts of possession of marijuana with intent to deliver and one count of failure to affix a drug tax stamp. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Thomas Gaul, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney General, and Jennifer A. Davis, County Attorney, for appellee.

Considered by Sackett, C.J., and Eisenhauer and Mansfield, JJ. Tabor, J., takes no part.

MANSFIELD, J.

Lonnie Sigler appeals from his convictions and sentences for two counts of possession of marijuana with the intent to deliver and one count of failure to affix a tax stamp in violation of Iowa Code sections 124.401(1)(d) and 453B.12 (2007). On appeal, Sigler argues his defense counsel rendered ineffective assistance of counsel when he failed to object to the State's motion to revoke Sigler's bail on the grounds that it violated the parties' plea agreement. Upon our review, we find no violation of the plea agreement and therefore no ineffective assistance of counsel. Accordingly, we affirm.

I. Background Facts and Proceedings

On March 19, 2009, the State filed eight charges against Sigler in two separate cases numbered OWCR008553 (No. 8553) and FECR008555 (No. 8555).

In No. 8553, Sigler was charged with one count each of operating while intoxicated, third offense; possession of marijuana with the intent to deliver; possession of methamphetamine, enhanced; possession of marijuana, enhanced; failure to affix a drug tax stamp; and driving while revoked. These charges resulted from an October 28, 2008 traffic stop. After Sigler was arrested for driving while revoked, officers found marijuana and methamphetamine on his person.

In No. 8555, the State charged Sigler with one count of possession of marijuana with the intent to deliver and one count of failure to affix a drug tax stamp. The charges in No. 8555 arose from Sigler's acceptance on March 6,

2009, of a controlled delivery of a package known by officers to contain marijuana.

Sigler was granted bail on these charges and released from jail after posting bond. Subsequently, the State and Sigler reached a plea agreement to resolve Nos. 8553 and 8555. The terms of the plea agreement were set forth during a plea hearing held on August 31, 2009, as follows:

MS. DAVIS: Your Honor, the plea bargain is Mr. Sigler would plead to Count II in OWCR8553 and plead guilty to both counts in FECR8555. Based on that guilty plea, the State would recommend that Mr. Sigler be sentenced to five years in prison on each count. He would actually—Only two of the counts, Count II in the OWCR number and Count I in the FECR number, would run consecutively. Count II of the FECR number, the Failure to Affix a Drug Tax Stamp, would run concurrently. So the two counts on the one Trial Information would run concurrently, while the separate charge will be consecutive.

The State would also recommend that the fines in all of these matters be waived. The Defendant will be responsible for paying court costs and attorney's fees and, I believe, the \$10 DARE surcharge.

THE COURT: Okay. Mr. McCarville, you've heard what the plea agreement is. Is that your understanding as well?

MR. McCARVILLE: Yes. And there's a little bit more to it. There, apparently, are lab tests—There's currently an Eluding charge that will be dismissed not in connection with these cases. Your Honor, I don't think you have that in front of you.

Then there are lab tests at the DCI lab. They're testing for a potential meth lab and they've agreed they will not file charges in that case.

THE COURT: Is that correct?

MS. DAVIS: That's correct, Your Honor.

THE COURT: Anything else in regard to the plea agreement?

MR. McCARVILLE: No.

THE COURT: All right. Mr. Sigler, you've heard what the attorneys had to say. Have you been promised anything other than what they've spoken here today?

THE DEFENDANT: No.

In accordance with this plea agreement, Sigler pled guilty to count II in No. 8553, i.e., possession of marijuana with the intent to deliver, and to both counts in No. 8555, i.e., possession of marijuana with the intent to deliver and failure to affix a drug tax stamp. The court performed a colloquy with Sigler and accepted the pleas as knowing, voluntary, and supported by a factual basis. At the end of the hearing, the court asked whether bond would continue as previously set, and the State agreed. Accordingly, Sigler remained free on bond. Sentencing was set for September 28, 2009.

On September 11, 2009, the State filed a "Motion to Revoke Bond, Revoke Pretrial Release, and Hold until Sentencing." In its motion, the State pointed to additional offenses committed by Sigler on June 17, 2009, and July 21, 2009, as evidence that Sigler had violated the terms of his pretrial release and was a flight risk. On September 14, 2009, the court held a hearing on this motion. Although Sigler received notice of the hearing, he failed to appear. As a result, the court issued a warrant for Sigler's arrest and entered an order revoking his bond. The court did state that, after being arrested, Sigler would be able to file a request for a bond review hearing. Defense counsel attended the hearing and did not object to this ruling.

Sigler was arrested on September 19, 2009. He did not request bond review, and he was consequently held in jail for approximately ten days until the sentencing hearing on September 28. At sentencing, the court followed the recommendations offered by the State pursuant to the plea agreement. It sentenced Sigler to five years' imprisonment for each count of possession of marijuana with the intent to deliver (Nos. 8553 and 8555) and five years for

failure to affix a drug tax stamp (No. 8555). The district court ordered the sentences on the two charges in No. 8555 to run concurrently and the sentence in No. 8553 to run consecutively. On October 26, 2009, in accordance with the terms of the plea agreement, the State filed a motion to dismiss the remaining charges in No. 8553, as well as charges in three other pending cases.

Sigler appeals. He contends the State breached the plea agreement by moving to revoke his bond and his counsel rendered ineffective assistance by failing to object.

II. Standard of Review

We review claims of ineffective assistance of counsel *de novo*. *State v. Maxwell*, 743 N.W.2d 185, 195 (Iowa 2008). The supreme court has recently clarified our role in deciding ineffective assistance of counsel claims raised on direct appeal. *See State v. Johnson*, ___ N.W.2d ___, ____ (Iowa 2010).

[I]f a defendant wishes to have an ineffective-assistance claim resolved on direct appeal, the defendant will be required to establish an adequate record to allow the appellate court to address the issue. If the defendant requests that the court decide the claim on direct appeal, it is for the court to determine whether the record is adequate, and if so, to resolve the claim. If, however, the court determines the claim cannot be addressed on appeal, the court must preserve it for a postconviction-relief proceeding, regardless of the court's view of the potential viability of the claim.

Id. at _____. Sigler requests this court to decide his claim on direct appeal, stating, “This failure can be decided on appeal, rather than postconviction because the record is clear as to the terms of the plea agreement and it is equally clear that the prosecutor did not follow the agreement.” Upon our review, we find the record to be adequate to resolve the claim on direct appeal.

III. Analysis

Sigler argues his defense counsel rendered ineffective assistance of counsel when he failed to object to the State's motion to revoke Sigler's bond, because that motion amounted to a breach of the State's plea agreement with Sigler. In order for Sigler to prevail on his claim of ineffective assistance of counsel, he needs to prove "by a preponderance of the evidence that (1) counsel failed to perform an essential duty, and (2) prejudice resulted." *State v. Bearnse*, 748 N.W.2d 211, 214-15 (Iowa 2008). "In analyzing the first prong of the test, we presume counsel acted competently." *Id.* at 215. In order to successfully rebut this presumption, Sigler must establish "that counsel's performance fell below the normal range of competency." *State v. Horness*, 600 N.W.2d 294, 298 (Iowa 1999). Further, a claim of ineffective assistance of counsel cannot succeed when the unasserted objection was without merit. *Id.* Accordingly, in addressing Sigler's claim of ineffective assistance of counsel, we first determine whether the objection had merit, i.e., whether the State breached the plea agreement. If the State did not breach the plea agreement, then defense counsel's failure to object cannot amount to ineffective assistance of counsel. *Id.*

Plea agreements serve an essential role in ensuring the overall efficiency of the judicial system. *Bearnse*, 748 N.W.2d at 215. The improper use of plea agreements has an adverse effect not only on the liberty of the criminally accused, but also on the "honor of the government" and "public confidence in the fair administration of justice." *Id.* (quoting *State v. Kuchenreuther*, 218 N.W.2d 621, 624 (Iowa 1974)). Because of the potential harm that may result from the improper use of plea agreements, "we are compelled to hold prosecutors and

courts to the most meticulous standards of both promise and performance.” *Id.* (quoting *Horness*, 600 N.W.2d at 298).

Upon our review, we find Sigler’s claim of ineffective assistance of counsel cannot succeed because the objection defense counsel failed to make was without merit. The terms of the plea agreement were set forth orally on the record during the August 31, 2009 plea hearing.¹ The prosecutor initially described those terms, and then defense counsel added some points. The prosecutor confirmed the accuracy of defense counsel’s additions. Both defense counsel and Sigler himself were asked whether anything else had been promised. Both answered no. No one mentioned continuation of bond. In fact, the issue of continuation of bond did not arise until the very end of the hearing, well after the district court judge heard the terms of the plea agreement, performed the colloquy with Sigler, and accepted the plea. At that point, the court inquired if bond would continue as previously set and the prosecutor said it would. However, no one suggested that the continuation of bond was part of the plea agreement. In short, the transcript belies Sigler’s claim that the State promised continuation of bond as part of the plea agreement. Accordingly, the State could not have breached the plea agreement when it moved to revoke Sigler’s bond and pretrial release. Sigler cannot prevail on his claim of ineffective

¹ Iowa does not require plea agreements to be in writing, only that they be disclosed “in open court at the time the plea is offered.” Iowa R. Crim. P. 2.10(2). Federal Rule of Criminal Procedure 11 has a similar disclosure requirement. Fed. R. Crim. P. 11(c)(2) (stating that the parties “must disclose the plea agreement in open court when the plea is offered.”). The 1974 Advisory Committee Note to rule 11 provides that the plea bargain “could be stated orally and recorded by the court reporter, whose notes then must be preserved or transcribed.”

assistance of counsel because defense counsel did not breach an essential duty when he failed to raise a meritless objection.

Sigler argues that all of the events upon which the State relied in seeking revocation of bond predated the August 31, 2009 guilty plea hearing, at which the prosecutor said bond would continue.² Sigler also maintains, “[T]he prosecutor went directly against her agreement that the bond should be continued.” The problem with these arguments is that the issue is not whether the prosecutor kept her word personally regarding something she said at the end of the hearing, but whether a plea agreement was breached. The record is very clear about what the metes and bounds of the plea agreement were: They were stated on the record and both defense counsel and Sigler confirmed them. Bond was not a part of the plea agreement.³

For the foregoing reasons, we affirm Sigler’s convictions and sentences.

AFFIRMED.

² The State’s motion to revoke bond cited a number of recent criminal acts by Sigler, including some charges that were not covered by the plea agreement. For example, the motion noted that on July 21, 2009, Sigler was charged in Webster County with possession of a firearm as a felon, eluding, possession of a controlled substance, driving while revoked, and two counts of interference with official acts.

³ The State also argues, with some basis, that even if a breach of the plea agreement had occurred, it would not be material, since its only effect was to advance by nine days the commencement of Sigler’s incarceration. Sigler, of course, received credit for those nine days already served between September 19 and September 28 when he was formally sentenced on September 28.