**IN THE COURT OF APPEALS OF IOWA**

No. 0-787 / 10-0134
Filed December 22, 2010

**WAYNE BROWN,**
Applicant-Appellant,

**vs.**

**STATE OF IOWA,**
Respondent-Appellee.

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Appeal from the Iowa District Court for Polk County, Robert A. Hutchison, Judge.

Applicant appeals the district court's denial of his application for postconviction relief. **AFFIRMED.**

Angela L. Campbell of Dickey & Campbell Law Firm, P.L.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Bridget A. Chambers, Assistant Attorney General, John P. Sarcone, County Attorney, and Mark Taylor, Assistant County Attorney, for appellee State.

Heard by Eisenhauer, P.J., and Potterfield and Doyle, JJ. Tabor, J., takes no part.

**DOYLE, J.**

Wayne Brown appeals the district court's denial of his application for postconviction relief stemming from his decision to plead guilty to possession of ecstasy as a habitual offender and failure to possess a tax stamp.[1] Brown claims his trial counsel was ineffective in three respects: (1) "failing to investigate the facts underlying the case, the possibility of a motion to suppress, and the case as a whole," (2) refusing to confer with Brown about his case, and (3) erroneously advising Brown about the potential federal consequences of the state drug charges. Our review is de novo. *Ledezma v. State*, 626 N.W.2d 134, 141 (Iowa 2001).

In order to prevail on an ineffective-assistance-of-counsel claim, an applicant must show by a preponderance of the 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). The claim may be resolved on either ground. *Id.* at 697, 104 S. Ct. at 2069, 80 L. Ed. 2d at 699.

With respect to Brown's first claim, we observe an attorney's duty to investigate is not limitless. *Schrier v. State*, 347 N.W.2d 657, 662 (Iowa 1984); *see also Ledezma*, 626 N.W.2d at 145. "The extent of the investigation required in each case turns on the peculiar facts and circumstances of that case." *Schrier*, 347 N.W.2d at 662. The record here shows counsel's ability to

[1] In exchange for Brown's guilty plea, the State agreed to dismiss a charge of conspiracy to deliver ecstasy and recommend a total term of imprisonment not to exceed twenty-five years on the two other charges. The court accepted Brown's guilty plea and sentenced him according to the terms of the plea agreement.

investigate was constrained by Brown's desire from the very beginning of the case to plead guilty.[2] The State's plea offer was conditioned on Brown refraining from filing any pretrial motions. Brown's attorney testified he discussed that condition with Brown, who never authorized him to file any pretrial motions or engage in discovery. He accordingly took other steps to investigate the case, including requesting and participating in a preliminary hearing, reviewing the trial information and attached minutes of testimony, and securing a copy of the search warrant and supporting affidavit. Given these circumstances, we conclude counsel's investigation was adequate.[3] *See Ledezma*, 626 N.W.2d at 145 ("There is no need to investigate a particular matter . . . if the defendant has given counsel a reason to believe the investigation would be fruitless or unwarranted.").

We further conclude counsel did not breach an essential duty in supposedly refusing to confer with Brown in jail. Counsel did not even visit Brown in the jail when given the opportunity to do so during a two-hour and fifty-minute recess of the failed plea hearing.[4] However, counsel testified at the postconviction relief hearing that he met with Brown at each court hearing he

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[2] On the same day the preliminary hearing was held, Brown wrote his attorney a letter stating: "I would like for you to go to [the assistant county attorney] and ask her what type of plea will she give me to save all this court cost." He continued, "You must come and let me know, before you take any deal from her. I want to go straight to sentencing at my arraignment, if the deal is right."

[3] We also agree with the district court's extensive analysis and rejection of the merits of the motion-to-suppress issue somewhat summarily raised by Brown on appeal.

[4] It is noted Brown's testimony is in conflict as to whether he conferred with his counsel during the lunchtime recess. At the postconviction relief hearing he testified he had not spoken to his counsel during the recess. However, the plea hearing transcript reveals that when the hearing was reconvened, the court asked Brown if he "had an opportunity since we recessed before lunch to talk with [counsel]." Brown responded: "Yes, sir."

attended, which included a preliminary hearing, pretrial conference, status conference, two plea proceedings, and sentencing. Counsel's notes from Brown's file and his testimony show he discussed Brown's case and the State's plea offer with him at those proceedings. *See Parsons v. Brewer*, 202 N.W.2d 49, 54 (Iowa 1972) (stating effective assistance of counsel "denotes conscientious, meaningful legal representation wherein the accused is advised of his rights and honest, learned and able counsel is accorded reasonable opportunity to perform his assigned task"). While we do not accept the State's argument that there was nothing to discuss until the prosecutor had made a plea offer, Brown did not identify any additional topics he would have discussed with counsel had counsel given him more time to explain his situation. We accordingly reject this assignment of error as well and turn to Brown's remaining claim on appeal.

It is undisputed Brown's attorney mistakenly told him that if the state drug charges were pursued in federal court, he would be facing a mandatory life sentence under the federal "three strikes" statute. Counsel testified he offered this advice to Brown only after consulting with an assistant federal public defender. In rejecting this claim, the district court found that although counsel may have breached a duty to Brown in misadvising him, *see Mott v. State*, 407 N.W.2d 581, 583 (Iowa 1987) (noting if a defendant "has been affirmatively *mis*led by an attorney concerning the consequences of a plea, the plea may be held to be invalid, even though the consequences are characterized as collateral"), no prejudice resulted. *See State v. Carroll*, 767 N.W.2d 638, 641 (Iowa 2009) (stating in order to establish prejudice in the context of a guilty plea,

an applicant must prove a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial).

We agree with and adopt the court's well-reasoned analysis as follows:

> Petitioner's testimony that he would not have entered into his plea agreement absent the erroneous legal advice is not credible. . . .
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> . . . From the outset, petitioner instructed Mr. Reser to obtain a plea agreement as soon as possible. These were petitioner's instructions before Mr. Reser ever looked into the possibility of a mandatory [federal] life sentence. The two elements of that agreement upon which petitioner insisted were that there would be no federal charges and that his co-defendant would be exonerated. As it turned out, he got these two elements plus a reduction of the possible sentence from 60 to 25 years, with a much reduced time before petitioner would be eligible for parole. Petitioner's assertion now that he would not have entered into the plea agreement absent fear of a mandatory life sentence is plainly false.

*See Ledezma*, 626 N.W.2d at 141 (deferring to postconviction court's findings concerning witness credibility); *see also Kirchner v. State*, 756 N.W.2d 202, 205 (Iowa 2008) (stating an applicant "'must present some credible, non-conclusory evidence that he would have pled guilty had he been properly advised'" (citation omitted)). This case is thus distinguishable from *Meier v. State*, 337 N.W.2d 204, 207 (Iowa 1983), where the court found the incorrect pre-plea advice relayed by counsel to the defendant was central to the defendant's decision to plead guilty.

The judgment of the district court is affirmed.

**AFFIRMED.**