

IN THE COURT OF APPEALS OF IOWA

No. 0-849 / 10-0579
Filed January 20, 2011

STATE OF IOWA,
Plaintiff-Appellee,

vs.

BILLY RAY WILLIAMS, JR.,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Todd A. Geer (guilty plea) and Bruce B. Zager (sentencing), Judges.

Billy Ray Williams, Jr. appeals from the sentence imposed by the district court on his guilty pleas to possession of marijuana with the intent to deliver and two counts of domestic abuse assault causing bodily injury. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Patricia Reynolds, Assistant Appellate Defender, for appellant.

Billy Williams, Fort Dodge, pro se appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Brook Jacobsen and Brad Walz, Assistant County Attorneys, for appellee.

Heard by Sackett, C.J., and Potterfield and Mansfield, JJ. Tabor, J., takes no part.

POTTERFIELD, J.**I. Background Facts and Proceedings**

This appeal involves three separate cases arising out of three separate events occurring on different dates. On September 10, 2009, the State filed a trial information charging Billy Ray Williams, Jr. with possession of marijuana with intent to deliver, a class D felony. On October 6, 2009, the State filed a trial information charging Williams with domestic abuse assault causing bodily injury, enhanced, an aggravated misdemeanor. On November 2, 2009, the State filed a trial information charging Williams with a separate count of domestic abuse assault causing bodily injury, enhanced.

On February 5, 2010, Williams appeared in court on the possession with intent matter, which was scheduled for further proceedings. Williams's attorney informed the court that Williams intended to "enter a plea of guilty as charged pursuant to a plea agreement wherein the state will follow the recommendations of the PSI." The judge informed Williams that his plea agreement was not binding on the court. The judge asked whether Williams had any other charges pending, and Williams's attorney replied, "There are two misdemeanors, Your Honor, that I will bring at the time of sentencing." The judge then asked, "And you're familiar with those charges and the punishments involved? . . . And do you understand that those could be run consecutively to this charge?" Williams responded in the affirmative.

On the same date, Williams also filed a written guilty plea with respect to the second domestic abuse offense. The plea stated, "I understand that upon my plea of guilty, the County Attorney's Office will recommend the following

sentence: any plea agreement will be stated on the record.” On April 1, 2010, Williams signed a written plea of guilty to the first domestic abuse offense containing the same language that “any plea agreement will be stated on the record.”

A presentence investigation report (PSI) for the possession with intent offense was filed on March 5, 2010. The PSI noted Williams’s two domestic abuse charges. The PSI recommended that Williams be sentenced to a five-year prison term on the possession with intent charge.

On April 1, 2010, Williams appeared for sentencing on all three of the charges involved in this appeal.¹ At sentencing, the State recommended that Williams be sentenced to a total of nine years in prison, stating, “We’re recommending on the possession with intent case that the defendant be fined \$750, . . . that that fine be suspended; but that the five-year prison sentence be imposed.” The State also recommended two-year sentences on each of the domestic abuse charges and that all three sentences be served consecutively to one another.

The court sentenced Williams to five years in prison on the possession with intent charge. The court also sentenced Williams to two years in prison on each of the domestic abuse charges, to run concurrently with each other but consecutively to the sentence for possession with intent.

Williams asserts on appeal that the prosecutor breached the plea agreement by recommending nine years in prison instead of five, as

¹ Williams appeared for other matters as well.

recommended by the PSI. He argues his trial counsel was ineffective for failing to object to the prosecutor's breach of the plea agreement.

II. Standard of Review

We review ineffective-assistance-of-counsel claims de novo. *Ledezma v. State*, 626 N.W.2d 134, 141 (Iowa 2001). To prevail, Williams must demonstrate: (1) his counsel failed to perform an essential duty and (2) prejudice resulted. *State v. Buck*, 510 N.W.2d 850, 853 (Iowa 1994). To establish the first prong, Williams "must overcome the presumption that counsel was competent and show that counsel's performance was not within the range of normal competency." *Id.* To establish the second prong, Williams must show counsel's failure worked to his actual and substantial disadvantage so that a reasonable probability exists that but for counsel's error the result of the proceeding would have changed. *Id.* Williams must prove both elements by a preponderance of the evidence. *Ledezma*, 626 N.W.2d at 142.

III. Ineffective Assistance of Counsel

We determine Williams cannot prove his claim of ineffective assistance of counsel. The plea agreement involved only Williams's possession with intent charge; there is no indication that the plea agreement involved any other charges. The plea agreement was discussed at the time Williams pleaded guilty to the possession with intent charge. Williams's attorney stated he would bring the two misdemeanors "at the time of sentencing." The judge warned Williams at the time of his plea of guilty to possession with intent that punishments for his misdemeanors could run consecutively to the punishment for the possession with intent charge. The written guilty pleas for both of the domestic abuse charges

stated that any plea agreement “will be stated on the record.” No record was made regarding a plea agreement for these charges.

The plea agreement required that the prosecutor follow the recommendations of the PSI on the possession with intent charge. The prosecutor recommended a five-year sentence on the charge, consistent with the PSI. Because the prosecutor followed the plea agreement, we find Williams’s counsel did not breach an essential duty in failing to object to the prosecutor’s sentencing recommendation.

AFFIRMED.