

IN THE COURT OF APPEALS OF IOWA

No. 2-1019 / 10-0958
Filed January 9, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

FLORENCE WILLIAMS,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Jeffrey L. Harris (motion to suppress) and James D. Coil (bench trial), District Associate Judges.

A defendant appeals her conviction for possession of a controlled substance (second offense). **AFFIRMED.**

Patricia Reisen-Ottavi, Dubuque, for appellant.

Thomas J. Miller, Attorney General, Darrel Mullins, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Brad Walz, Assistant County Attorney, for appellee.

Considered by Eisenhauer, C.J., and Vogel and Vaitheswaran, JJ. Bower, J., takes no part.

VOGEL, J.

The defendant, Florence Williams, appeals the conviction and sentence following a bench trial for the crime of possession of a controlled substance (second offense) in violation of Iowa Code section 124.401(5) (2009) and driving while license barred in violation of Iowa Code sections 321.560 and 321.561. She claims her trial counsel deprived her of her constitutional right to effective assistance of counsel under the United States and Iowa constitutions by creating a conflict of interest in failing to zealously advocate Williams's rights at a suppression hearing.

I. Background Facts and Proceedings

The following fact findings of the district court are supported by the minutes of testimony, as stipulated to by both the State and Williams. On May 29, 2009, at approximately 2:00 a.m., Officer Bose of the Waterloo Police Department saw a small black vehicle which appeared to have a rear brake light and license plate light not in proper working order. He made a u-turn and followed the car, but the car accelerated to fifty to sixty miles per hour in a thirty-mile per hour area and he lost sight of the vehicle for a short time. The officer then radioed that he was seeking a small black car, model not specified. Another officer located a small black car several blocks away that he believed did not have a properly working brake light. Both officers were soon following the vehicle and a license plate check revealed the vehicle's registered owner did not have a license to drive. Officer Bose initiated a traffic stop and Williams was found driving the car. At some point in the encounter a bag of crack cocaine fell from her mouth.

Williams was charged on June 12 with two counts of possession of a controlled substance (second offense) and one count of driving with a barred license, all aggravated misdemeanors. She filed a pre-trial motion to suppress, challenging the vehicle stop and seizure. A suppression hearing was held on August 24, at which time Williams's attorney moved to withdraw as requested by Williams due to a breakdown in the attorney-client relationship over how the case should proceed. Specifically, the attorney told the court she informed Williams of her belief the motion to suppress was frivolous but Williams still wanted to pursue it. The motion to suppress was denied on August 26. In a separate order entered September 18, Williams's attorney was allowed to withdraw and new counsel was appointed.¹

A bench trial was held on March 2, 2010, on the minutes of testimony, a DVD of the stop of the car, and documentary reports. Williams was convicted of the driving charge as well as one count of possession of a controlled substance (second offense). She was sentenced to two years in prison, suspended in full, and placed on probation. She appeals.

II. Ineffective Assistance

Our analysis of an ineffective-assistance claim is de novo. *Everett v. State*, 789 N.W.2d 151, 158 (Iowa 2010). To succeed on an ineffective-assistance-of-counsel claim, a defendant must show: "(1) counsel failed to perform an essential duty; and (2) prejudice resulted." *State v. Maxwell*, 743 N.W.2d 185, 195 (Iowa 2008). "[W]e measure counsel's performance against the

¹ Also in the September 18 order, the district court denied Williams's "application to reassert the legality of the stop, as previously addressed in the motion to suppress."

standard of a reasonably competent practitioner.” *Id.* In determining whether an attorney failed in performance of an essential duty, we avoid second-guessing reasonable trial strategy. *Fullenwider v. State*, 674 N.W.2d 73, 75 (Iowa 2004). 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. *State v. Johnson*, 784 N.W.2d 192, 198 (Iowa 2010). 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.*

Williams claims her attorney was ineffective on two grounds: (1) the attorney created a conflict of interest when she stated to the court she believed the motion to suppress was frivolous and asked to be removed, and (2) when counsel failed to adequately cross examine the arresting officer regarding the basis for Williams’s motion. We find the record before us is sufficient to resolve the issues and whether Williams frames the issue as a traditional ineffective-assistance claim or a conflict of interest claim, her argument fails.

An attorney has no duty to pursue a motion that is without merit. *State v. Westeen*, 591 N.W.2d 203, 207 (Iowa 1999) (“Counsel is not ineffective when the issue counsel failed to raise has no merit.”). Thus, we must first determine whether there was any merit to the motion to suppress that counsel allegedly did not adequately pursue.

In denying the motion to suppress, the district court afforded the testimony of Officer Bose great weight. He testified that he observed Williams driving a vehicle with an inoperative license plate light and brake light. Both of these are

traffic violations. Iowa Code §§ 321.387, 321.388. “It is well-settled that a traffic violation, however minor, gives an officer probable cause to stop a motorist.” *State v. Aderholdt*, 545 N.W.2d 559, 563 (Iowa 1996). Moreover, before stopping the vehicle Officer Bose knew the registered owner of the vehicle did not have a valid driver’s license, providing reasonable suspicion to support the investigatory stop. See *State v. Vance*, 790 N.W.2d 775, 781 (Iowa 2010). It appears from the suppression record, in spite of counsel’s statement to the court that the motion was frivolous, she went ahead on cross examination to prod the officer regarding details of the stop. She questioned the identity of the vehicle, the delayed use of the DVD camera, and the time lapse from first observing the vehicle until it was stopped, in relation to the distance traveled, among other things. The district court found Officer Bose was justified in stopping Williams’s car, and we conclude counsel was not ineffective in her representation of Williams at the suppression hearing. *Dunbar v. State*, 515 N.W.2d 12, 15 (Iowa 1994) (holding when complaining about the adequacy of an attorney’s representation, it is not enough to simply claim that counsel should have done a better job, the defendant must show how adequate performance would have changed the outcome).

Williams also frames her claim as receiving ineffective assistance of counsel because of an alleged conflict of interest, that is, having a difference of

opinion between attorney and client as to how to proceed.² The question before us is “whether the defendant has made a showing whereby we can presume prejudice.” *State v. Smitherman*, 733 N.W.2d 341, 346-47 (Iowa 2007). The Court only presumes prejudice where there is an undisclosed, actual conflict which adversely impacts representation. *Id.* Williams’s claim, however, fails at the outset because there was no conflict for purposes of the Sixth Amendment and Iowa Constitution Article I, section 10. Counsel was not representing conflicting interests. The suppression court inquired of both Williams and her counsel as to what the conflict may be. Williams responded that she wanted to see the DVD of the stop, defend with testifying that she had a work permit to drive, although admitted she was “after hours,” and she claimed the officers lied about the identity of the car, timing, and location of the stop. All of those details were probed by her counsel at the suppression hearing. The district court saw no conflict and the hearing continued. The attorney’s action of asking to withdraw due to the disagreement whether to pursue the motion to suppress cannot be seen as dividing the loyalties of the attorney. *See State v. Lopez*, 633 N.W.2d 774, 778-79 (Iowa 2001) (holding it must be an “irreconcilable conflict, or a complete breakdown in communication” to warrant substitution without a conflict of interest). Requesting to withdraw for differing opinions as to how the case should progress does not, in this case, amount to a conflict of interest such

² Williams notes she was not included in the short colloquy between the court, the State, and her attorney on her attorney’s motion to withdraw. *See State v. Wise*, 427 N.W.2d 278, 279 (Iowa 1999) (requiring defendant’s personal presence at every stage of trial, barring exceptional circumstances). Her conflict claim, however, is not based on this omission.

as to deem her counsel ineffective in representing Williams at the subsequent suppression hearing.

III. Conclusion

Williams was unable to show her trial counsel was ineffective as to her performance at the hearing on the motion to suppress or that her representation was flawed because of a conflict of interest. The attorney did not breach any essential duties and were therefore affirm the conviction and sentence.

AFFIRMED.