

IN THE COURT OF APPEALS OF IOWA

No. 2-1117 / 12-0184
Filed January 24, 2013

MICHAEL FORD,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Eliza J. Ovrom,
Judge.

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

Mark C. Smith, State Appellate Defender, and Stephan J. Japuntich,
Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Michael L. Bennett, Assistant Attorney
General, John P. Sarcone, County Attorney, and Jaki L. Livingston, Assistant
County Attorney, for appellee.

Considered by Doyle, P.J., and Mullins and Bower, JJ.

DOYLE, P.J.

Michael Ford appeals from the district court's denial of his application for postconviction relief. He claims the attorney who represented him in the probation violation proceedings leading to his incarceration was ineffective for failing to investigate the violations and explain the meaning of the word "stipulate" to him. He additionally claims postconviction counsel was ineffective for failing to argue that his probation officer did not adequately assist him in his "quest for rehabilitation." We affirm.

I. Background Facts and Proceedings.

Ford pleaded guilty to two counts of third-degree theft and one count of fourth-degree theft on October 16, 2009. He was sentenced to a suspended sentence totaling five years in prison and placed on probation for two years.

Ford violated his probation on June 21, 2010, when he was arrested for spying on women in a public restroom. He was charged with three counts of third-degree harassment and one count of trespassing. A probation violation report was filed the day after the arrest.

After pleading guilty to the harassment charges, Ford stipulated to the violations. He was continued on probation and ordered to undergo a psychosexual exam and risk assessment. Ford was to remain in custody pending placement at the Fort Des Moines Residential Facility. He unfortunately failed to meet the criteria for the facility. Ford's probation officer consequently filed another addendum recommending that Ford "reside at his mother's home until a more appropriate placement can be secured," complete the psychosexual

exam and risk assessment, and “actively participate in therapy and psychiatric services.”

Ford thereafter stipulated to new violations and was found in contempt of court. He was ordered to serve twenty-five days in jail with credit for twenty-five days already served and continued on probation.

Soon after Ford’s release from jail, the probation violation report giving rise to this case was filed. In that report, the probation officer asserted Ford had breached his probation in the following ways:

Mr. Ford is not being financially responsible with his money. He has admitted to sending money to a married woman he has met on the internet even though he does not have enough money to support himself.

. . . On July 20, 2010 Mr. Ford admitted to accessing pornography on the internet. He admitted that the pornography includes naked pictures of minor females. He also admits to masturbating to these pictures.

. . . Mr. Ford was released from jail to his mother’s home; however his mother’s landlord has stated that Mr. Ford is not allowed to reside on his property.

. . . Mr. Ford had told his aunt and mother that he did not have to attend therapy since it was not in his court order. When evaluated by Dr. Tatman from DCS, he failed to report his collection of pornography/child pornography and his sending naked pictures of himself to others. He also reports receiving sexual pictures from internet “friends.” He admits he has now downloaded these images and admits to using these images for sexual stimulation.

An addendum stated Ford did “not qualify for mental health services in a more restrictive and supervised environment. There are no appropriate family members able to allow him to live with them and monitor him closely enough to ensure safety of the community.” The probation officer thus recommended Ford’s probation be revoked and the original sentence be imposed.

Ford met with his attorney before an evidentiary hearing on the probation report. Upon trying to review the violations with him, the attorney became concerned Ford was not competent. He explained:

[O]n my first meeting with [Ford], it was very confusing, very disjointed in which he didn't really want to talk about this stuff. And he was insisting that he be released, be given credit [for] time served and he'd just simply be released, because he didn't want to be on probation anymore. He was tired of it. . . .

. . . I couldn't pin him down to . . . talk about . . . [h]ere's what you're facing. Here's what you're . . . looking at here.

At the attorney's request, the court continued the hearing and ordered a competency evaluation for Ford.

That evaluation was completed just a few days prior to the rescheduled hearing and determined Ford was competent. Ford's attorney met with him on the day of the hearing and went over the violations. The attorney said Ford again told him that "[h]e wanted to stipulate to the violations. He wanted to argue for no probation. He wanted to argue for credit [for] time served." The attorney accordingly informed the court Ford was stipulating to the violations. Ford then personally addressed the court as follows:

Over the last year I've reflected a lot on my life and how I didn't want to continue down the bad road that I had been under. . . .

And I'm willing to do anything to stay within the community and, if need be, have another longer term psyche evaluation so it can be shown that I don't have those aggressive tendencies as some of the reports have been saying.

The district court accepted Ford's stipulation, revoked his probation, and imposed the original sentence of five years in prison.

Ford sought postconviction relief, arguing his attorney was ineffective for failing to adequately investigate the violations and explain the meaning of the

word “stipulate” to him. The district court rejected these claims, finding there was no reason for counsel to investigate the violations because Ford told his “attorney that he had committed the enumerated violations. He further stated he wanted to stipulate and to argue disposition.” The court found Ford’s testimony that he believed “stipulate” meant “to fight against the allegations” was not credible. Finally, the court concluded no prejudice resulted from any claimed breach of duty. Ford appeals.

II. Scope and Standards of Review.

We normally review postconviction proceedings for errors at law. *Everett v. State*, 789 N.W.2d 151, 155 (Iowa 2010). But when there is an alleged denial of constitutional rights such as ineffective assistance of counsel, we conduct a de novo review. *Id.*

III. Discussion.

To prevail on his ineffective-assistance claims, Ford must prove by a preponderance of evidence that counsel failed to perform an essential duty and prejudice resulted. *Id.* at 158. A reviewing court need not engage in both prongs of the analysis if one is lacking. *Id.* at 159. We believe this case is resolvable on the prejudice prong.

“To establish prejudice, a defendant must show the probability of a different result is sufficient to undermine confidence in the outcome.” *Id.* (citations omitted). Ford has not made that showing here.

The district court found Ford violated his probation by failing to (1) fulfill financial obligations, (2) obey all laws and contact his probation officer within twenty-four hours upon arrest, (3) maintain an approved residence, and

(4) satisfactorily complete treatment. Ford appears to agree he “technically” committed these violations but argues “the court’s decision would have been less restrictive” had certain evidence been presented at the probation revocation hearing. That evidence includes exhibits showing Ford had made some payments on his financial obligations and contacted his probation officer after his release from jail.

We cannot agree Ford’s probation would not have been revoked had this evidence been presented to the court. As the postconviction court found:

The record shows that Ford was required to live with his mother, but her landlord would not allow him to live there. Thus he violated that condition of probation. He made some of his court-ordered payments, but made minimal or no payments on other financial obligations. In addition, he told his probation officer he was sending money to a woman he met on the internet. He was not complying with sex offender treatment. He admitted viewing pornography on his computer, which he failed to disclose in treatment.

Ford acknowledges these violations were a “product of [his] own behavior,” but nevertheless asserts his probation officer should have done more to help him succeed on probation. He relies on Iowa Code section 907.2 (2009) in making this argument, which requires probation officers to “keep informed of each person’s conduct and condition and . . . use all suitable methods prescribed by the judicial district department of correctional services to *aid and encourage the person to bring about improvements in the person’s conduct and condition.*” (Emphasis added.) Ford contends his probation officer failed in this italicized duty because she did not address “the required treatment (SOTP) and his housing dilemma.” We conclude otherwise.

We first observe Ford does not identify what more the probation officer could have done to keep him from continually violating his probation. An offender log admitted as an exhibit at the postconviction hearing shows the officer met with Ford regularly and kept close tabs on his behavior. She communicated with his family about housing options and explored mental health treatment for him. She also encouraged Ford to secure a job and become responsible with his money. We agree with the State that ultimately, however, “Ford’s success on probation depended on his commitment to accept treatment and change his behavior.”

Furthermore, while one purpose of probation is “to provide maximum opportunity for the rehabilitation of the defendant,” a second purpose is “to protect the community from further offenses by the defendant.” Iowa Code § 907.7(3). The district court recognized these dual purposes in revoking Ford’s probation, stating:

Mr. Ford, my obligation, one, is to protect the public, but in some ways also protect you.

I think, as the State has indicated, you are not present here today for the first time on criminal charges. You do have a fairly extensive criminal history, not including the charges that you’re here answering today.

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It is unfortunate there’s not a community-based system available for you, but that’s the times we live in. And the government of the people and by the people do what they can do, but there is a limit. And I think in your case we’ve reached the limit in year 2010.

In light of the foregoing, we find no reasonable probability that had Ford’s postconviction counsel raised any supposed deficiencies with the probation

officer's actions, the result of the proceeding would have been different. See *Dunbar v. State*, 515 N.W.2d 12, 15 (Iowa 1994).

For these reasons, we affirm the judgment denying Ford's application for postconviction relief.

AFFIRMED.