

IN THE COURT OF APPEALS OF IOWA

No. 2-1168 / 12-1105
Filed January 24, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ERIC LANCE BOTTROFF,
Defendant-Appellant.

Appeal from the Iowa District Court for Clinton County, David H. Sivright Jr., Judge.

Eric Bottroff appeals from his conviction and sentence for harboring a runaway child, in violation of Iowa Code section 710.8(3) (2011). **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Theresa R. Wilson, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Elisabeth S. Reynoldson, Assistant Attorney General, Michael L. Wolf, County Attorney, and Amanda W. Trejo, Assistant County Attorney, for appellee.

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

DOYLE, P.J.

Eric Bottroff appeals from his conviction and sentence for harboring a runaway child, in violation of Iowa Code section 710.8(3) (2011). In February 2012, Bottroff pled guilty to the charge. He was granted a deferred judgment and placed on unsupervised probation for a twelve-month period. As a condition of probation, he was to have no contact with the child for twelve months. A separate no contact order was also entered.

About two months later, Bottroff made contact with the child. A petition to revoke the deferred judgment was filed. Bottroff stipulated he violated the conditions of his probation. An order revoking his deferred judgment was entered, adjudicating him guilty of the harboring-a-runaway charge. He was sentenced to serve thirty days in jail, with all thirty days suspended, and he was placed on unsupervised probation for twelve months. He was also ordered to pay a fine and costs.

On appeal, Bottroff contends his trial counsel was ineffective in permitting him to stipulate to the probation violation that resulted in the revocation of his deferred judgment. “We review claims of ineffective assistance of counsel *de novo*.” *State v. Rodriguez*, 804 N.W.2d 844, 848 (Iowa 2011). Although we often preserve ineffective assistance claims for postconviction relief, we find the record here is sufficient to address this claim on direct appeal. *See State v. Braggs*, 784 N.W.2d 31, 34 (Iowa 2010).

Ineffective assistance of counsel requires a defendant to prove (1) trial counsel failed to perform an essential duty and (2) such failure resulted in prejudice. *Everett v. State*, 789 N.W.2d 151, 158 (Iowa 2010). We need not

examine the breach of duty prong on Bottroff's ineffective-assistance-of-counsel claim because the claim can be resolved on the prejudice prong. *Ledezma v. State*, 626 N.W.2d 134, 142 (Iowa 2001) ("If the claim lacks prejudice, it can be decided on that ground alone without deciding whether the attorney performed deficiently."). To prove prejudice resulted, a defendant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 143 (citing *Strickland v. Washington*, 466 U.S. 668, 694 (1984)).

Bottroff contends his deferred judgment revocation and subsequent conviction was the result of his stipulating to a violation of the illegally entered no-contact order. He suggests he would not now have the conviction on his record had his trial counsel argued that, because the no-contact order was not legally imposed, any violation of the order could not serve as the basis for revoking the deferred judgment. We disagree.

In granting Bottroff a deferred judgment, the district court imposed certain conditions of probation. One condition was that Bottroff "shall have no contact with [the child] for [twelve] months. *See separate Order of Protection.*" (Emphasis in original.) A separate no contact order was entered. A plain reading of the order granting the deferred judgment leads us to conclude, whether or not a separate no-contact order was entered, no contact with the child was imposed as a condition of Bottroff's probation. The district court was authorized under Iowa Code section 907.6 to define reasonable probation conditions "to promote rehabilitation of the defendant or protection of the

community.”¹ Bottroff does not argue that no contact, as a *condition* of probation, is not authorized; he argues the no-contact *order* was not authorized. Bottroff makes no suggestion that the no-contact condition of probation was in any way unreasonable or arbitrary. See *State v. Rogers*, 251 N.W.2d 239, 243 (Iowa 1977) (“[C]onditions of probation cannot be unreasonable or arbitrary.”). Bottroff does not dispute he had contact with the child during the period of his probation. He admitted to the arresting officer that he had contact with the child. Even had the court found the no-contact order to be invalid, there was still a sufficient factual basis for the court to find Bottroff violated the no-contact condition of his probation. Bottroff’s deferred judgment was properly revoked. There is no reasonable probability that the outcome of the proceedings would have been any different had Bottroff’s counsel argued the invalidity of the no-contact order and not permitted his client to sign the order revoking the deferred judgment wherein he admitted “violating the conditions of his deferred judgment based on his stipulation to [v]iolating the [no-contact] [o]rder.” Accordingly, we affirm his conviction and sentence.

AFFIRMED.

¹ Section 907.6 does not, however, authorize the creation of a condition of probation that could result in criminal prosecution under Iowa Code chapter 664A. See *State v. Hall*, 740 N.W.2d 200, 203 (Iowa Ct. App. 2007). This appeal does not involve a prosecution under chapter 664A. As an aside, later the district court, finding no statutory authority under chapter 664A to enter the no contact order, cancelled the order but continued Bottroff’s condition of probation that he have no contact with the child during the period of probation.