

**IN THE COURT OF APPEALS OF IOWA**

No. 2-270 / 11-1379  
Filed May 9, 2012

**AARON STACY ROBERTS,**  
Applicant-Appellant,

**vs.**

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

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Appeal from the Iowa District Court for Black Hawk County, Bradley J. Harris, Judge.

Aaron Roberts appeals the postconviction court's denial of his application for postconviction relief. **AFFIRMED.**

Erin M. Carr of Carr & Wright, P.L.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Kimberly A. Griffith, Assistant County Attorney, for appellee State.

Considered by Vogel, P.J., and Potterfield and Doyle, JJ. Tabor, J., takes no part.

**VOGEL, P.J.**

Aaron Roberts appeals the district court's denial of his application for postconviction relief.<sup>1</sup> We typically review postconviction relief proceedings on error; however, when an applicant asserts claims of a constitutional nature, including claims of ineffective assistance of counsel, our review is de novo. *Castro v. State*, 795 N.W.2d 789, 792 (Iowa 2011).

Roberts asserts his trial counsel was ineffective for failing in his duty to investigate and pursue defense avenues, and that this failure rendered Roberts's guilty plea neither knowing nor voluntary. In asserting an ineffective-assistance-of-counsel claim, Roberts must establish (1) his counsel failed to perform an essential duty and (2) prejudice resulted from such failure. See *Lado v. State*, 804 N.W.2d 248, 251 (Iowa 2011) (citing *Strickland v. Washington*, 466 U.S. 668, 687–88 (1984)). Roberts must prove both elements by a preponderance of the evidence. *Id.*

A guilty plea must be knowing and voluntary. *State v. Speed*, 573 N.W.2d 594, 596 (Iowa 1998). Roberts argues his guilty plea was not knowing and voluntary due to ineffective assistance of counsel—namely trial counsel's failure to obtain a recorded voicemail message containing the alleged harassing statements.<sup>2</sup>

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<sup>1</sup> Waterloo police officers arrested Roberts on a harassment complaint filed by Roberts's cousin. During a search incident to arrest, police found a bag of marijuana, a metal pipe, and a lighter in Roberts's pants pocket. Roberts was charged by trial information with possession of a controlled substance (marijuana), third offense. Roberts signed and filed a written guilty plea on October 16, 2008.

<sup>2</sup> Roberts contends that “had this matter been properly investigated, his trial counsel would have discovered that the police lacked the necessary probable cause to arrest him for harassment” and in turn, “the search incident to arrest which produced the illegal

The component of the claim involving the voluntariness of the plea is largely tied to the prejudice element of ineffective-assistance-of-counsel claims. This element means criminal defendants who seek postconviction relief after pleading guilty must establish the guilty plea would not have been entered but for the breach of duty by counsel.

*Castro*, 795 N.W.2d at 793 (internal citation omitted).

At the postconviction hearing, Dennis Guernsey, Roberts's trial counsel, stated he read the police reports regarding the phone call Roberts made to his cousin; he further explained that Roberts admitted to making the phone call and admitted to the statements made in the voicemail message.<sup>3</sup> Based on this information, Guernsey stated he did not feel there were grounds for a motion to suppress and he explained this to Roberts several times. Guernsey's testimony developed as follows:

A: [T]he day of the guilty plea or the day before, I talked with [Roberts] about it again, and he seemed to understand that it just wasn't—that the conspiracy he was talking about just wasn't relevant to the issue of whether the police had probable cause to arrest him once he admitted to making the phone call, and then once the arrest was made, then they searched him and found the marijuana.[<sup>4</sup>]

Q: So the day of or the day before he grasped that finally?

A: I believe so, yes.

Q: Didn't like it, though, probably? A: No. But I think then that's during that conversation is when he decided he just wanted to get it over with, plead guilty and not go to trial.

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substance in question, would have proven invalid and the contents of that search would have been subject to a suppression motion.”

<sup>3</sup> Guernsey was Roberts's fourth attorney in this case; Roberts was dissatisfied with his three previous attorneys.

<sup>4</sup> At the postconviction trial, Roberts testified that he told Guernsey he and his family were victims of a mass conspiracy.

The postconviction court found no merit to Roberts's claim his counsel was ineffective.<sup>5</sup> Trial counsel has no duty to pursue a meritless issue. *State v. Utter*, 803 N.W.2d 647, 652 (Iowa 2011). Because Guernsey had no duty to file a suppression motion that lacked merit, he did not breach an essential duty to Roberts. See *State v. Dudley*, 766 N.W.2d 606, 620 (Iowa 2009) (recognizing counsel has no duty to raise a meritless issue). Consequently, Roberts cannot establish prejudice and his ineffective-assistance-of-counsel claim must fail. See *Osborn v. State*, 573 N.W.2d 917, 922 (Iowa 1998) ("If the petitioner makes an insufficient showing on either prong of the two-part test, we need not address both components."). In the absence of trial counsel breaching an essential duty, Roberts cannot prove prejudice and Roberts's claim that his guilty plea was not voluntary due to ineffective assistance of counsel must fail. See *State v. Carroll*, 767 N.W.2d 638, 644 (Iowa 2009) (stating a postconviction relief applicant has the burden of proving "that *but for counsel's breach of duty*, the party seeking relief would have pled guilty and would have elected to stand trial") (emphasis added). We therefore affirm.

**AFFIRMED.**

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<sup>5</sup> The State maintains Roberts failed to preserve error on the Fourth Amendment issue because the postconviction court made no specific finding as to the investigation and Roberts failed to move to enlarge or amend. The investigation, however, is an underlying component of Roberts's ineffective-assistance-of-counsel claim, which Roberts contends influenced the voluntariness of his guilty plea. We therefore address the claim.