

IN THE COURT OF APPEALS OF IOWA

No. 3-089 / 10-1458
Filed March 13, 2013

JESUS NOE CORDOVA,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Glenn E. Pille, Judge.

Applicant appeals the district court decision denying his application for postconviction relief from his conviction for assault. **AFFIRMED.**

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

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney General, John Sarcone, County Attorney, and Andrea M. Diaz, Assistant County Attorney, for appellee.

Considered by Danilson, P.J., Bower, J., and Miller, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2013).

MILLER, S.J.**I. Background Facts & Proceedings**

Jesus Cordova was charged with domestic abuse assault, in violation of Iowa Code section 708.2A(2)(a) (2005), a simple misdemeanor. Cordova's primary language is Spanish. A Spanish-speaking interpreter was present for his initial appearance and pre-trial conference.

On October 23, 2006, Cordova entered a guilty plea to assault, in violation of Iowa Code section 708.2(6), a simple misdemeanor. An interpreter, Anna Pottebaum, submitted a claim for having provided one hour of services in Cordova's case on October 23, 2006. Cordova was immediately sentenced after his guilty plea to two days in jail, with credit given for two days served. He was also ordered to attend an assaultive behavior class. Cordova later submitted a certificate showing he had completed the class on March 24, 2007.

On October 6, 2009, Cordova filed an application for postconviction relief. He claimed his conviction should be overturned because he did not receive assistance from an interpreter at his guilty plea proceeding. A Spanish-speaking interpreter was appointed for him for the postconviction proceedings.

At the postconviction hearing, held on August 5, 2010, Cordova testified he did not have an interpreter present during the guilty plea proceeding on October 23, 2006. He stated he was not able to understand everything that happened in the courtroom that day. Cordova stated he had completed the assaultive behavior class.

Pottebaum testified she was a self-employed court interpreter. She did not have any specific memory of interpreting for Cordova on October 23, 2006. She indicated, however, that she had filled out a form showing that she had worked as an interpreter on Cordova's case that day. The case number on the form was SM 284811, the number of Cordova's criminal case, and his name, Jesus Cordova, was on the form. Pottebaum had signed the form, it had been approved by the State Public Defender's office, and had been initialed by the judge who had presided over the guilty plea proceeding.

The district court entered a decision denying Cordova's application for postconviction relief. The court specifically found Cordova's testimony was not credible.¹ The court determined the evidence showed that Cordova did have the assistance of a Spanish-speaking interpreter at the time of the guilty plea proceeding. The court noted that Cordova signed the plea and followed through with the requirements of the sentence. Cordova now appeals.

II. Standard of Review

In general, we review the district court's denial of an application for postconviction relief for the correction of errors at law. *Lamasters v. State*, 821 N.W.2d 856, 862 (Iowa 2012). When an applicant raises claims of a constitutional nature, however, our review is de novo. *Id.* To establish a claim of ineffective assistance of counsel, an applicant must show (1) the attorney failed

¹ For instance, Cordova testified his attorney told him that if he did not accept the plea agreement, we would spend one to two years in jail. Cordova was charged with a simple misdemeanor and could have been sent to jail for up to thirty days. See Iowa Code § 903.1(1)(a).

to perform an essential duty, and (2) prejudice resulted to the extent it denied applicant a fair trial. *State v. Carroll*, 767 N.W.2d 638, 641 (Iowa 2008).

III. Interpreter

Cordova contends he is entitled to postconviction relief because the record does not support a finding that he had the assistance of an interpreter at the guilty plea proceeding. He asserts his guilty plea was not voluntary and intelligent because he did not have sufficient understanding of the proceeding due to the fact he was not proficient in English. Cordova asserts that based on due process and section 622A.2 he was entitled to an interpreter throughout his legal proceedings.

The State points out that Cordova did not file a motion in arrest of judgment, or appeal his conviction. The State asserts Cordova's postconviction claim must be raised within the context of a claim of ineffective assistance of counsel. Whether we consider Cordova's claim directly or as a claim of ineffective assistance of counsel, however, our determination would be the same—the evidence does not support Cordova's claim that he did not have the assistance of an interpreter at his guilty plea proceeding.²

We first note the district court specifically found Cordova's testimony on this issue was not credible. We also note the claim submitted by Pottebaum showed Cordova had the assistance of an interpreter at the guilty plea proceeding. The claim submitted by Pottebaum includes the case number for his

² Cordova raises an alternate claim that he received ineffective assistance of postconviction counsel because that counsel did not raise the issue regarding the lack of an interpreter as a claim of ineffective assistance of defense counsel.

case and has his name as the case title. Her claim shows she worked for one hour on Cordova's case on October 23, 2006, which is the date of his guilty plea. The claim is signed and dated by Pottebaum, was approved by the State Public Defender's office, and initialed by the judge presiding over the guilty plea proceeding.

We affirm the decision of the district court finding "the testimony and records of the interpreter indicate the Applicant was provided the services of said interpreter." Furthermore, Cordova has not shown he received ineffective assistance on the ground that his counsel failed to demand the presence of an interpreter at the guilty plea proceeding. Cordova has not shown he was entitled to postconviction relief because he did not understand the proceedings due to the lack of an interpreter.

IV. Iowa Rules of Criminal Procedure

Cordova asserts that in order to adequately ensure the validity of guilty pleas involving simple misdemeanors in the future, courts should be required to use the written guilty plea provisions of Iowa Rule of Criminal Procedure 2.8(2)(b). He claims that postconviction trial counsel rendered ineffective assistance by not asserting that trial counsel in his criminal case rendered ineffective assistance by not presenting this issue. To prove postconviction trial counsel's performance resulted in prejudice, Cordova must show that an underlying claim of ineffective assistance of criminal trial counsel would have prevailed if raised in the postconviction trial court. See, generally, *Ledezma v. State*, 626 N.W.2d 134, 141-42 (Iowa 2001) (holding that to prove direct appeal

counsel's performance resulted in prejudice, applicant for postconviction relief must show that the claim of ineffective assistance of criminal trial counsel would have prevailed if raised on direct appeal). Thus, Cordova can prevail only if a claim of ineffective assistance of criminal trial counsel would have prevailed. *Id.*

There are separate rules of criminal procedure regarding simple misdemeanors. See Iowa Rs. Crim. P. 2.51-2.75; *Hadjis v. Iowa Dist. Ct.*, 275 N.W.2d 763, 766 (Iowa 1979) (noting the simple misdemeanor rules "are intended to facilitate disposition of criminal charges with as much speed and as little cost as can be accomplished consistent with a fair trial"). As Cordova recognizes, rule 2.8(2)(b) applies only to serious misdemeanors, aggravated misdemeanors, and felonies.³ His claim of ineffective assistance would thus require an interpretation and application of the rules of criminal procedure contrary to the structure and existing application of those rules.

If there is a change in the interpretation or application of the Iowa Rules of Criminal Procedure, we believe it must be done by amendment to the rules or an opinion of the Iowa Supreme Court. We cannot conclude that there is a reasonable probability that if presented with such a request for a change in the law the criminal trial court would have sustained the request. We therefore do

³ "Whether a provision of the indictable offense rules is by its nature applicable to prosecutions for simple misdemeanors must be decided by reference to the purposes of the simple misdemeanor rules." *Hadjis*, 275 N.W.2d at 766. We note that rule 2.8(2) is captioned, "Pleas to the indictment or information." Simple misdemeanors are not prosecuted either on indictment or information. Iowa R. Crim. P. 2.4(2). They are instead prosecuted on a "complaint." Iowa Rs. Crim. P. 2.54-.57. Thus, as Cordova recognizes, because simple misdemeanors are not prosecuted under an indictment or information, rule 2.8(2) has not been applied to guilty plea proceedings for simple misdemeanors.

not find that postconviction trial counsel rendered ineffective assistance by not asserting that trial counsel in the criminal case rendered ineffective assistance by not presenting such a request.

V. Sentencing

Finally, Cordova contends the district court imposed an illegal sentence by ordering him to complete an assaultive behavior class. He points out that he was convicted of a simple misdemeanor, punishable by a fine of between \$50 to \$500 and up to thirty days in jail. Iowa Code § 903.1(1)(a). He argues the court did not have authority to order him to complete an assaultive behavior class. Cordova points out that illegal sentences may be corrected at any time. Iowa R. Crim. P. 2.24(5)(a); *State v. Lathrop*, 781 N.W.2d 288, 293 (Iowa 2010).

“In general an action is moot if it no longer presents a justiciable controversy because the issues involved have become academic or non-existent. A case is moot when judgment, if rendered, will have no practical effect upon the existing controversy.” *State v. Wilson*, 234 N.W.2d 140, 141 (Iowa 1975). Because Cordova’s sentence has been discharged, we conclude his challenge is moot. See *Rarey v. State*, 616 N.W.2d 531, 532 (Iowa 2000) (finding an absolute discharge of a sentence renders a challenge to the sentence moot).

Even if we were to find that Cordova should not have been ordered to complete the assaultive behavior class, it would not benefit him because he has already completed that class. See *Wilson*, 234 N.W.2d at 141 (finding defendant had already been released from jail, and his challenge to the sentence was moot).

VI. Disposition

We affirm the decision of the district court denying Cordova's application for postconviction relief.

AFFIRMED.