

IN THE COURT OF APPEALS OF IOWA

No. 3-090 / 10-1616
Filed March 13, 2013

CHARLES STAPLES,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Robert B. Hanson,
Judge.

An applicant appeals a district court judgment denying his application for
postconviction relief. **AFFIRMED.**

Benjamin D. Bergmann of Parrish, Kruidenier, Dunn, Boles, Gribble,
Parrish, Gentry & Fisher, L.L.P., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Jean C. Pettinger, Assistant Attorney
General, John Sarcone, County Attorney, and David Porter, Assistant County
Attorney, for appellee.

Considered by Potterfield, P.J., Doyle, J., and Miller, S.J.*

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

MILLER, S.J.

Charles R. Staples appeals a district court judgment denying his application for postconviction relief from a conviction for third-offense operating while intoxicated (OWI). We affirm.

I. BACKGROUND FACTS AND PRIOR PROCEEDINGS.

Staples was charged in one trial information with third-offense OWI in violation of Iowa Code sections 321J.2(1) and 321J.2(2)(c) (2007), a class “D” felony, and driving while barred, in violation of section 321.561, an aggravated misdemeanor. He was charged in a second trial information with another offense of driving while barred, and was charged in a separate complaint with operating a non-registered vehicle, a simple misdemeanor. As part of a plea agreement Staples pleaded guilty to the OWI charge and to the driving while barred charge contained in the second trial information, with the driving while barred charge in the first trial information and the simple misdemeanor charge both to be dismissed.

Staples waived his time and right to file a motion in arrest of judgment, his right to have a presentence investigation report considered for sentencing, and his right to time before sentencing. The matter proceeded to sentencing directly following his pleas of guilty. In relevant part, on the felony OWI conviction the court sentenced Staples to a suspended prison term of no more than five years, placed him on probation for five years, and ordered him to serve 300 days in jail (with credit for eighty days already served). See Iowa Code § 321J.2(3)(a)(2).

On the driving while barred conviction the court imposed a sentence of 300 days in jail (with credit for eighty days already served).

Staples appealed. We affirmed the judgment of the district court. *State v. Staples*, No. 07-1916, 2008 WL 4531023 (Iowa Ct. App. Oct. 1, 2008). Staples subsequently filed an application for postconviction relief on July 9, 2009. Following a hearing the district court filed a ruling on September 8, 2010, denying relief. Staples timely appealed. On appeal he pursues claims that defense counsel in the criminal proceeding rendered ineffective assistance, and he raises a claim of error by the trial court in the criminal proceeding.¹

II. SCOPE AND STANDARDS OF REVIEW.

In general, we review the district court's denial of an application for postconviction relief for correction of errors at law. *Lamasters v. State*, 821 N.W.2d 856, 862 (Iowa 2012). However, when an applicant has asserted claims of a constitutional nature, we review de novo. *Id.* Claims of a constitutional nature include claims of ineffective assistance of counsel. *Ledezma v. State*, 626 N.W.2d 134, 141 (Iowa 2001).

A claimant alleging ineffective assistance of counsel must prove (1) counsel failed to perform an essential duty and (2) prejudice resulted. To establish prejudice, a claimant must demonstrate there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. In the context of a guilty plea, an applicant for postconviction relief must prove a reasonable probability that, but for counsel's alleged errors, he [or she] would not have pled guilty and would have insisted on going to trial.

¹ The issues raised in Staples's application for postconviction relief, and pursued on appeal, relate solely to his conviction and sentence for third-offense OWI.

State v. Carroll, 767 N.W.2d 638, 641 (Iowa 2009) (citations and quotation marks omitted).

Both elements of a claim of ineffective assistance must be proved by a preponderance of the evidence. *State v. Utter*, 803 N.W.2d 647, 652 (Iowa 2011). The claim fails if either of the two elements is lacking in proof. *State v. Braggs*, 784 N.W.2d 31, 34 (Iowa 2010).

III. MERITS.

A. Staples first asserts:

TRIAL COUNSEL WAS INEFFECTIVE FOR NOT TELLING THE COURT THE PLEA AGREEMENT BETWEEN THE STATE AND MR. STAPLES WAS REACHED PURSUANT TO IOWA RULE OF CRIMINAL PROCEDURE 2.10(2) AND FAILING TO OBJECT WHEN THE TRIAL JUDGE CHANGED THE TERMS OF THE PLEA.

As cogently noted by the district court, implicit in this assertion is that the plea agreement was reached under Iowa Rule of Criminal Procedure 2.10(2).² Staples readily acknowledges that the parties' plea agreement was disclosed to the court by the prosecutor, but asserts that defense counsel failed to state that the agreement was conditioned upon the court concurring in an agreement of the parties as to sentencing.³

During the plea proceeding the prosecuting attorney stated the parties' plea agreement. In doing so he did not in any way indicate the agreement was

² Rule 2.10(2) provides, in relevant part:

[I]f the agreement is conditioned upon concurrence of the court in the charging or sentencing concession made by the prosecuting attorney, the court may accept or reject the agreement, or may defer its decision as to acceptance or rejection until receipt of a presentence report.

³ There is no claim that the court did not concur in and follow the parties' agreement as to charging concessions, the dismissal of the two charges previously mentioned.

conditioned upon the court's acceptance. He then spoke of what the State's "sentencing recommendation" would be. Defense counsel concurred in the prosecutor's rendition of the agreement. The court inquired of Staples whether he understood that the parties' "plea negotiations are not binding on me," and that "the Court makes a decision and you could be sentenced in this case to a prison term as much as seven years and a fine in the amounts previously mentioned." The court received Staples's assurance that he understood those things and did not want any more time to think about it.

The court thereafter stated that it would make a decision concerning sentencing "at the time of sentencing," and asked Staples if he wished to confer with his attorney. Staples apparently did so, as the record indicates a "[d]iscussion was held off the record," after which Staples indicated he was ready to proceed. Staples then entered his pleas of guilty and acknowledged two prior OWI convictions within the past twelve years.

Nothing in the plea and sentencing transcript states or suggests that the parties' plea agreement was made pursuant to rule 2.10(2) or was conditioned upon the court's concurrence. During the postconviction trial, which occurred thirty-two months after the plea and sentencing, the attorney who represented Staples in the criminal proceeding testified that he did not have a recollection of the plea itself, and thought the transcript should be relied on. He testified that in the county in which Staples had been prosecuted, Polk County, "both the Courts and the county attorney's office are reluctant to do binding pleas" and that he

“would be surprised if this would have been in any way a binding plea on the Court.”

The postconviction trial court concluded Staples had not established that the plea agreement was reached under rule 2.10(2). Upon our de novo review we fully agree, concluding the evidence strongly indicates it was not. Accordingly, defense counsel did not breach any essential duty either by not informing the court the agreement was pursuant to rule 2.10(2), or by not objecting to the court’s sentencing decision on the basis that the plea was pursuant to that rule.

B. Staples next asserts:

IN THE ALTERNATIVE, IF THE PLEA AGREEMENT WAS NOT REACHED UNDER IOWA RULE OF CRIMINAL PROCEDURE 2.10(2), TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO INFORM MR. STAPLES OF THIS AND FAILING TO PROPERLY INFORM MR. STAPLES OF THE CONSEQUENCES OF HIS GUILTY PLEA, RENDERING MR. STAPLES’ GUILTY PLEA INVOLUNTARY.

Staples’s claim is that defense counsel did not (1) tell him the parties’ plea agreement was not conditioned on the court’s acceptance, and (2) tell him the court could impose probation when suspending a sentence of imprisonment. The record presented on appeal, however, contains no substantial affirmative evidence that counsel did not inform him of these matters. We conclude Staples has not proved these claims by a preponderance of the evidence and has thus not proved counsel breached any essential duty.

To establish prejudice when a defendant has been convicted pursuant to a guilty plea “an applicant for postconviction relief must prove a reasonable

probability that, but for counsel's alleged errors, he [or she] would not have pled guilty and would have insisted on going to trial." *Carroll*, 767 N.W.2d at 641. Staples had a nine-year-old daughter. He stated that "[m]y main objective is to take care of my daughter," and that he was "trying to maintain some kind of contact with her." He and the State thus recommended a sentence of one year in the Polk County Jail. Defense counsel explained to the court that the reason Staples was proposing such a sentence was that it would allow Staples and his daughter the opportunity to maintain contact, an opportunity "which would not be available in prison."

In addition to concluding that Staples has not shown a breach of essential duty in connection with these claims, we also conclude Staples has not shown that he was prejudiced. As to his claim that counsel rendered ineffective assistance by not telling him the plea agreement was not pursuant to rule 2.10(2), Staples's colloquy with the court, summarized and quoted in part in III.(A.) above, clearly informed him that the plea agreement was not binding on the court as to sentencing. Under such circumstances Staples has not shown how additional explanation by counsel would have resulted in him not pleading guilty. He thus has not shown how he can have been prejudiced by the alleged failure by counsel.

As to his claim counsel rendered ineffective assistance by not telling him of the possibility of being placed on probation, for two reasons we conclude he cannot have been prejudiced. First, in the guilty plea proceeding the district court several times mentioned the possibility that it might impose but "suspend" a five-

year term of imprisonment. As a person highly experienced in the criminal justice system⁴ Staples in all probability knew that a suspended sentence involved being placed on probation. Second, and more importantly, probation achieved the very goal stated by Staples of avoiding imprisonment so he could maintain contact with his daughter. As cogently stated by the postconviction trial court, “[G]iven Staples’s plea agreement, his interest in maintaining some contact with his daughter, and the State’s favorable recommendation for sentencing, it is unlikely that Staples would have changed his desire to plead guilty.”

We reject these claims of ineffective assistance of counsel.

C. Staples last asserts:

TRIAL COURT ERRED IN NOT EXPLAINING TO MR. STAPLES
THAT ONE OF THE SENTENCING OPTIONS WAS PROBATION.

The postconviction trial court rejected this claim on both lack of error preservation and the merits. We find it only necessary to address error preservation.

Postconviction relief “is not a substitute for . . . any remedy, incident to the proceedings in the trial court, or of direct review of the sentence or conviction.” Iowa Code § 822.2(2).

[A]ny claim not properly raised on direct appeal may not be litigated in a postconviction relief action unless sufficient reason or cause is shown for not previously raising the claim, and actual prejudice resulted from the claim of error.

Berryhill v. State, 603 N.W.2d 243, 245 (Iowa 1999).

⁴ The record shows that in the nineteen years preceding his guilty plea in this case Staples had accumulated twenty-six non-traffic criminal convictions.

On direct appeal from his conviction Staples raised three issues. He argued that

(1) the district court erred in concluding it did not have discretion to suspend [a fine it imposed], (2) trial counsel was ineffective in failing to raise a constitutional challenge to the pertinent sentencing statute, and (3) the sentence was “unduly harsh.”

Staples, No. 07-1916, 2008 WL 4531023, at *2. The issue which Staples now attempts to present was not raised in Staples’s direct appeal, and no reason or cause for not raising it has been shown. It therefore may not be litigated in this postconviction relief action. *Berryhill*, 603 N.W.2d at 245.

IV. DISPOSITION.

We affirm the district court’s judgment denying postconviction relief.

AFFIRMED.