

**IN THE COURT OF APPEALS OF IOWA**

No. 3-1055 / 13-0210  
Filed December 5, 2013

**COLIN SNOOK,**  
Applicant-Appellant,

**vs.**

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

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Appeal from the Iowa District Court for Polk County, D.J. Stovall, Judge.

Colin Snook appeals the district court's dismissal of his postconviction relief application. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Shellie L. Knipfer, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Tyler J. Buller, Assistant Attorney General, John P. Sarcone, County Attorney, and Frank Severino Jr., Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Mullins and McDonald, JJ.

**VOGEL, P.J.**

Colin Snook appeals the district court's dismissal of his postconviction relief application, claiming trial counsel was ineffective for failing to adequately advise Snook of the possible sentencing consequences of pleading guilty to seven counts of sexual abuse in the third degree. Because we find counsel breached no essential duty, nor was Snook prejudiced, we affirm.

On August 5, 2008, Snook was charged by trial information with seven counts of sexual abuse in the third degree. Snook was initially represented by court-appointed counsel, then he retained a private attorney. On October 22, Snook pleaded guilty to all seven counts, and his plea was accepted by the court. On December 22, Snook was adjudicated guilty and sentenced to ten years on each count, to be served consecutively. Snook filed a postconviction relief application on December 5, 2011, alleging trial counsel was ineffective in recommending he plead guilty without adequately advising him of the possible sentencing consequences. He further alleged counsel was ineffective for failing to advise him of the prison's "unwritten policy" that his court-ordered sex offender treatment program would only be offered toward the end of his sentence. A hearing on Snook's application was held in December 2012. On January 31, 2013, the district court found counsel was not ineffective and dismissed the application. Snook appeals.

We review ineffective-assistance-of-counsel claims de novo. *State v. Straw*, 709 N.W.2d 128, 133 (Iowa 2006). To succeed on this claim, the defendant must show, first, that counsel breached an essential duty, and, second, that he was prejudiced by counsel's failure. *Id.* Under the first prong,

counsel's performance is measured "against the standard of a reasonably competent practitioner with the presumption that the attorney performed his duties in a competent manner." *Id.* (internal citations omitted). It is the defendant's burden to prove both prongs by a preponderance of the evidence, and if the defendant fails to establish prejudice, his claim may be disposed of on that prong alone. *State v. Maxwell*, 743 N.W.2d 185, 195–96 (Iowa 2008). This same standard applies to ineffective-assistance claims arising from a guilty plea. *Hill v. Lockhart*, 474 U.S. 52, 57–59 (1985).

We agree with the district court Snook failed to show counsel breached an essential duty. At the hearing, the privately-retained attorney testified he did not advise Snook about an "unwritten policy" of the sex offender treatment program not beginning until the end of a defendant's prison term because he was not aware of the existence of such a policy. Moreover, Snook has not offered any proof that this policy actually exists. Therefore, counsel did not breach an essential duty.

Additionally, Snook cannot establish prejudice with respect to his contention counsel did not adequately advise him of the sentencing consequences. Snook's assertion counsel informed him he would receive no more than forty years and that his actual sentence would be closer to twenty is not an accurate characterization of the plea hearing. Snook admitted at the postconviction hearing that trial counsel advised him a possible sentence was seventy years. Specifically, the following exchange occurred:

Q: [Counsel] never promised you that you would receive any particular sentence, did he?

A: He said the seventy years was highly unlikely, so, yes, there were no promises. He said he could not promise that, but seventy years just wasn't going to happen.

Furthermore, at the postconviction hearing Snook also admitted the district court, with the aid of the prosecutor, advised him he faced a possible seventy-year prison sentence, but he intended to plead guilty throughout the entirety of the proceeding. Therefore, not only did counsel not breach an essential duty, Snook cannot establish prejudice. We affirm the district court's dismissal of Snook's application for postconviction relief.

**AFFIRMED.**