

**IN THE COURT OF APPEALS OF IOWA**

No. 3-187 / 12-1313  
Filed March 27, 2013

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**MORGAN ALEXANDER SHIELDS,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Warren County, Peter A. Keller (plea) and Martha L. Mertz (sentencing), Judges.

Morgan Shields appeals the conviction following his guilty plea.

**SENTENCE VACATED AND REMANDED FOR RESENTENCING.**

Mark C. Smith, State Appellate Defender, and Rachel C. Regenold, Assistant State Appellate Defender, for appellant.

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

Considered by Eisenhauer, C.J., and Danilson and Bower, JJ.

**DANILSON, J.**

Morgan Shields appeals the conviction entered following his guilty plea. He asserts a claim of ineffective assistance, alleging prejudice resulted after his counsel failed to object to the prosecutor's breach of a plea agreement.<sup>1</sup> Because Shields suffered prejudice as a result of his counsel's failure, we vacate his sentence and remand for resentencing.

**I. Background Facts and Proceedings.**

On May 2, 2012, Shields entered a guilty plea to the charge of burglary in the second degree, in violation of Iowa Code section 713.5 (2011). His plea was entered pursuant to an agreement with the State, which called for the prosecutor to recommend a suspended sentence and probation. The district court conducted a full colloquy and accepted Shields' plea.

A sentencing hearing was held on June 18, 2012. The prosecutor recited the terms of the plea agreement, but contrary to the agreement, the prosecutor made no affirmative recommendation to the court. Shields' counsel did not object. The court made no specific request for recommendations, declined to follow the plea agreement and sentenced Shields to an indeterminate term of imprisonment not to exceed ten years.

On appeal, Shield alleges ineffective assistance of counsel and seeks remand for a new sentencing hearing to require the prosecutor to fulfill the terms of the plea agreement.

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<sup>1</sup> The State concedes that the prosecutor's failure to affirmatively recommend the plea agreement resulted in a breach. Thus, the only issue on appeal is whether the breach of an essential duty prejudiced Shields.

## II. Standard of Review.

We review ineffective-assistance-of-counsel claims de novo. *State v. Maxwell*, 743 N.W.2d 185, 189 (Iowa 2008); see also *State v. Fountain*, 786 N.W.2d 260, 263 (Iowa 2010) (“Ineffective-assistance-of-counsel claims are an exception to the traditional error-preservation rules.”). We generally preserve ineffective-assistance-of-counsel claims for postconviction relief proceedings. *State v. Utter*, 803 N.W.2d 647, 651 (Iowa 2011). However, when the record is adequate, we consider ineffective-assistance claims on direct appeal. *State v. Fannon*, 799 N.W.2d 515, 519-20 (Iowa 2011); see also Iowa Code § 814.7(3) (2011).<sup>2</sup>

## III. Discussion.

To prevail on a claim of ineffective assistance of counsel, a defendant must prove by a preponderance of the evidence (1) the attorney failed to perform an essential duty and (2) prejudice resulted from the failure. *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *Fountain*, 786 N.W.2d at 265–66. The claim fails if either element is lacking. *Strickland*, 466 U.S. at 700; *Fountain*, 786 N.W.2d at 266. Here, the State concedes Shields’ counsel breached an essential duty; thus, we look directly to the prejudice element to resolve his claim.

To establish prejudice, 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.” *Strickland*, 466 U.S. at 694; accord

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<sup>2</sup> Iowa Code § 814.7(3) (2011) provides: “If an ineffective assistance of counsel claim is raised on direct appeal from the criminal proceedings, the court may decide the record is adequate to decide the claim or may choose to preserve the claim for determination under chapter 822.”

*Bowman v. State*, 710 N.W.2d 200, 203 (Iowa 2006). A “reasonable probability is a probability sufficient to undermine confidence in the outcome” of the defendant’s trial. *Strickland*, 466 U.S. at 694; accord *Maxwell*, 743 N.W.2d at 196.

Shields must demonstrate that the result of the proceeding would have been different had his counsel objected to the prosecutor’s breach. *State v. Horness*, 600 N.W.2d 294, 300-01 (Iowa 1999). The State urges that no prejudice resulted because the sentencing judge would not have followed the recommendation had it been properly presented by the prosecutor. However, an analysis of the sentencing court’s inclination or motivation is unnecessary here. The fact that the prosecutor did not make statements undermining the agreement is also immaterial.

A proper objection by the defendant’s attorney would have alerted the sentencing court to the prosecutor’s breach of the plea agreement. In that circumstance, the court would have allowed the defendant to withdraw his guilty pleas, or would have scheduled a new sentencing hearing at which time the prosecutor could make the promised recommendations. The outcome of the defendant’s sentencing proceeding was different, however, because defense counsel did not make the necessary objection.

*Id.* at 301 (citations omitted).

Under nearly the same factual scenario, our supreme court has stated, “[T]he outcome of the sentencing proceeding in this case would have been different if defense counsel would have objected. The sentencing hearing would have been rescheduled, or the plea of guilty would have been withdrawn. Consequently . . . counsel was ineffective.” *State v. Bearse*, 748 N.W.2d 211, 218 (Iowa 2008). We conclude Shields’ counsel’s failure to object to the

prosecutor's breach of the plea agreement prevented him from withdrawing his plea or obtaining a new sentencing hearing in which the prosecutor would make the promised recommendation. Under these circumstances, there is no need to vacate the conviction, as remand for resentencing adequately serves the interests of justice. *See id.* Accordingly, because Shields received ineffective assistance of counsel, we remand for resentencing.

**SENTENCE VACATED AND REMANDED FOR RESENTENCING.**