

IN THE COURT OF APPEALS OF IOWA

No. 3-408 / 12-1418
Filed May 30, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MATTHEW EDWARD SEAGREN,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Michael D. Huppert,
Judge.

Matthew Seagren appeals the sentence following his guilty plea to possession of a controlled substance, third offense, and possession of a controlled substance, second offense. **AFFIRMED.**

Donna Ruth Beary, Des Moines, for appellant.

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

Considered by Eisenhauer, C.J., and Potterfield and Tabor, JJ.

TABOR, J.

Matthew Seagren appeals the sentence following his guilty plea to the aggravated misdemeanors of third-offense possession of marijuana and second-offense possession of Alprazolam without a prescription. Seagren argues his trial counsel provided ineffective assistance in allowing him to waive use of a presentence investigation (PSI) report. Because the district court imposed the sentence bargained for by the parties, Seagren is unable to show he was prejudiced by the PSI waiver.

I. Background Facts and Proceedings

The minutes of testimony establish the following facts.

On July 28, 2011, Detective Daniel Jansen visited Matthew Seagren's West Des Moines residence. Unaware Detective Jansen was an undercover officer, Seagren sold him marijuana.

On October 6, 2011, Detective Jansen returned to Seagren's residence with Detective Michael Colby. The detectives told Seagren their investigation revealed he was selling marijuana and prescription pills. Seagren agreed to cooperate and consented to a search of his room. Before Detectives Jansen and Colby entered the residence, Seagren admitted he had marijuana, Xanax, a Ruger .45 handgun, and a Ruger Mini 14 rifle. The detectives collected both firearms, ten Alprazolam pills, a digital scale, drug paraphernalia, and marijuana. Seagren admitted he sold marijuana to numerous individuals.

During a phone call four days later, Seagren told Detective Colby he wished to continue cooperating with law enforcement. But by the end of February 2012, Seagren stopped communicating with Detective Colby.

In March 2012, police arrested Seagren for unlawful possession of prescription pills and public intoxication. Later that month, Seagren awoke one night to find his girlfriend had stopped breathing. Seagren called 911, and she was taken to a hospital, but ultimately died from an overdose.

On May 8, 2012, the State filed a trial information charging Seagren with three counts: (1) third-offense possession of marijuana, in violation of section 124.401(5) (2011); (2) third-offense possession of Alprazolam, in violation of section 124.401(5); and (3) delivery of marijuana, in violation of section 124.401(1)(d).¹

On July 6, 2012, Seagren filed a written guilty plea to the count one, third-offense possession of marijuana, and to a reduced count two, second-offense possession of Alprazolam. The State dismissed count three and other unrelated charges at sentencing. Seagren's signed plea also includes a "joint recommendation between parties" for the indeterminate two-year sentences to run concurrently. Written beneath the sentencing date is "No PSI. Waived by Defendant."

On July 20, 2012, the district court accepted the jointly recommended plea and sentencing. Seagren filed a notice of appeal on August 1, 2012. The next

¹ Seagren was previously convicted for possessing controlled substances on February 14, 2002; February 5, 2003; and February 28, 2003.

day, he asked the court to reconsider the sentence, which was denied by operation of law.

II. Scope and Standard of Review

We review claims counsel rendered ineffective assistance de novo. *State v. Clark*, 814 N.W.2d 551, 560 (Iowa 2012). Under de novo review, we look to the entire record to make an independent evaluation of the totality of the circumstances. *State v. Watts*, 801 N.W.2d 845, 850 (Iowa 2011).

III. Analysis

Seagren argues he received ineffective assistance of counsel because his trial attorney failed to advise him against waiving use of a PSI at sentencing.

A claim that counsel was ineffective arises from the Sixth Amendment to the United States Constitution. *State v. Canal*, 773 N.W.2d 528, 530 (Iowa 2009). To succeed on a claim that counsel's assistance was ineffective, a defendant must show that "(1) counsel failed to perform an essential duty; and (2) prejudice resulted." *State v. Maxwell*, 743 N.W.2d 185, 195 (Iowa 2008). A defendant must make both showings by a preponderance of the evidence. *State v. Clay*, 824 N.W.2d 488, 495 (Iowa 2012).

A defendant satisfies the first prong by showing "counsel's representation fell below an objective standard of reasonableness." *State v. Madsen*, 813 N.W.2d 714, 724 (Iowa 2012) (quoting *Strickland v. Washington*, 466 U.S. 668, 668 (1984)). We ask whether any errors occurred that were so serious that counsel failed to function to the capacity constitutionally guaranteed. *State v. Utter*, 803 N.W.2d 647, 652 (Iowa 2011). We measure the attorney's

performance “against the standard of a reasonably competent practitioner.” *Strickland*, 466 U.S. at 195–96.

A defendant proves the second prong by showing prejudice resulted from the trial attorney’s failure to perform an essential duty. *Clay*, 824 N.W.2d at 496. Prejudice results “if there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Madsen*, 813 N.W.2d at 724 (internal quotation marks omitted). A reasonable probability is more than a conceivable likelihood, but rather a substantial likelihood of a different result. *Id.* at 727.

Seagren argues by allowing him to waive use of the PSI, counsel breached an essential duty which resulted in prejudice. Seagren asserts that absent a PSI, the court sentenced him without being fully aware of several negative circumstances in his life. He contends use of a PSI would have allowed the district court to impose sentence in a manner that would maximize his opportunity for rehabilitation and protect the community from further offenses. He requests we set aside his sentence and order a PSI so the district court can resentence him after reviewing the report.

The criminal code mandates that sentencing courts order a PSI in most felony cases, but ordering the report is permissive when the offense is an aggravated misdemeanor. Iowa Code § 901.2. The PSI serves a dual purpose: first, it provides the court with pertinent information relevant to sentencing, and second, it assists correctional authorities. *State v. Uthe*, 541 N.W.2d 532, 533 (Iowa 1995). The report includes a brief social and personal history of the

defendant, the defendant's criminal record, and the harm to any victim and the community. Iowa Code § 901.2.

Because Seagren pleaded guilty to two aggravated misdemeanors, the court was not bound to order a PSI. See *id.* In this case, the substance abuse evaluation on file included Seagren's medical, criminal, and mental history, as well as his history with drugs and alcohol—information which would be disclosed in a PSI.

Without deciding whether Seagren's counsel breached a duty, we find no prejudice resulted from Seagren waiving the PSI. Here, the written guilty plea included a handwritten notation, initialed by the judge, spelling out the parties' negotiated agreement:

Joint recommendation between parties: D pleads guilty to count I and II of fe 255060 and agrees to 2 yrs prison on each count to run concurrent to each other. The state agrees to dismiss the remaining counts of fe 255060 and the remaining case numbers.

Where a court approves a plea agreement, a sentence is “not the product of the exercise of trial court discretion but of the process of giving effect to the parties' agreement.” *State v. Snyder*, 336 N.W.2d 728, 729 (Iowa 1983) (holding district court need not include reasons for sentence); see *State v. Cason*, 532 N.W.2d 755, 756–57 (Iowa 1995) (approving *Snyder* rationale where defendant agreed to plea agreement because “the sentencing court was merely giving effect to the parties' agreement”).

We believe this reasoning applies to defeat Seagren's claim. One purpose of a PSI is to aid the court in determining the proper sentence. See *Uthe*, 541 N.W.2d at 533. Because the district court gave effect to the parties'

agreement, any additional information in the PSI would have not have created a reasonable probability of lessening Seagren's sentence, especially considering his several previous drug offenses. Accordingly, Seagren suffered no prejudice, and his ineffective assistance claim must fail.

AFFIRMED.