

IN THE COURT OF APPEALS OF IOWA

No. 3-466 / 12-0908
Filed June 26, 2013

CHRISTINE GINTER,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Dubuque County, Monica L. Ackley and Alan L. Pearson, Judges.

Christine Ginter appeals from the district court's summary dismissal and subsequent denial of claims asserted in her application for postconviction relief.

AFFIRMED.

Steven J. Drahozal of Drahozal Law Office, P.C., Dubuque, for appellant.

Thomas J. Miller, Attorney General, Linda J. Hines, Assistant Attorney General, Ralph Potter, County Attorney, and Christine O. Corken, Assistant County Attorney, for appellee State.

Considered by Doyle, P.J., and Danilson and Mullins, JJ.

DOYLE, P.J.

In 2009, Christine Ginter entered *Alford* pleas¹ pursuant to a written plea agreement with the State for five felonies: second-degree theft, manufacturing methamphetamine, conspiracy to manufacture methamphetamine, and two counts of possession of methamphetamine precursors. Ginter was sentenced to concurrent terms of five years and ten years prison, which were suspended. Ginter was placed on probation. Ginter filed a direct appeal. Later her appellate counsel applied to the supreme court to withdraw, alleging the appeal was frivolous. The direct appeal was dismissed by the supreme court as frivolous.

In February 2010, the State filed a complaint asserting Ginter had violated the conditions of her probation, stating, among other things, that “multiple items of drug paraphernalia including pseudoephedrine, glassware, and rubber tubing consistent with the manufacture of methamphetamine” were found at her home. A correctional services report of violation was filed shortly thereafter, reporting Ginter had violated her probation based upon the aiding and abetting incident and possessing methamphetamine precursors, as well as reporting Ginter had failed two prior drug tests. The report stated Ginter had tested positive for methamphetamine in October 2009, and she had failed to provide a sample in February 2010, both resulting in a failed test. The report recommended Ginter’s probation be revoked and sentence imposed, stating “[t]here is not a lot of progress to report on [Ginter]. . . . It was reported [Ginter] was passively, as well as actively, resistant to attempts to evaluate substance use to enable treatment

¹ An *Alford* plea is a variation of a guilty plea where the defendant does not admit participation in the acts constituting the crime but consents to the imposition of a sentence. See *North Carolina v. Alford*, 400 U.S. 25, 37 (1970).

recommendation.” Her probation officer opined that, at that time, Ginter was “not amenable to probation supervision. [Ginter had not taken] the break she received from the [c]ourt to cease her criminal behavior and activities to change her lifestyle.”

Ginter filed a motion to suppress the evidence obtained during the search of her house, asserting the evidence was illegally obtained. Her motion was ultimately dismissed, and a probation revocation hearing was held. At the hearing, the supervisor of Ginter’s probation officer testified as to the substance of the report of violation that was filed, including Ginter’s violations for two failed drug tests. Additionally, several police officers testified concerning the search of Ginter’s house and the evidence subsequently seized. At the close of the hearing, the court found that Ginter was in violation of her probation “in that she did test positive for . . . methamphetamine being in her system” in October 2009. The court also found that Ginter was “in violation of her probation by being in joint possession of precursors used for the manufacture of methamphetamine.” The next day, the district court entered its written order finding Ginter had violated the terms of her probation. The court revoked her probation and imposed the original sentence.

Thereafter, Ginter filed an application for postconviction relief (PCR). Among other things, she asserted the dismissal of her motion to suppress was improper because material issues of fact existed concerning the legality of the seizure of evidence presented in her probation revocation hearing. Additionally, she argued her trial counsel was ineffective for failing to ensure that her *Alford* pleas had a factual basis.

The State moved for summary dismissal of Ginter's claims. Following a hearing, the court granted the State's motion concerning the denial of Ginter's motion to suppress in the revocation hearing. The court ultimately found it did not need to determine the legality of the evidence seized and presented at the revocation hearing because the revocation court also determined Ginter had violated her probation in failing two drug tests. Thus, even if that evidence was illegally obtained and should not have been introduced at the revocation hearing, the State still proved, excluding that evidence, that Ginter violated the terms of her probation in failing the drug tests. However, the court found material issues of fact existed as to Ginter's ineffective-assistance-of-trial-counsel claim and denied the State's motion concerning that claim.

Following a trial on Ginter's ineffective-assistance claim, the district court entered its order denying Ginter's application for PCR, finding Ginter's trial counsel was not ineffective because a factual basis for her *Alford* pleas existed in the record.² The court found that the trial court inquired about the factual basis for each of the five charges for which Ginter pled guilty. The court found that "[f]or each offense in the record of the factual basis is the minutes of testimony related to that trial information and statements made in the plea proceeding itself." The court further explained that there was "no point in going through each of the elements for all five charges and then reciting the portions of the minutes of the record that provide a factual basis. When this process is engaged . . . there is a factual basis for each of the offenses." The court found

² The PCR court did set aside one of Ginter's sentences and remanded for resentencing for reasons not relevant to this appeal. Accordingly, that issue is not further discussed in this opinion.

Ginter's application for PCR concerning this claim was without merit, and it dismissed the claim.

Ginter now appeals. We normally review postconviction proceedings for errors at law. See *Everett v. State*, 789 N.W.2d 151, 155 (Iowa 2010). But when there is an alleged denial of constitutional rights such as ineffective assistance of counsel, we conduct a de novo review. *Id.* To establish a claim that counsel in a criminal proceeding rendered ineffective assistance, the defendant must show (1) the attorney failed to perform an essential duty, and (2) prejudice resulted. *State v. Carroll*, 767 N.W.2d 638, 641 (Iowa 2009).

Upon our de novo review of the record, we agree with the PCR court's summary dismissal of Ginter's motion-to-suppress issue and its denial of her ineffective-assistance-of-trial-counsel claim asserting a lack of factual bases. The district court rejected both of these claims in thorough and well-reasoned rulings. Because we agree with the district court on these two issues, we affirm its rulings on those claims pursuant to Iowa Court Rule 21.26(1)(d) and (e).

Ginter also asserts the PCR court erred in assessing court costs to her. She maintains that because she was successful on her other PCR claim, not at issue here, she was entitled to have the court costs assessed against the State pursuant to Iowa Code section 625.1 (2011). However, Ginter did not raise this specific issue before the PCR court in an Iowa Rule of Civil Procedure 1.904 motion or by any other means. See *Lamasters v. State*, 821 N.W.2d 856, 863 (Iowa 2012) (noting a rule 1.904 motion is but one means for requesting a court rule on an issue after it has entered a ruling). For error to be preserved, an issue must be raised and decided by the district court to give this court an opportunity

to correct its mistakes and to provide us with an adequate record for review. *State v. Pickett*, 671 N.W.2d 866, 869 (Iowa 2003). Additionally, Ginter has not asserted an ineffective-assistance-of-PCR-counsel claim to avoid application of these traditional error-preservation rules. See *State v. Fountain*, 786 N.W.2d 260, 263 (Iowa 2010). Accordingly, she has failed to preserve the costs issue for our review, and the claim is deemed waived.

AFFIRMED.