

IN THE COURT OF APPEALS OF IOWA

No. 3-515 / 12-1541
Filed August 7, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ADDISON LAYNE MCFERREN,
Defendant-Appellant.

Appeal from the Iowa District Court for Lee (South) County, John M. Wright, Judge.

Addison L. McFerren appeals her conviction for altering or forging a prescription to obtain a schedule III controlled substance. **AFFIRMED.**

Steven E. Ort of Bell, Ort & Liechty, New London, for appellant.

Thomas J. Miller, Attorney General, Thomas H. Miller, Assistant Attorney General, and Michael P. Short, County Attorney, for appellee.

Considered by Vogel, P.J., and Vaitheswaran and Bower, JJ.

BOWER, J.

Addison L. McFerren appeals her conviction for altering or forging a prescription to obtain a schedule III controlled substance, in violation of Iowa Code section 124.401(1)(c)(8) (2011). McFerren argues her trial counsel was ineffective by failing to object to the admission of evidence concerning her prescription refill history. Because we find the record inadequate to address her claim, we preserve her ineffective-assistance-of-counsel claim for postconviction relief and affirm the district court.

I. Background Facts and Proceedings

On November 24, 2011, Addison McFerren went to a hospital emergency room in Keokuk, Iowa, complaining of knee pain and was seen by Dr. David Studer. After examining McFerren, Dr. Studer wrote a prescription for ten pills of Tylenol 3, a pain reliever containing codeine. The prescription was later altered to change the number ten to forty allowing McFerren to acquire a larger quantity of the drug. Less than one month later, McFerren returned to the same Keokuk hospital and attempted to obtain a second prescription.¹ A nurse checked McFerren's name in the State of Iowa's automated prescription monitoring program (PMP) and noticed a regular refill history as well as the extraordinary number of Tylenol 3 previously prescribed by Dr. Studer. The nurse spoke with Dr. Studer, who checked his own records and discovered the discrepancy between the number actually prescribed and the number dispensed by the

¹ Evidence exists in the record to indicate McFerren had obtained a large number of prescription drugs from hospitals throughout the area.

pharmacy. Hospital staff contacted law enforcement who arrested McFerren, Mirandized her, and obtained a confession.

During trial Dr. Studer testified he had written the original prescription for ten pills and testified to the contents of the PMP printout. Dr. Studer also answered a hypothetical question posed by the State concerning whether he would have given McFerren the ten-pill prescription if he had been aware of her extensive refill history. McFerren's counsel did not object to this line of questioning.

On appeal, McFerren contends her trial counsel was ineffective for failing to object to the PMP printout and the testimony of Dr. Studer.

II. Standard of Review

Ineffective-assistance claims have their basis in the Sixth Amendment to the United States Constitution, and we review such claims *de novo*. *State v. Clay*, 824 N.W.2d 488, 494 (Iowa 2012).

III. Discussion

McFerren argues her trial counsel was ineffective for failing to object to the testimony of Dr. Studer, which she believes is privileged, and the admission of the PMP printout. Ordinarily we preserve such claims for postconviction relief proceedings. *State v. Wills*, 696 N.W.2d 20, 22 (Iowa 2005). "That is particularly true where the challenged actions of counsel implicate trial tactics or strategy which might be explained in a record fully developed to address those issues." *Clay*, 824 N.W.2d at 494. "It is for the court to determine whether the record is

adequate and, if so, to resolve the claim.” *State v. Johnson*, 784 N.W.2d 192, 198 (Iowa 2010); Iowa Code § 814.7(3).

Claims of ineffective assistance of counsel require proof that counsel failed to perform an essential duty and prejudice resulted. *State v. Ondayog*, 722 N.W.2d 778, 783 (Iowa 2006). Miscalculated tactics or unwise trial strategy does not automatically, or even necessarily, constitute ineffective assistance of counsel. *Id.* at 786. “[W]e will not reverse where counsel has made a reasonable decision concerning trial tactics and strategy, even if such judgments ultimately fail.” *Brewer v. State*, 444 N.W.2d 77, 83 (Iowa 1989). On a limited record, we are asked to determine whether a reasonably competent attorney would have failed to object to the testimony and evidence in this case. See *Ondayog*, 722 N.W.2d at 787.

The record in this case is inadequate for us to determine whether McFerren’s counsel was ineffective. Though the State presents several arguments on possible trial strategies, we are unable to determine whether counsel acted reasonably without a greater development of the record. Because we cannot say, as a matter of law, counsel should or should not have objected to any given piece of evidence in this case, we preserve the claim for postconviction relief.

AFFIRMED.