

IN THE COURT OF APPEALS OF IOWA

No. 3-802 / 12-2268
Filed November 6, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

FRANCISCO JAVIER GARCIA,
Defendant-Appellant.

Appeal from the Iowa District Court for Marshall County, Kim M. Riley,
District Associate Judge.

Defendant appeals his convictions, following guilty pleas, for operating
while intoxicated, third offense, and driving while revoked. **AFFIRMED.**

Darrell G. Meyer, Marshalltown, for appellant.

Francisco Garcia, Marshalltown, appellant pro se.

Thomas J. Miller, Attorney General, Martha E. Trout, Assistant Attorney
General, Jennifer Miller, County Attorney, and Benjamin J. Stansberry, Assistant
County Attorney, for appellee.

Considered by Potterfield, P.J., and Mullins and Bower, JJ.

BOWER, J.

Francisco Javier Garcia appeals his convictions, following guilty pleas, for operating while intoxicated, third offense, and driving while revoked. He claims he received ineffective assistance from defense counsel on several grounds. We determine his claims cannot be addressed on the present record and preserve his claims for possible postconviction relief proceedings. We affirm his convictions.

I. Background Facts and Proceedings

On July 7, 2012, the Marshalltown police were dispatched to an area of Woodbury Street around 8:00 p.m. after Max Levis reported an intoxicated driver. Levis saw Francisco Garcia drive over a terrace, over the curb, and then drive erratically backwards down Woodbury Street. Garcia then made four attempts to park the car on the side of the street. After parking, Garcia stumbled out of the car and over to a retaining wall.

Upon her arrival, Officer Brooke noticed Garcia sitting on the retaining wall. When she approached Garcia, Officer Brooke smelled the “strong odor” of an intoxicating beverage. Subsequently, Garcia failed a horizontal gaze nystagmus test. Garcia also admitted driving the car when he told Officer Brooke he “was just parking the vehicle down the street.” Officer Brooke learned Garcia’s driving privileges had been revoked. Garcia was arrested and charged with one count of operating while intoxicated, third offense, as a habitual offender, and driving while revoked. See Iowa Code §§ 321.J.2, 902.8, 321J.21 (2011).

In October 2012 Garcia entered two guilty pleas: October 12—open-court plea to operating while intoxicated, third offense; October 15—written guilty plea to driving while revoked. In December 2012 Garcia was sentenced. He now appeals his convictions.

II. Discussion

Garcia asserts his trial counsel rendered ineffective assistance on several issues: (1) whether the services of an interpreter were needed when he entered his guilty pleas, (2) whether counsel induced his pleas of guilty by false promises as to the sentencing outcome, and (3) whether Garcia had a valid defense to the operating while intoxicated charge.

We review claims of ineffective assistance of counsel de novo. *Ennenga v. State*, 812 N.W.2d 696, 701 (Iowa 2012). To successfully prove his claim of ineffective assistance, Garcia must show by a preponderance of evidence (1) his counsel failed to perform an essential duty and (2) prejudice resulted. See *id.* In our analysis of the essential duty element, “we avoid second-guessing reasonable trial strategy.” *Everett v. State*, 789 N.W.2d 151, 158 (Iowa 2010). Regarding the prejudice element in the context of a guilty plea, Garcia must show “there is a reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and would have insisted on going to trial.” See *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

Generally, we do not resolve claims of ineffective assistance of counsel on direct appeal. *State v. Reynolds*, 670 N.W.2d 405, 411 (Iowa 2003). We prefer to leave ineffective-assistance claims for postconviction relief proceedings. *State*

v. Lopez, 633 N.W.2d 774, 784 (Iowa 2001). Those proceedings allow an adequate record of the claim to be developed in an evidentiary hearing “and the attorney charged with providing ineffective assistance may have an opportunity to respond to defendant’s claims.” *State v. Biddle*, 652 N.W.2d 191, 203 (Iowa 2002). “Even a lawyer is entitled to his day in court, especially when his professional reputation is impugned.” *State v. Coil*, 264 N.W.2d 293, 296 (Iowa 1978). “Counsel may, indeed, have had good reason for each step he took or failed to take.” *Id.*

This is not the “rare case” which allows us to decide Garcia’s ineffective-assistance-of-counsel claims on direct appeal without an evidentiary hearing. See *State v. Straw*, 709 N.W.2d 128, 138 (Iowa 2006) (stating in “only rare cases will the defendant be able to muster enough evidence to prove prejudice without a postconviction relief hearing”). We therefore preserve Garcia’s claims for possible postconviction relief proceedings. We affirm his convictions.

AFFIRMED.