

**IN THE COURT OF APPEALS OF IOWA**

No. 6-273 / 03-0796  
Filed May 10, 2006

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

vs.

**DEBRA SUSAN DIRKSEN,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Scott County, Mark D. Cleve, and Mark J. Smith, Judges.

Debra Susan Dirksen appeals her convictions on three counts of fraudulent practice in the first degree. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Stephan Japuntich, Assistant Appellate Defender, for appellant.

David Morrison, Rock Island, Illinois, for appellant.

Thomas J. Miller, Attorney General, Robert Ewald, Assistant Attorney General, William E. Davis, County Attorney, and Kelly G. Cunningham, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Huitink and Miller, JJ.

**HUITINK, J.**

Debra Susan Dirksen appeals her convictions on three counts of fraudulent practice in the first degree, in violation of Iowa Code sections 714.8(3), 714.9, 234.13, 239B.14 and 249A.7 (2001). We affirm and preserve Dirksen's ineffective assistance of counsel claims for postconviction proceedings.

***I. Background Facts and Proceedings.***

On February 26, 2002, Debra Dirksen (as a principal) and Ray Kraklio (as an aider and abettor) were each charged with three counts of fraudulent practice in the first degree. Pursuant to a plea agreement, Dirksen and Kraklio entered guilty pleas to all counts charged in exchange for the State's recommendation that each receive a suspended sentence and probation. The plea agreements also provided that Dirksen and Kraklio would be jointly and severally liable for payment of \$124,000 in restitution. The plea agreement was contingent on the court's concurrence.

In response to the court's questions at the March 13, 2003, plea hearing, Dirksen admitted to fraudulently applying for welfare benefits from October 2, 1981, through March 31, 2000. She specifically admitted that she fraudulently received food stamps "between July of 1981 and 2000." She further admitted she had fraudulently received FIP benefits "between July 28, 1981, and March 31, 2000." She additionally admitted she fraudulently received Title XIX medical benefits "between July of '81 and March 2000."

Dirksen also stated that she read the minutes of testimony and that the minutes completely and accurately described her involvement in the charged offenses. Dirksen's trial counsel told the court that he had reviewed the relevant

statutes of limitations and was satisfied that the trial information was timely filed. The court determined Dirksen's plea was voluntarily entered and that there was a factual basis for her plea.

On April 2, 2003, Dirksen filed a motion in arrest of judgment. On April 14, 2003, Dirksen filed a pro se motion to withdraw her guilty plea. At the April 17, 2003 sentencing hearing, Dirksen withdrew her motion in arrest of judgment and motion to withdraw her guilty plea and was sentenced in accordance with the plea agreement.

On appeal, Dirksen argues:

I. Counsel was ineffective in failing to investigate and assert a defense based upon the expiration of the statute of limitations as Miss Dirksen would not have pleaded guilty had she been so advised and such a defense would have resulted in a dismissal or acquittal had the matter gone to trial.

The supreme court granted Dirksen a ninety-day limited remand to allow discovery on the issue of whether trial counsel was ineffective in failing to properly investigate and present a statute of limitations defense. *State v. Dirksen*, No. 03-0796 (Iowa March 18, 2004). Dirksen deposed Kraklio's appellate counsel Kent Simmons, investigator Randy Dodson, and the custodian of documents for dentist Dr. Alpen Scott. Dirksen did not depose trial counsel or the county attorney who prosecuted her case.

## ***II. Standard of Review.***

We review the totality of the circumstances surrounding claims of ineffective assistance of counsel de novo. *Osborn v. State*, 573 N.W.2d 917, 920 (Iowa 1998).

### **III. The Merits.**

To establish a claim of ineffective assistance of counsel, Dirksen has the burden to prove: (1) counsel failed in an essential duty and (2) prejudice resulted therefrom. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984); *Ledezma v. State*, 626 N.W.2d 134, 142 (Iowa 2001); *State v. Greene*, 592 N.W.2d 24, 29 (Iowa 1999). There is a strong presumption that the performance of counsel falls within a wide range of reasonable professional assistance. *State v. Hepperle*, 530 N.W.2d 735, 739 (Iowa 1995). Looking at the totality of the circumstances, Dirksen must overcome this presumption. *Irving v. State*, 533 N.W.2d 538, 540 (Iowa 1995). We will not second guess trial strategy. *State v. Wissing*, 528 N.W.2d 561, 564 (Iowa 1995).

To satisfy the second element, Dirksen must show there is a reasonable probability that but for counsel's breach of an essential duty, the result of the proceeding would have been different. *Davis v. State*, 520 N.W.2d 319, 321 (Iowa Ct. App. 1994). She must also establish that "there is a reasonable probability that, but for counsel's errors, she would not have pleaded guilty and would have insisted on going to trial." *Irving*, 533 N.W.2d at 541 (quoting *Hill v. Lockhart*, 474 U.S. 52, 57-59, 106 S. Ct. 366, 370, 88 L. Ed. 2d 203, 210 (1985)). Conclusory claims of prejudice that a defendant would have insisted on going to trial are insufficient. *State v. Myers*, 653 N.W.2d 574, 579 (Iowa 2002).

Generally, we do not resolve claims of ineffective assistance of counsel on direct appeal. *State v. Biddle*, 652 N.W.2d 191, 203 (Iowa 2002) (citing *State v. Kinkead*, 570 N.W.2d 97, 103 (Iowa 1997)). We preserve claims for

postconviction proceedings “where an adequate record of the claim can be developed and the attorney charged with providing ineffective assistance may have an opportunity to respond to defendant's claims.” *Biddle*, 652 N.W.2d at 203.

A defendant's guilty plea to a criminal offense waives all objections and defenses to the charged offense other than objections intrinsic to the plea itself. *Speed v. State*, 648 N.W.2d 56, 61 (Iowa 2002). The statute of limitations is an affirmative defense which is waived by entry of a guilty plea. *State v. Burgess*, 639 N.W.2d 564, 567 (Iowa 2001); *State v. Cole*, 452 N.W.2d 620, 622 (Iowa Ct. App. 1989). A guilty plea also waives all claims of ineffective assistance of counsel, except those that bear on the knowing and voluntary nature of the guilty plea. *Manning v. State*, 654 N.W.2d 555, 561 (Iowa 2002). Because Dirksen's ineffective assistance of counsel claims implicate the validity of her guilty pleas, she has not waived her claims by pleading guilty.

The remaining question is whether the record, including the record made on remand, is sufficient to resolve Dirksen's ineffective assistance of counsel claims. We conclude it is not. The record does not include either trial counsel's or the county attorney's version of the plea negotiations resulting in Dirksen's guilty plea. Specifically, there is no indication whether the State would have made the same sentencing recommendation if the plea agreement did not include Dirksen's guilty plea to all three counts. In the event the postconviction court sets aside Dirksen's guilty plea to some, but not all, of the counts charged, the State should be allowed to rescind the plea agreement as it concerns the remaining counts and the parties returned to their original positions prior to the

plea agreement. See, e.g., *State v. Kress*, 636 N.W.2d 12, 21 (Iowa 2001); *State v. White*, 587 N.W.2d 240, 246 (Iowa 1998); see also *State v. Sanders*, 309 N.W.2d 144, 147 (Iowa Ct. App. 1981). We accordingly affirm Dirksen's convictions and preserve her ineffective assistance of counsel claims for postconviction relief proceedings.

**AFFIRMED.**