

IN THE COURT OF APPEALS OF IOWA

No. 6-474 / 06-0108
Filed June 28, 2006

ERIC WAYNE BANSE,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Pocahontas County, William C. Ostlund, Judge.

Eric Wayne Banse appeals the denial of his application for postconviction relief. **AFFIRMED.**

Catherine Levine, Des Moines, and William Kutmus of Kutmus & Pennington, P.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Robert Ewald, Assistant Attorney General, and Ann Beneke, County Attorney, for appellee State.

Considered by Mahan, P.J., and Hecht and Eisenhauer, JJ.

MAHAN, P.J.

Eric Wayne Banse appeals the denial of his application for postconviction relief. He argues he received ineffective assistance of counsel because his attorney failed to inform him of the mandatory minimum punishment associated with his criminal charges. We affirm.

I. Background Facts and Proceedings

On January 10, 2000, Banse was charged with first-degree kidnapping, first-degree robbery, first-degree burglary, willful injury, assault while participating in a felony, and second-degree theft. The State dismissed the kidnapping and assault while participating in a felony charges. It then offered Banse a plea: the State would dismiss the robbery and theft charges if Banse would plead guilty to the burglary and willful injury charges. Banse refused the offer.

Banse's attorney provided him with a written statement explaining the possible penalties for each charge. The statement provided that:

I, Eric Banse, have been advised by my counsel that the penalties for Robbery, Burglary, Willful Injury, and Theft are as follows:

Robbery is a Class B Felony and the possibility of 25 years in with no allowability for parole, except up to fifteen percent good time. Second Degree also carries with it a forcible felony charge wherein you are only allowed fifteen percent reduction in time served or therefore you would have to serve 22.5 years for the Robbery charge. Burglary would be 25 years and also forcible felony charge, so no parole until I serve 22.5 years. A Class C would be ten years and a Class D would be five years so the possibility exists to serve 65 years consecutively. Class C carries with it a fine of at least \$500.00 but not more than \$10,000.00 and a Class D of at least \$500.00 but not more than \$7,000.00.

Banse signed the statement in the presence of his attorney.

A jury convicted Banse of first-degree robbery, first-degree burglary, willful injury, and third-degree theft on July 20, 2000. He received concurrent sentences consisting of a term not to exceed twenty-five years on the burglary and robbery convictions, a term not to exceed ten years on the willful injury conviction, and a term not to exceed two years on the theft conviction. His conviction and sentence was affirmed and his ineffective assistance claims were preserved on July 31, 2001. *State v. Banse*, No. 00-1205 (Iowa Ct. App. July 31, 2001).

Banse filed an application for postconviction relief on October 18, 2004. He alleged his trial attorney did not inform him of the eighty-five-percent mandatory minimum punishment he could receive upon conviction.¹ The district court denied his application. Banse appeals.

II. Standard of Review

Generally, we review postconviction relief proceedings for errors at law. *Ledezma v. State*, 626 N.W.2d 134, 141 (Iowa 2001). However, when ineffective assistance is alleged, we review de novo. See *Nguyen v. State*, 707 N.W.2d 317, 322-23 (Iowa 2005).

III. Merits

In order to show his counsel was ineffective, Banse must show (1) his counsel breached a duty and (2) that breach prejudiced Banse's defense. *Strickland v. Washington*, 433 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d

¹ The eighty-five-percent mandatory minimum punishment associated with Banse's charges is pursuant to Iowa Code section 902.12 (1999). The statute has since been amended to require a seventy-percent mandatory minimum time served. Iowa Code § 902.12 (2005).

674, 693 (1984). We may resolve the claim on either prong. *Id.* at 697, 104 S. Ct. at 2052, 80 L. Ed. at 699.

Banse's trial attorney testified that, in addition to the written statement he provided for Banse, he also verbally explained the eighty-five-percent mandatory minimum rule. He also testified he encouraged Banse to accept the State's plea offer both before trial and during jury deliberations. The attorney slightly overstated the sentence Banse would receive if convicted.² However, counsel's testimony and the written statement make it clear Banse's counsel fulfilled his duty to inform his client of the mandatory minimum possible sentence he would receive if convicted on the robbery charge. Banse decided to roll the dice with the jury; he cannot now blame his attorney for his loss.

The district court's denial of postconviction relief is affirmed.

AFFIRMED.

² Eighty-five percent of twenty-five years is twenty-one and one-fourth years.