

**IN THE COURT OF APPEALS OF IOWA**

No. 6-869 / 05-2121  
Filed February 28, 2007

**CHRISTIE LEE ANN HELEN VAN OORT,**  
Applicant-Appellant,

**vs.**

**STATE OF IOWA,**  
Respondent-Appellee.

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Appeal from the Iowa District Court for Sioux County, John D. Ackerman,  
Judge.

Christie Van Oort appeals the district court's denial of her application for  
postconviction relief. **AFFIRMED.**

Paul D. Miller of Miller Law Office, Iowa City, for appellant.

Thomas J. Miller, Attorney General, Richard J. Bennett, Assistant Attorney  
General, and Melissa O'Rourke, Count Attorney, for appellee.

Considered by Sackett, C.J., and Zimmer and Eisenhauer, JJ.

**PER CURIAM**

Christie Van Oort appeals the district court ruling denying her application for postconviction relief. She contends her trial counsel was ineffective (1) for allowing her to enter a guilty plea and waive the time for filing a motion in arrest of judgment; and (2) for failing to properly investigate a potential defense she may have had to the murder charges. We affirm.

On January 16, 2003, Van Oort was charged with first-degree murder for the death of eighty-seven year old Dick Post, a resident of Memorial Valley Manor nursing care facility where Van Oort worked. Van Oort, a Canadian citizen, told an immigration agent that she had been feeding the victim when she became angry and shoved food down his throat until he could no longer breathe or swallow. After exhumation of the body, an autopsy revealed the cause of death to be asphyxiation on a large amount of food.

Van Oort was represented by three attorneys. Curtis Puetz was originally appointed to represent her. About a month later, Greg Jones, the Chief Public Defender, was appointed and he was assisted by Mike Williams of the public defender's office. Mr. Puetz was permitted to remain on the case as he was familiar with the defendant and her family. On August 25, 2003, Van Oort entered a guilty plea to second-degree murder. Van Oort also waived her right to the fifteen-day waiting period for sentencing. On appeal to this court, the conviction and sentence were affirmed and several issues preserved for postconviction relief. *State v. Van Oort*, No. 03-1572 (Iowa Ct. App. July 14, 2004). Further review by the Supreme Court narrowed the issues preserved.

Van Oort filed an application for postconviction relief which was denied by the trial court on November 23, 2005. Van Oort appeals.

The parties dispute the issues preserved for our review. Van Oort contends that her counsel was ineffective for two reasons: (1) that at the time of taking her plea her mental state was impaired and she could not make a voluntary and knowing waiver of the time for filing a motion in arrest of judgment; and (2) that trial counsel failed to properly investigate and explain to her that a defense might exist to the murder charge. The State contends error has been preserved only as to the waiver issue. On direct appeal from sentencing, this court preserved both of Van Oort's claims for ineffective assistance on postconviction relief. *Id.* However, after further review, the supreme court, in an unpublished opinion, vacated the decision and preserved "only [Van Oort's] claim of ineffective assistance of counsel regarding the waiver of the time for sentencing." In the district court's ruling on Van Oort's application for postconviction relief, although it noted the only issue that appeared to be preserved was the claim regarding waiver of the fifteen-day period, the court addressed all issues raised by Van Oort. We find the district court was correct that the only issue preserved for postconviction relief is

whether trial counsel were ineffective for allowing [Van Oort] to waive the fifteen-day waiting period for sentencing (thereby precluding her from filing a motion in arrest of judgment and challenging her plea on direct appeal) because competent counsel would have known that the medications [Van Oort] was taking at the time of her plea precluded her from making a knowing and voluntary plea of guilty.<sup>1</sup>

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<sup>1</sup> The trial court has no authority to do anything except to proceed in accordance with directions given to it by an appellate court. *In re Marriage of Davis*, 608 N.W.2d 766, 769 (Iowa 2000).

Therefore, we will only address Van Oort's claim regarding ineffective assistance as to the waiver issue.

Because a claim of ineffective assistance of counsel implicates a defendant's constitutional rights our review is de novo. *State v. Ray*, 516 N.W.2d 863, 865 (Iowa 1994).

In order to prevail on a claim of ineffective assistance of counsel, Van Oort must show (1) her trial counsel failed to perform an essential duty and (2) this omission resulted in prejudice. *State v. Graves*, 668 N.W.2d 860, 869 (Iowa 2003). The burden of proof lies with Van Oort to show by a preponderance of the evidence that her counsel was ineffective. *Osborn v. State*, 573 N.W.2d 917, 922 (Iowa 1988). If Van Oort is unable to prove either element, her ineffective assistance of counsel claim must fail and we will affirm the district court. *Graves*, 668 N.W.2d at 869. We measure Van Oort's counsel against prevailing professional norms and determine whether under the totality of the circumstances, counsels' performance was within the normal range of competency. *Osborn*, 573 N.W.2d at 922. However, we avoid second-guessing counsels' trial strategies. *Ledezma v. State*, 626 N.W.2d 135, 142 (Iowa 2001). If we find counsel erred, Van Oort must also show "there is a reasonable probability that, but for counsel[s'] unprofessional errors, the result of the proceeding would have been different. *State v. Voll*, 655 N.W.2d 548, 550 (Iowa Ct. App. 2002).

Essentially, Van Oort contends that due to the medications she was taking at the time she pled guilty her waiver of time for sentencing was not made

knowingly and voluntarily, and her attorneys, in turn, were ineffective for allowing her to waive the time for sentencing. Here, Van Oort was represented by counsel who were aware of the medications prescribed to her and had discussed with competent doctors the potential side-effects of those drugs. The court was also well apprised of the medications Van Oort was taking and asked Van Oort whether the medications helped her to “think clearly.” The court’s colloquy fully covers Van Oort’s mental condition and any potential effects of her medications. Furthermore, at the postconviction proceeding, Van Oort did not testify as to the effects these drugs had on her mental state, nor was testimony given indicating that an individual using these medications would be incompetent to stand trial or give a knowing and intelligent plea.

Additionally, the court adequately explained to Van Oort her right to file a motion in arrest of judgment and the results of failing to file a motion. *See State v. Straw*, 709 N.W.2d 128, 132 (Iowa 2006) (finding where the district court informed the defendant of his right to file a motion challenging a guilty plea and the consequences of waiving that right was substantial compliance and resulted in a knowing and voluntary waiver). There is no evidence to show the attorneys failed to explain to Van Oort her rights regarding the fifteen-day waiting period for sentencing. Her counsel had legitimate reasons for advising Van Oort to waive her right to the fifteen-day waiting period. The three attorneys agreed the favorable plea agreement they had reached with the prosecutor could evaporate if sentencing was delayed. They had legitimate reasons for this concern due to

significant public interest and publicity surrounding the case.<sup>2</sup> They also feared new charges would be brought against her based on statements she had made regarding another death, and additional statements she might make in jail while awaiting sentencing that could be detrimental to her interest. There is no evidence to suggest the medications Van Oort was taking affected her ability to knowingly and voluntarily waive the fifteen-day waiting period for sentencing. We conclude Van Oort has failed to prove a breach of duty by her attorneys.

Even assuming counsel failed to perform an essential duty, we cannot conclude Van Oort suffered any prejudice. On direct appeal, this court preserved this issue for postconviction relief finding that “even a cursory investigation into Van Oort’s mental health may have yielded a valid defense.” Having a complete record before us now, we are aware that counsel did conduct a thorough investigation into the possibility of a defense based on Van Oort’s mental state. Had Van Oort not waived the fifteen-day waiting period and had she filed a motion in arrest of judgment, there is no likelihood the plea would have been set aside. We therefore affirm.

**AFFIRMED.**

Sackett, C.J. dissents.

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<sup>2</sup> During the plea proceedings, a protest occurred outside the courthouse by relatives of the victim objecting to the perceived lenient sentence expected in the case.

**SACKETT, C.J.** (dissents)

The supreme court in an unpublished opinion preserved for postconviction relief Van Oort's claim that trial counsel was ineffective for allowing her to waive the fifteen-day waiting period for sentencing (thereby precluding her from filing a motion in arrest of judgment and challenging her plea on direct appeal) because competent counsel should have known that the medications she was taking at the time of her plea precluded her from making a knowing and voluntary plea of guilty. *State v. Van Oort*, No. 03-1572 (Iowa Nov. 29, 2004). She brought this claim to the district court in this postconviction proceeding and was denied relief. The majority has affirmed and I disagree.

In order to prevail on a claim of ineffective assistance of counsel, Van Oort must show by a preponderance of the evidence (1) her attorney failed to perform an essential duty, and (2) this omission resulted in prejudice. *State v. Graves*, 668 N.W.2d 860, 869 (Iowa 2003); *Osborn v. State*, 573 N.W.2d 917, 922 (Iowa 1988). If Van Oort is unable to prove either element, her ineffective assistance of counsel claim must fail and we will affirm the district court. *Graves*, 668 N.W.2d at 869. If Van Oort is unable to prove either element, her ineffective assistance of counsel claim must fail and we will affirm the district court. *Graves*, 668 N.W.2d at 869.

Essentially, Van Oort contends that due to the medications she was taking at the time she pled guilty, neither her plea nor her waiver of time for sentencing were made knowingly and voluntarily. The State contends the plea colloquy shows the district court discussed with Van Oort her rights to delay sentencing

and file a motion for arrest of judgment. Further, the State asserts that her plea was made knowingly and voluntarily as the court was advised of the medications she was taking and there was no reason for the court to believe she was incompetent to stand trial.

Van Oort has a mental diagnosis that includes (1) a major depressive episode with psychotic features, (2) chronic post-traumatic stress disorder, and (3) mixed personality disorder with schizotypal, dependant, and obsessive-compulsive personality traits. On the date of her plea, Van Oort was taking the medications Seroquel, Clonazepam, Risperdal, and Paxil. The district court was told Van Oort was taking these medications. It was told these medications helped her to “think clearly.” Dr. Paul Perry, an expert in the area of clinical psychopharmacology, testified that:

Seroquel is a very sedating drug even . . . . at the small doses the patient is taking . . . Seroquel would slow down a person’s thinking, cognitive ability or ability to think . . . . Clonazepam’s a potent sedative benzodiazepine anti-anxiety agent similar to valium. It’s shown – it’s been shown to be capable of impairing cognitive performance during the first four to six hours after a single dose given to a normal subject . . . . The drug will [be] just [as] likely to interact with other CNS depressant drugs like the Seroquel to produce increased sedation and decreased cognition . . . . Risperdal is another anti-psychotic drug like catipine (phonetically). She was taking a dose of two milligrams a day, which is a therapeutic dose, a therapeutic antipsychotic dose of the drug. Single oral doses have been shown to cause subjective sedation and impair psychomotor functioning in healthy adults . . . . There should be an inhibitant effect when you take all these sedating drugs and add one on top of the other. It’s just going to get a lot of impairment of the cognition.

Van Oort has shown the medications she was taking were sedating and impaired cognition and this, in combination with her mental disorders, was a

significant factor in her ability to voluntarily and intelligently waive the time for sentencing and her right to file a motion in arrest of judgment. Van Oort's trial counsel was ineffective for failing to appropriately assess the impact of these medications on her competency and in recommending she waive her time to file a motion in arrest of judgment. I would reverse the district court, vacate the sentence, and give Van Oort fifteen days from the date procedendo issues to file a motion in arrest of judgment.