

**IN THE COURT OF APPEALS OF IOWA**

No. 6-972 / 06-0793  
Filed December 28, 2006

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

**vs.**

**LLOYD HENRY BLACKWELL,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Polk County, William A. Price,  
District Associate Judge.

Defendant appeals his guilty plea and sentence on a charge of assault  
causing bodily injury. **AFFIRMED.**

Linda Del Gallo, Appellate Defender, and Nan Jennisch, Assistant  
Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Linda J. Hines, Assistant Attorney  
General, John P. Sarcone, County Attorney, and Jessica Reynolds, Assistant  
County Attorney, for appellee.

Considered by Zimmer, P.J., and Eisenhauer, J., and Brown, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2005).

**BROWN, S.J.****I. Background Facts & Proceedings**

Lloyd Blackwell was charged with assault causing bodily injury, in violation of Iowa Code section 708.2(2) (2005). Just before starting a jury trial, and in the presence of the court and prosecuting attorney, defense counsel explained the proposed plea agreement to defendant, stating “The end result is that you would plead guilty to both charges. You would do 30 days in jail. As I understand it, there would not be any probation.” After consultation with his attorney, Blackwell agreed to enter an *Alford* plea to the charge of assault causing bodily injury.

Out of the jury panel’s presence, the court then conducted plea proceedings with the defendant and counsel. During the course of the proceedings, the plea agreement was discussed again on the record, the thirty-day jail sentence was reiterated, but no mention was made of probation, although the prosecutor did add two provisions to defense counsel’s recitation of the agreement. Later, at the sentencing hearing, the prosecutor recommended “an indeterminate term not to exceed one year with all but 30 days suspended.” Defense counsel asked for probation with no jail time. The district court sentenced Blackwell to one year in jail, with all but fifteen days suspended. Blackwell now appeals, claiming he received ineffective assistance because his counsel did not object when the State failed to abide by the plea agreement.

**II. Standard of Review**

We review de novo claims of ineffective assistance of counsel. *Berryhill v. State*, 603 N.W.2d 243, 244-45 (Iowa 1999). To prevail on a claim of ineffective

assistance of counsel, a defendant must prove (1) his attorney failed to perform an essential duty and (2) prejudice resulted to the extent he was denied a fair trial. *State v. Ceaser*, 585 N.W.2d 192, 195 (Iowa 1998).

### **III. Merits**

Blackwell asserts that under the plea agreement the State would ask for thirty days of jail time, and there would be no probation. He contends the State breached this agreement by asking for an indeterminate term of one year, with all but thirty days suspended.

“[W]hen a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration [for the plea], such promise must be fulfilled.” *State v. Horness*, 600 N.W.2d 294, 298 (Iowa 1999) (citations omitted). Of course, in our review we must first know what the promise was. We are unable to determine from the present record whether or not the plea agreement contained any provision for probation. Thus, we cannot ascertain whether the plea agreement was breached, or whether defense counsel provided ineffective assistance by failing to object to the prosecutor’s recommendation.

We determine this issue should be preserved for possible postconviction proceedings. See *State v. Truesdell*, 679 N.W.2d 611, 616 (Iowa 2004) (“Ordinarily, ineffective assistance of counsel claims are best resolved by postconviction proceedings to enable a complete record to be developed and afford trial counsel an opportunity to respond to the claim.”).

We affirm Blackwell's conviction.

**AFFIRMED.**