

IN THE COURT OF APPEALS OF IOWA

No. 7-289 / 06-1529
Filed June 13, 2007

KEN TOMKINS,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Winneshiek County, Lawrence H. Fautsch, Judge.

Applicant-appellant Ken Tomkins appeals from the denial of postconviction relief. **AFFIRMED.**

John J. Bishop, Cedar Rapids, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney General, and Andrew F. Van Der Maaten, County Attorney, for appellee.

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

SACKETT, C.J.

Ken Tomkins appeals from the district court's denial of his application for postconviction relief. He contends defense counsel was ineffective in allowing him to plead guilty without a full understanding of the potential consequences. We affirm.

Appellant was charged with several serious offenses, including a forcible felony. Following plea negotiations, he pleaded guilty to reduced charges and was sentenced to up to ten years incarceration. He filed an application for postconviction relief, alleging his defense counsel was ineffective in not properly advising him of the maximum possible punishment and telling him he probably would receive no more than an eighteen-month sentence. Following an evidentiary hearing, the court denied his application, finding Tomkins was not credible and he failed to prove counsel was ineffective.

Although postconviction actions are civil proceedings reviewable for correction of errors at law, to the extent a constitutional issue is raised, such as ineffective assistance of counsel, our review is de novo. See *Ledezma v. State*, 626 N.W.2d 134, 142 (Iowa 2001). We give weight to the district court's findings concerning witness credibility. Iowa R. App. P. 6.14(6)(g); *Taylor v. State*, 352 N.W.2d 683, 687 (Iowa 1984).

Appellant claims his attorney advised him he likely faced only eighteen months in prison and that, had he known he could be sentenced to up to fourteen years, he would have insisted on going to trial and presenting an intoxication defense. The record does not support his claim he was not informed of the

maximum possible sentence. Counsel testified he advised appellant he could face up to ten years in prison. The transcript of the plea proceeding shows the court described the maximum sentences and explained the difference between concurrent and consecutive.

Appellant also claims he would have insisted on going to trial and presenting an intoxication defense had he known the maximum possible sentences. Testimony at the postconviction hearing shows counsel fully explored the defense, including contacting several experts, and determined appellant's admission he remembered certain events during the incident made a successful intoxication defense unlikely.

We conclude appellant has failed to prove counsel failed in an essential duty. Counsel, therefore, was not ineffective. *See State v. Lane*, 726 N.W.2d 371, 393 (Iowa 2007) (requiring proof counsel failed in an essential duty and prejudice resulted). We affirm the denial of appellant's application for postconviction relief.

AFFIRMED.