

IN THE COURT OF APPEALS OF IOWA

No. 7-644 / 06-1855
Filed September 19, 2007

MARK WAYNE BRUNS,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Black Hawk County, Bruce B. Zager, Judge.

Defendant appeals the district court decision denying his petition for postconviction relief. **AFFIRMED.**

Christopher M. Soppe of Blair & Fitzsimmons, P.C., Dubuque, for appellant.

Thomas J. Miller, Attorney General, Elisabeth S. Reynoldson, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Kimberly Griffith, Assistant County Attorney, for appellee State.

Considered by Huitink, P.J., and Vogel and Baker, JJ.

HUITINK, P.J.

Mark Wayne Bruns appeals the district court decision denying his petition for postconviction relief. We affirm.

I. Background Facts and Prior Proceedings

On August 16, 2001, Bruns was charged with two counts of second-degree sexual abuse for allegedly sexually abusing two five-year-old boys. Because of his indigency, the court appointed him an attorney from the public defender's office. On October 18, 2001, Bruns pled guilty to both counts and agreed to be sentenced immediately. The court sentenced him to two concurrent twenty-five-year prison sentences.

Bruns filed the current application for postconviction relief in July 2004, and the court held a hearing on his application in September 2006. The postconviction proceeding was limited to the voluntariness of his plea. The court considered testimony from Bruns and his trial counsel concerning Bruns's state of mind at the time of the plea.

Following the hearing, the district court entered an order denying his application for postconviction relief. On appeal, Bruns claims his trial counsel was ineffective because she did not have his mental health assessed by a professional prior to the guilty plea.

II. Standard of Review

Normally, a trial court's denial of an application for postconviction relief proceedings is reviewed for correction of errors at law. *Ledezma v. State*, 626 N.W.2d 134, 141 (Iowa 2001). However, when an applicant raises constitutional issues, our review is de novo. *Id.*

III. Merits

Our ultimate concern in claims of ineffective assistance is with the “fundamental fairness of the proceeding whose result is being challenged.” *State v. Risdal*, 404 N.W.2d 130, 131 (Iowa 1987) (quoting *Strickland v. Washington*, 466 U.S. 668, 696, 104 S. Ct. 2052, 2069, 80 L. Ed. 2d 674, 699 (1984)). The burden is on the defendant to prove by a preponderance of the evidence that (1) counsel failed in an essential duty and (2) prejudice resulted. *Id.* at 131-32. “To prove the first prong, the defendant must overcome the presumption that counsel was competent and show that counsel’s performance was not within the range of normal competency.” *State v. Buck*, 510 N.W.2d 850, 853 (Iowa 1994). To prove the second prong, the defendant must show “there is a reasonable probability that, but for counsel’s unprofessional errors, the result would have been different.” *State v. Artzer*, 609 N.W.2d 526, 531 (Iowa 2000). If the defendant is unable to prove either prong, the ineffective-assistance claim fails. *Bear v. State*, 417 N.W.2d 467, 472 (Iowa Ct. App. 1987).

Bruns contends that trial counsel knew he was bipolar, taking Paxil, and was contemplating suicide while he was in jail. He claims his trial counsel failed to perform an essential duty when she did not have his mental health assessed by a professional prior to the guilty plea proceeding.

The State first points out that there was no expert testimony or medical evidence to establish Bruns’s claim that his bipolar disorder made him incompetent to waive his rights. The only evidence of Bruns’s alleged incompetency was his own testimony about how he had “a hard time concentrating on things and knowing what’s really real or not.”

The State also contends there was ample evidence to prove trial counsel did not breach an essential duty when she did not take efforts to have his mental health assessed by a professional.¹ His trial counsel testified at the postconviction hearing that she had a doctorate in counseling and human development and was a ten-year veteran at the public defender's office. She indicated that she had "a lot" of experience working with people with mental illness and some experience working with people who were suicidal. When asked how she viewed Bruns's mental state at the time, she classified it as "very clear" and went on to indicate she never had any concerns that he did not understand what was going on. She testified that Bruns took an active role in his defense and he was "orchestrating what was going to go on" throughout the case.

The State also notes that the district court inquired into this issue at the time of the plea and found no reason to doubt Bruns's competency:

Q. The various medications that we have talked about you taking, do any of those medications affect your ability to think and to know what's going on? A. No.

Q. Where are you right now, Mr. Bruns? A. Black Hawk County Jail.

Q. And what are you doing right now? A. I'm being sentenced for the crime of second degree sexual abuse, two counts, two boys.

The court went on to determine a factual basis for the plea. Not only did Bruns articulate a factual basis, but he also went further to correct the court with respect to which sex acts were committed on which victim.

¹ The State contends Bruns did not preserve error because he has not specifically alleged that his trial counsel was ineffective for failing to file a motion in arrest of judgment or allowing him to waive this right. We will assume, arguendo, that Bruns preserved error on this issue.

For a defendant to be adjudged legally incompetent during any stage of a criminal proceeding, it must reasonably appear as though “the defendant is suffering from a mental disorder which prevents the defendant from appreciating the charge, understanding the proceedings, or assisting effectively in the defense.” Iowa Code § 812.3 (2005). As a general rule, a competency hearing is required if the “record contains information from which a *reasonable person* would believe a substantial question of the defendant’s competency exists.” *State v. Kempf*, 282 N.W.2d 704, 706 (Iowa 1979) (emphasis added).

Even though he was on Paxil and, at some point, on a suicide watch, we find a reasonable attorney would not have doubted his competency and taken steps to seek a mental health assessment. The record is void of any objective manifestations of incompetence. Bruns’s conduct throughout the proceedings was that of a cogent, sound-minded individual. His trial counsel met with him on approximately twelve occasions, and she described how he was “orchestrating” his own defense. She had extensive criminal experience and experience working with individuals with mental illness, yet at no point did she find any reason to doubt his competency. In addition, his conduct during the plea colloquy gave the district court no reason to doubt his competency. In total, we find there was no reason for trial counsel to take steps to procure a mental health assessment in this case.

Bruns did not prove his trial counsel’s performance fell outside the normal range of competence. Accordingly, we find he did not meet his burden to prove that she failed to perform an essential duty. Without such proof, his ineffective-assistance-of-counsel claim fails. See *Bear*, 417 N.W.2d at 472 (holding a

defendant must prove both prongs in order to succeed on an ineffective-assistance claim).

AFFIRMED.