

IN THE COURT OF APPEALS OF IOWA

No. 7-656 / 07-0148
Filed October 12, 2007

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JERRY ALLEN SAVALA, JR.,
Defendant-Appellant.

Appeal from the Iowa District Court for Pottawattamie County, J.C. Irvin,
Judge.

Jerry Allan Savala appeals from his judgment and sentence for forgery.

AFFIRMED.

Mark C. Smith, State Appellate Defender, and James G. Tomka, Assistant
Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Martha Boesen, Assistant Attorney
General, and Matthew Wilber, County Attorney, for appellee.

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

ZIMMER, J.

Jerry Allan Savala appeals from his judgment and sentence for forgery, in violation of Iowa Code section 715A.2(1)(c) (2005). Savala claims he received ineffective assistance of counsel in connection with the district court's calculation of credit for time served. We affirm.

On April 27, 2005, Savala tried to cash a stolen check at People's National Bank in Council Bluffs, Iowa.¹ The State charged Savala with forgery and alleged that he was an habitual offender. Savala and the State entered into a plea agreement that called for Savala to plead guilty to forgery. In return, the State agreed to dismiss the habitual offender allegation. The parties agreed to jointly recommend a five-year term of incarceration at sentencing.

Savala pled guilty to forgery pursuant to his agreement with the State and, on October 30, 2006, the district court sentenced him to five years in prison. Upon request of Savala's counsel, the court kept the record open to allow the parties to submit additional information regarding Savala's request for "credit for time served" in the State of Nebraska.²

On November 7, 2006, Savala filed a motion for expanded findings and relief. Savala's counsel attached several documents to the motion detailing Savala's criminal activities in Nebraska and the length of time he spent in

¹ The check was made payable to Savala and was written on the account of Gallner & Patterman, P.C. Sheldon Gallner had reported the checks stolen from his business the day before.

² According to Iowa Code section 903A.5, "an inmate *may* receive credit upon the inmate's sentence while incarcerated in an institution or jail of another jurisdiction during any period of time the person is receiving credit upon a sentence of that other jurisdiction." (Emphasis added.)

custody there. Savala's motion requested that he receive 274 days of out-of-state jail credit.

On December 19, 2006, the district court held a hearing on Savala's motion. The hearing was not reported. After reviewing the motion and considering the arguments of counsel, the court entered an order granting Savala twenty-seven days' credit for the time served in Nebraska while awaiting extradition. The court also granted Savala credit for time served in the Pottawattamie County Jail from July 13, 2006.

On appeal, Savala raises one issue, which he has framed in the following manner, "Savala received ineffective assistance of counsel: The failure of counsel to demand a hearing on the issue of credit for time served so that there is an adequate record for appellate purposes."

As we have already noted, the district court held an unreported hearing before ruling on Savala's motion regarding the amount of credit for time served he should receive. Thus, we interpret Savala's actual claim to be that he was denied effective assistance of counsel by his counsel's failure to request that the hearing be reported.

We review claims of ineffective assistance of counsel de novo. *Wemark v. State*, 602 N.W.2d 810, 814 (Iowa 1999). To establish ineffective assistance of counsel, Savala must prove: (1) his attorney's performance fell below "an objective standard of reasonableness" and (2) "the deficient performance prejudiced the defense." *Strickland v. Washington*, 466 U.S. 668, 687-88, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984). To establish breach of duty, Savala must overcome the presumption that counsel was competent and prove

that counsel's performance was not within the range of normal competency. *State v. Buck*, 510 N.W.2d 850, 853 (Iowa 1994). Savala may establish prejudice by showing a reasonable probability that, but for counsel's errors, the result of the proceeding would have differed. *State v. Atwood*, 602 N.W.2d 775, 784 (Iowa 1999). We may dispose of Savala's ineffective assistance claims if he fails to prove either prong. *State v. Query*, 594 N.W.2d 438, 445 (Iowa Ct. App. 1999).

In order to establish prejudice resulted from his counsel's ineffective assistance in failing to request that his hearing be transcribed, Savala must make a "minimal showing of the potential viability of the claim." *State v. Alloway*, 707 N.W.2d 582, 587 (Iowa 2006). Savala must show why the actions of his counsel were ineffective and how those actions resulted in prejudice. *Id.* In this case, Savala has not alleged or shown that any error would have been revealed in the manner the court calculated his credit for time served if his hearing had been reported. Savala cannot simply assert that prejudice resulted because the court did not automatically grant him credit for the entire time requested in his motion. *See Alloway*, 707 N.W.2d at 587. Because Savala has failed to sufficiently allege or show prejudice, we find his claim of ineffective assistance of counsel is without merit. Accordingly, we affirm the district court.

AFFIRMED.