IN THE COURT OF APPEALS OF IOWA

No. 7-775 / 06-1942
Filed February 13, 2008

MATTHEW BUCKLIN,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Jasper County, John D. Lloyd, Judge.

Matthew Bucklin appeals from the district court's dismissal of his postconviction relief action. **AFFIRMED.**

Susan Stockdale, Colo, for appellant.

Thomas J. Miller, Attorney General, Darrel Mullins, Assistant Attorney General, Steve Johnson, County Attorney, and James Cleverley, Assistant County Attorney, for appellee State.

Considered by Sackett, C.J., and Vaitheswaran and Baker, JJ.

VAITHESWARAN, J.

Matthew Bucklin, a methamphetamine addict, was sold sugar made to look like methamphetamine. On discovering the deception, he took actions that led to charges of first-degree robbery and first-degree burglary. A jury found Bucklin guilty of first-degree robbery and criminal trespass. Iowa Code §§ 711.1, .2 and 717.8(1) (2001).

Bucklin appealed. *State v. Bucklin*, No. 03-1801, *1 (Iowa Ct. App. June 15, 2005). In part, he claimed trial counsel was ineffective in withdrawing a motion to suppress his videotaped confession. We rejected that ineffective-assistance-of-counsel claim. *Id.* at *2.

Bucklin thereafter filed an application for postconviction relief, raising several grounds for relief. Following a hearing, the district court dismissed all the claims.

On appeal from that ruling, Bucklin urges three grounds for relief: (1) his "trial attorney provided ineffective assistance when he failed to fully investigate the facts surrounding [his] statements to law enforcement officers," (2) his "trial attorney provided ineffective assistance of counsel when he provided misinformation at the time a plea offer was made to [him]," and (3) his "appellate attorney provided ineffective assistance of counsel when she failed to raise and argue the issue of sufficiency of the evidence regarding the theft elements of the charges against [him]."

To prove ineffective assistance of counsel, Bucklin must show his attorney (1) failed to perform an essential duty, and (2) prejudice resulted. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693

(1984). On the first prong, the inquiry is "whether counsel's assistance was reasonable considering all the circumstances." *Id.* at 688, 104 S. Ct. at 2065, 80 L. Ed. 2d at 694. On the second prong, Bucklin must show there is a reasonable probability that, "but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694, 104 S. Ct. at 2068, 80 L. Ed. 2d at 698. Our review of these claims is de novo. *Ledezma v. State*, 626 N.W.2d 134, 141 (Iowa 2001).

I. Failure to Investigate

Bucklin first claims his trial attorney failed to interview his father, Dan, about the circumstances of his arrest. Specifically, he contends counsel should have talked to Dan about his mental state and promises of leniency claimed to have been made by officers. Bucklin suggests that Dan would have corroborated and lent credence to his assertions.

This claim is an effort to repackage Bucklin's direct appeal claim that trial counsel was ineffective in withdrawing his motion to suppress the videotaped confession. Although Bucklin does not refer to the videotape, his argument is premised on counsel's failure to fully pursue a motion to suppress. He now asserts that, had trial counsel obtained corroboration from Dan, he would not have needed to withdraw the motion and would have succeeded in suppressing the confession. To the extent Bucklin is again challenging trial counsel's withdrawal of his suppression motion, we reject that challenge. *See* Iowa Code § 822.8 (2005); *State v. Wetzel*, 192 N.W.2d 762, 764 (Iowa 1971).

Assuming this claim is distinct from the claim raised on direct appeal, we are not persuaded trial counsel breached an essential duty in failing to

investigate the statements of Bucklin's father. On the question of Bucklin's mental condition, one of the officers who interrogated Bucklin testified by deposition that Bucklin was crying and making reference to substance-abuse treatment. Another deposed officer confirmed that Bucklin described himself as "out of his mind." Defense counsel took these depositions well before the motion to suppress was withdrawn. He also deposed other witnesses who testified at trial about Bucklin's emotional condition on the night of the incident. As counsel possessed ample evidence to corroborate Bucklin's assertions about his clouded mental state, we are not convinced he was also obligated to interview Dan. *See Strickland*, 466 U.S. at 691, 104 S. Ct. at 2066, 80 L. Ed. 2d at 695 ("[C]ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.").

As for the promise of leniency, Bucklin testified he told his attorney about the promise. Counsel investigated the assertion by deposing the two law enforcement officers. Counsel also spoke to Bucklin's father, Dan. While there is no evidence that he asked Dan about his recollection of the promise of leniency, such a discussion would not have aided Bucklin. At the postconviction relief hearing, Dan testified officers made a promise of leniency at his home, not at the jail as Bucklin claimed. This inconsistency alone would have rendered Dan's statements of questionable corroborative value at a suppression hearing. Therefore, trial counsel breached no essential duty in failing to follow up with Dan about the asserted promise of leniency. *See Ledezma*, 626 N.W.2d at 145 ("There is no need to investigate a particular matter . . . if the defendant has

given counsel a reason to believe the investigation would be fruitless or unwarranted.”).

We also are not convinced Bucklin could establish *Strickland* prejudice. With respect to the statements Dan would have made about Bucklin’s mental state, those statements were cumulative, and “the withholding of cumulative testimony will not ordinarily satisfy the prejudice component of a claim of ineffectiveness of counsel.” *Taylor v. State*, 352 N.W.2d 683, 687 (Iowa 1984). With respect to the claimed promise of leniency Dan would have corroborated, we reiterate that Dan’s testimony on this subject was inconsistent with his son’s. Therefore, there is no reasonable probability that counsel would have pursued the motion to suppress and would have prevailed had he investigated Dan’s statements. For these reasons, we affirm the district court’s dismissal of this ineffective-assistance-of-counsel claim.

II. Plea Offer

At the postconviction relief hearing, Bucklin testified that prior to trial, the State offered him a sentence of “[t]en years, 85 percent.” He rejected the offer. He now contends his decision was based on inappropriate advice from his attorney. *See Wanatee v. Ault*, 39 F.Supp.2d 1164, 1172 (N.D. Iowa 1999), *aff’d*, 259 F.3d 700 (8th Cir. 2001) (stating breach of duty exists when trial counsel failed to provide “reasonably competent” advice regarding a plea offer, or failed to advise defendant on relevant law).

The problem with this argument is that Bucklin cannot establish *Strickland* prejudice. *Id.* at 1173 (stating prejudice exists if “the plea bargain agreement would have resulted in a lesser sentence *and* the claimant shows that but for

counsel's advice he would have accepted the plea.") (citation omitted) (emphasis in original). Bucklin had to "present some credible, non-conclusory evidence that he would have pled guilty had he been properly advised." *Engelen v. United States*, 68 F.3d 238, 241 (8th Cir. 1995). The only advice Bucklin cited was a statement by his attorney that he could beat the charges. He did not assert that his attorney made inaccurate statements about the law or misapprehended any specific facts. Indeed, he conceded his attorney took depositions of all the relevant witnesses. He also conceded his attorney "thought the same thing that I did, that the plea agreement wasn't worth it." Finally, he conceded it was only "later on" that Bucklin told his attorney he would have taken the offer. Under these circumstances, we fully concur in the district court's statement that this is a case of "buyer's remorse." Accordingly, we affirm the district court's rejection of this ineffective-assistance-of-counsel claim.

III. Sufficiency of Evidence

Bucklin asserts his appellate counsel was ineffective in failing to urge a "claim of right" theory to negate the theft element of his robbery conviction. Claim-of-right is a statutory defense in certain theft cases. *See* Iowa Code § 714.4 ("No person who takes . . . property is guilty of theft by reason of such act if the person reasonably believes that the person has a right, privilege or license to do so, or if the person does in fact have such right, privilege or license."). Bucklin contends the defense applies as follows: he paid for methamphetamine, he was tricked, and, therefore, he had the right to retrieve either his money or the drugs.

In a nineteenth century opinion, the Iowa Supreme Court recognized such a defense to robbery. *See State v. Hollyway*, 41 Iowa 200 (1875) (holding that

where defendant threatened victim with a revolver and demanded settlement of a debt, no intent to rob existed because defendant had bona fide belief that he had a right to victim's property). However, this court has categorically stated the claim of right defense is only a defense to a theft charge. *See State v. Miller*, 622 N.W.2d 782, 785 (Iowa Ct. App. 2000). While only burglary was at issue in *Miller*, we stated "[b]urglary and robbery are not included." *Miller*, 622 N.W.2d at 785. We further stated, "We align ourselves with the majority of states that do not recognize a claim-of-right defense to violent reclamations of property." *Id.* at 787. Based on *Miller*, we conclude the claim-of-right defense was not available to Bucklin and, accordingly, we agree with the district court that appellate counsel was not ineffective in failing to challenge the sufficiency of the evidence on this basis. *See State v. Greene*, 592 N.W.2d 24, 30 (Iowa 1999) (holding counsel is not ineffective for failing to raise meritless issues).

AFFIRMED.