IN THE COURT OF APPEALS OF IOWA

No. 8-1006 / 05-1013
Filed April 22, 2009

ENRIQUE GARCIA,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Arthur E. Gamble, Judge.

A postconviction relief applicant appeals from the district court's order denying the application. **AFFIRMED.**

Christopher Kragnes of Kragnes & Associates, and Patrick O'Bryan of O'Bryan Law Firm, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Mary Tabor and Richard Bennett, Assistant Attorneys General, John P. Sarcone, County Attorney, and Frank Severino, Assistant County Attorney, for appellee.

Heard by Vogel, P.J., and Vaitheswaran and Eisenhauer, JJ.

PER CURIAM

Enrique Garcia appeals from the district court's dismissal of his application for postconviction relief. On appeal, Garcia asserts that the district court erred in not finding his trial counsel was ineffective (1) due to failures of his interpreter and (2) for not informing him that he had the right to contact the Mexican Consulate. We affirm.

I. Background Facts & Proceedings

On March 28, 1998, Garcia and four other men went to the home of Daniel Hernandez, where they beat Hernandez and shot him several times. Hernandez later died from his injuries.

Following Garcia's arrest, an interpreter, Lou McCarney, was appointed to act as both an intermediary between Garcia and his trial counsel and as the district court's interpreter for judicial proceedings. Prior to trial, a plea agreement was reached, pursuant to which Garcia would plead guilty to attempted murder and first-degree burglary. On October, 30, 1998, a guilty plea hearing was held and McCarney translated the proceedings. The district court questioned Garcia about his use of interpreters throughout the proceedings, to which Garcia responded that he had not had any difficulty communicating through them or understanding the legal proceedings.[1] Then, the district court conducted a

[1] The following exchange took place between the district court and Garcia:

> Q. You do not speak the English language; is that correct? A. No, I do not.
>
> Q. And throughout all the legal proceedings in this case, you have had the assistance of an interpreter; is that correct? A. Yes.
>
> Q. And that has either been Ms. McCarney or Ms. Arellano; is that correct? A. Yes.

colloquy regarding the guilty plea, which included questioning Garcia to establish a factual basis for the plea. However, Garcia maintained that he was a bystander and unaware of the plan to assault and murder Hernandez. After further discussion between the court, Garcia, his attorney, and the assistant county attorney, the district court stated:

> Notwithstanding the best efforts of counsel in this regard, the factual basis here supports no more than mere presence at the scene and only questionable knowledge of the crime . . . . The Court notes the youth of this defendant, the number of times that he has requested to speak with his lawyer. The Court has watched him personally, and the Court believes that there is significant reluctance on the part of this defendant.

Ultimately, the case went to trial. In December 1998, a jury found Garcia guilty of first-degree murder in violation of Iowa Code sections 707.1 and 707.2 (1997). Subsequently, Garcia was sentenced to life in prison. Garcia appealed, and his conviction was affirmed by our supreme court. *State v. Garcia*, No. 98-2266 (Iowa Nov. 16, 2000).

In September 2001, Garcia filed an application for postconviction relief raising two ineffective-assistance-of-counsel claims: (1) that his trial counsel was ineffective for failing to call his ex-girlfriend as a witness, and (2) that his direct-appeal counsel was ineffective for failing to raise on direct appeal whether his

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> Q. And they have interpreted for you in a manner that you have understood all of the proceedings? A. Yes.
>
> Q. Have you had any difficulty communicating though them? A. I do not understand.
>
> Q. Certainly. Have you had any difficulty, for example, speaking to your lawyer with the use of the interpreter? A. No.
>
> Q. Have you had any difficulty understanding the legal proceedings and what people have said through the interpreter? A. No.
>
> The Court: The record should reflect, of course, that Ms. McCarney and Ms. Arellano are qualified interpreters in view of this Court and have assisted this Court on numerous occasions in the past as well as in this particular case.

trial counsel was ineffective for failing to call his ex-girlfriend as a witness. A hearing was scheduled for January 22, 2004. On January 20, 2004, just prior to the hearing, Garcia filed a pro se pleading raising an additional ineffective-assistance-of-counsel claim asserting that Garcia's trial counsel was ineffective for failing to advise him of his right to contact the Mexican Consulate under Article 36 of the Vienna Convention on Consular Relations. During the scheduled hearing, the district court was not advised of Garcia's pro se pleading and Garcia did not argue or present any evidence regarding the additional ineffective-assistance-of-counsel claim. On April 19, 2004, the district court denied Garcia's application finding that Garcia's trial and appellate counsel were not ineffective for failing to call Garcia's ex-girlfriend as a witness or for failing to raise the ineffective-assistance-of-counsel claim on direct appeal.

On April 26, 2004, Garcia filed a rule 1.904 motion requesting the district court rule on the ineffective-assistance-of-counsel claim asserting Garcia's trial counsel was ineffective for failing to advise him of his right to contact the Mexican Consulate. Subsequently, Garcia filed a pro se motion requesting new counsel. A hearing was held regarding Garcia's request for new counsel, during which Garcia raised an additional ineffective-assistance-of-counsel claim alleging the translation by McCarney at his guilty plea hearing was inaccurate. On January 21, 2005, Garcia filed a pro se pleading that included a statement asserting that because there were errors in the translation of the guilty plea proceeding, the translation of the trial should be examined.

On February 15, 2005, a hearing was held, during which the district court reopened the record for evidence regarding Garcia's additional claims that his

trial counsel was ineffective (1) due to failures of the interpreter at the guilty plea proceeding and (2) for failing to advise him of his right to contact the Mexican Consulate. At the hearing, Garcia testified that he speaks English "a little bit." Prior to Hernandez's murder, he had been employed and had lived with his girlfriend, who did not speak Spanish, for a year and they communicated in English.

Garcia also testified that during the guilty plea proceeding he had difficulty understanding the interpreter. He was attempting to plead guilty to attempted murder and first-degree burglary and had he understood the questions, he would have testified that he went to Hernandez's with the intent to hurt him. Once the group arrived at the Hernandez's trailer, Garcia broke into the trailer and assaulted Hernandez. During the assault, Hernandez was shot. However, he stated that during his trial he maintained that he did not know Hernandez, did not know the other men who murdered Hernandez very well, and claimed he was simply in the wrong place at the wrong time. He also admitted that he lied under oath during his trial because he thought it would help him.

Additionally, Garcia testified that his attorney did not inform him of his right to contact the Mexican Consulate, but had he been informed he would have contacted the Mexican Consulate. However, since contacting the Mexican Consulate, officials had not attended any of his hearings or hired an attorney to represent him.

The evidence at the hearing also included a report reviewing the guilty plea proceeding completed by a certified interpreter, Michael Piper, who also

testified, and a deposition of an official from the Mexican Consulate, Jose Luis Cuevas.

Piper indicated that there were a significant number of errors in the plea translation, but the interpreter was well-versed in Spanish and English, and courtroom terminology. In spite of the errors, "the interpretation as a whole [was not] so flawed that it would be incomprehensible or misunderstood by the defendant . . . ."

Cuevas testified that in high profile cases, such as first-degree murder cases, the consulate interviews the defendant, either in person or by telephone, to obtain information concerning the defendant's identity, nationality, and mental and physical health. The consulate determines whether the defendant's human rights have been violated. The consulate verifies that a defendant either understands English or has an interpreter for proceedings. If a defendant complains about the translator, the consulate would verify the interpreter's credentials with the district court and review the transcript of the proceedings. If the transcript seems appropriate to what the attorney is telling the Consulate, then the Consulate "takes them at face value and indicates to the [defendant] that it is the court's opinion and the attorney's opinion and our opinion that the interpreter is—is able to be performing his job." Generally, the consulate monitors a case from beginning to end. However, this consulate covers a four-state territory, so consulate officials generally monitor a case through communication with the defendant's attorney, rather than attending hearings in person.

On May 31, 2005, the district court found that although Garcia failed to timely raise the interpreter and consulate issues, it was in the interest of justice to rule on these issues.[2] The district court noted that it carefully examined the transcript of the guilty plea proceedings along with Piper's translation of the tape recording of the guilty plea proceedings. During the plea proceedings, Garcia was unwilling to admit that he and his accomplices entered the trailer with the intent to assault or injure the victim; the district court did not have a factual basis to accept the plea. During the postconviction proceedings, Garcia claimed that he attempted to tell the district court that he and his accomplices entered the trailer to beat up the victim. However, the district court found, "the transcript of the proceedings and the detailed report of Michael J. Piper do not support Garcia's testimony." Further, throughout the course of the criminal proceedings, Garcia denied any knowledge that his accomplices intended to assault, injure, or shoot the victim. The district court then found that "Garcia's post-conviction statement that he attempted to confess and admit during his guilty plea that he knew his accomplices intended to assault or injure Hernandez is not credible."

As to the consular issue, there was no evidence that Garcia was advised of his right to contact the Mexican Consulate. Garcia testified that had he been advised of this right, he would have exercised it and a consular official would have attended the guilty plea proceedings and intervened to assist him in pleading guilty. However, had Garcia known of this right and utilized it, the Mexican Consulate would have provided Garcia the general type of assistance

[2] On June 6, 2005, the district court entered a nunc pro tunc ruling to correct a scriveners error regarding a date referenced in the ruling.

described by Cuevas, but it is highly unlikely that an official would have been present during the guilty plea proceeding, intervened in the proceedings, or requested a different interpreter given the district court's expressed confidence in Garcia's interpreter and Garcia's asserted understanding of the translation.

> [I]t is highly unlikely that the assistance of the Mexican Consulate would have caused Garcia to admit what he consistently denied throughout the course of the criminal proceedings, [specifically] that he knew his accomplices intended to assault or injure Hernandez during their encounter.

Therefore, the district court found that both of Garcia's ineffective-assistance-of-counsel claims were without merit and denied Garcia's application.

On June 14, 2005, Garcia, through counsel, filed a notice of appeal. Subsequently, he filed a pro se motion seeking limited remand. On November 30, 2005, our supreme court granted a limited remand to determine whether Garcia had previously raised the adequacy of the translation during the trial and if so, whether the translation was adequate.[3] On April 7, 2006, the district court found that during the postconviction relief hearing and in subsequent pro se documents Garcia had made statements regarding the adequacy of the translation during trial. A hearing was held, which included testimony from Piper,

[3] Garcia in his pro se brief, also raises a claim under *State v. Heemstra*, 727 N.W.2d 549 (Iowa 2006). However, as the State asserts, this claim is not preserved as it was not raised nor ruled on below. *See Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2006) ("It is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before we will decide them on appeal."). Garcia first raised this issue on limited remand. On December 7, 2006, the district court ruled that Garcia had now raised a claim based upon *State v. Heemstra*, but the issue was beyond the scope of the November 30, 2005 supreme court order for limited remand and the district court lacked jurisdiction to consider the issue. Subsequently, on December 21, 2006, the supreme court denied Garcia's "motion for additional limited remand to raise an issue under *State v. Heemstra*." In addition to not being preserved, Garcia in his pro se brief, does not include any citation to the record to support his allegation that *State v. Heemstra* is applicable.

who had examined the audio tapes of the trial. Subsequently, on May 3, 2007, the district court found that Garcia understood the trial proceedings and was able to assist his attorney; thus, the district court denied Garcia's claim of ineffective assistance of counsel based upon the translation during the trial.

On appeal, Garcia asserts that his trial counsel was ineffective (1) due to failures of the interpreter, and (2) for failing to advise him of his right to contact the Mexican Consulate pursuant to Article 36 of the Vienna Convention on Consular Relations. He claims that because of these failures, his attempt to plead guilty failed and he requests that we reverse the finding of guilt, vacate his sentence, and "remand the underlying criminal case to the district court with instructions to accept the previously entered guilty plea."[4]

II. Standard of Review

Garcia raises constitutional claims; thus our review is de novo. *Ledezma v. State*, 626 N.W.2d 134, 141 (Iowa 2001). We give weight to the district court's factual findings, especially when concerning credibility assessments. Iowa R. App. P. 6.14(6)(*g*); *Ledezma*, 626 N.W.2d at 141.

III. Ineffective Assistance of Counsel

In order to prevail on an ineffective-assistance-of-counsel claim, a defendant is required to show by a preponderance of the evidence that (1) counsel 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); *Ledezma*, 626 N.W.2d at 142. "Failing to perform an essential duty

[4] We note that Garcia's attempted guilty plea was not a "previously entered" plea, but rather was an offered plea that was rejected.

means counsel's performance fell outside of the normal range of competency." *State v. McCoy*, 692 N.W.2d 6, 14 (Iowa 2005). To establish prejudice, a "defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694, 104 S. Ct. at 2068, 80 L. Ed. 2d at 698. Although defendant is required to prove both elements, we do not always need to address both elements. *Ledezma*, 626 N.W.2d at 142. If a claim lacks prejudice, the claim may be decided on that ground alone without deciding whether the attorney performed deficiently. *Id*.

A. Interpreter

Garcia first asserts that his trial counsel was ineffective due to failures by his interpreter. Generally, an adequate translation mandates a "'word for word translation of everything relating to the trial a defendant conversing in English would be privy to hear.'" *Thongvanh v. State*, 494 N.W.2d 679, 681 (Iowa 1993) (quoting *United States v. Joshi*, 896 F.2d 1303, 1309 (11th Cir. 1990)). An interpreter's deficiency can be imputed to the attorney as ineffective assistance of counsel. *See Ledezma*, 626 N.W.2d at 149 (holding that an ineffective-assistance-of-counsel claim may arise from the deficient performance of an interpreter acting as an intermediary between the attorney and client). However,

> [o]nly if the defendant makes any difficulty with the interpreter known to the court can the judge take corrective measures. To allow a defendant to remain silent throughout the trial and then, upon being found guilty, to assert a claim of inadequate translation would be an open invitation to abuse.

Thongvanh, 494 N.W.2d at 682 (quoting *Valladares v. United States*, 871 F.2d 1564, 1566 (11th Cir. 1989)).

At the October 1998 guilty plea hearing, the district court questioned Garcia to establish a factual basis for the guilty plea:

> The Court: The record should likewise reflect that Mr. Isidro Ramirez and Mr. Manuel Ramirez are also present at these proceedings and are participating, at least insofar as their observation, and listening to these proceedings with the assistance of the interpreter.
>
> [The interpreter then whispered to Garcia: "No, no, no."]
>
> The Court: Mr. Garcia, is it your intention to enter a plea of guilty this afternoon to the crimes charged in the amended trial information? Garcia: Yes.
>
> . . . .
>
> Q. (The Court): Here's what the State would have to prove if you went to trial for attempted murder. The State would have to prove on March 28 of this year you were in Polk County, Iowa, and either acting all alone or assisting and encouraging other people or acting together with other people knowing that someone might be injured, assaulted, or killed. You were involved in knowingly and intentionally an attempt to cause the death of Daniel Hernandez Gonzalez. Do you understand what the State would have to prove to convict you of attempt to commit murder? A. Yes.
>
> Q. Did you commit that crime? A. Can you repeat that again?
>
> Q. Sure. Either acting by yourself or assisting, helping, aiding, encouraging, or participating with others, did you or one of those persons that you are acting with knowingly and intentionally attempt to cause the death of Daniel Hernandez Gonzalez? A. Yes.
>
> Q. Tell me what you did please.
>
> . . . .
>
> Q. Where did you gentlemen go when you left Jamie's house? A. To a house of—What is this guy's name?
>
> Q. Mr. Daniel Hernandez Gonzalez. A. Yes.
>
> Q. Why were you going? A. We were there because we had the intention to beat up a guy.
>
> . . . .
>
> Q. You just knew that you were going there to beat a man up? A. Yes.
>
> Q. Now, did anyone have any weapons with them as you went over to the house? A. I had a bottle in my hand.
>
> . . . .

Q. Who had knives or ball bats? A. Alejandro had a baseball bat.

. . . .

Q. When you got to the man's house, what happened Mr. Garcia? A. I couldn't see exactly what went on at that instant because I was the last one.

Q. Did you get out of the truck? A. Yes.

Q. Did the other men get out of the truck? A. Everyone except Manuel.

Q. And the other four of you go into the house? A. Yes.

Q. And how did you get in the house? A. Alejandro shoved his body into the door, and that's how we ended up with the door open.

Q. So did you break in? A. Yes.

Q. And did the four of you go into the house? A. I was the last one.

Q. Did you go in? A. Yes. I think I probably ended up taking two steps inside.

Q. Was the man beaten up in the house? A. What I saw was that he and Alejandro were struggling, physically struggling.

Q. Did you help the man when Alejandro was struggling with him? A. I tried to ask this guy why were they fighting. At the time I thought he and Alejandro were brothers.

Q. I see. Did you ever strike this man? A. No.

Q. Did you support or assist or help or encourage Alejandro? A. This needs to be explained to me clearly.

Q. Sure. Were you helping Alejandro? A. No.

Q. Were you just there for the ride? A. When I got out of the truck, I thought that's where Alejandro lived. When I ended up going inside that trailer, he and Alejandro were bodily physically struggling, and I asked why are you doing this, and this guy, not Alejandro, the other guy turned around and told me it was none of my business, to butt out.

Q. My question to you, Mr. Garcia, is were you an innocent bystander? A. Can you repeat that again?

Q. Yes. I want to know, Mr. Garcia, if you helped Alejandro, whether you encouraged him, whether you supported him, whether you helped him, or whether you just happened to be there and you had no involvement in this at all? A. At that time I wasn't fully aware of what was really happening at that precise time. This is the reason I inquired from the other guy what is going on because I was not aware of what was truly happening then.

Q. Well, you knew at that point you had gone over there so someone could be beaten up, didn't you? A. No.

. . . .

Mr. Boles: Mr. Garcia, you knew Alejandro was going over to beat up someone? Garcia: No.

> . . . .
>
> Mr. Foritano: Mr. Garcia, you went with Alejandro Garcia, Jamie Mendoza, Isidro Ramirez, and Manuel Ramirez to beat someone up; is that correct? A. When I left with them, I was not aware of that.

We conclude that upon this record, Garcia cannot establish prejudice. Garcia's main argument is that during the guilty plea proceeding, he was attempting to admit that he went to Hernandez's trailer to beat him up and injure him, broke into the trailer, and then participated in the murder; but, the translation of the guilty plea proceeding was so flawed it prevented the district court from accepting his guilty plea. He claims had there been a word for word translation, he would have pled guilty. The record does not support his argument. The district court specifically asked Garcia if he was having any difficulty communicating or understanding the translation through the interpreter, which he responded that he was not having any difficulty. The certified interpreter, Piper, who examined the translation of the guilty plea hearing and trial, reported that the interpreter was obviously well-versed in English and Spanish, and although there were numerous mistakes, he could not "say that the interpretation as a whole was so flawed that it would be incomprehensible or misunderstood by the defendant." The majority of the mistakes were the result of grammatical errors and omissions of words that were not required for an understandable translation.

Upon review of the transcript and Piper's analysis of the guilty plea proceeding, any deviation from the word for word translation standard did not interfere with the substantive meaning of the district court's questions to establish a factual basis. Garcia claims he was confused by the interpreter's use of the word "robo" meaning robbery, rather than using the appropriate translation for

"burglary" to which he was attempting to plead guilty along with attempted murder. While the two words are indeed separate offenses, a review of the plea transcript reveals that nowhere in Garcia's statements or in the court's questions regarding the events surrounding the crime is either term used. It was other facts that lead the court to reject Garcia's guilty plea. Garcia, in recalling the details of the incident, stated he went with the others to "beat up a guy". As the plea proceedings continued, he backed off that assertion, and denied his prior knowledge and participation in the attack. Neither "robbery" nor "burglary" were even mentioned in this dialog with the court, as the court was attempting to establish a factual basis. It was clear Garcia was backing off of his initial assertion of prior knowledge of what would transpire and thereby denying his participation in the murder. His denial continued throughout trial and the postconviction proceedings. It was not until after the district court ruled on his initial postconviction relief application, that Garcia admitted to his participation in the beating of the victim and claimed it was the translator's fault his guilty plea failed. However, on review of the transcript, it is clear the failed guilty plea resulted from Garcia's total denial of his guilt, rather than any errors in translation. Thus, as Garcia cannot establish prejudice, this ineffective-assistance-of-counsel claim must fail.[5]

[5] We note that Garcia states the translation "was woefully inadequate at both his guilty plea proceedings and the trial." However, Garcia does not raise an ineffective-assistance-of-counsel claim based upon the translation at trial. Further, he does not argue that he was prejudiced from an inadequate translation at trial. Rather, he only requests he be able to plead guilty according the plea agreement.

B. Access to Consular Assistance

Garcia next contends that his trial counsel was ineffective for failing to inform him of his right to contact the Mexican Consulate under Article 36 of the Vienna Convention on Consular Relations. In *Ledezma v. State*, 626 N.W.2d 134, 152 (Iowa 2001), our supreme court stated that counsel representing a foreign national should advise his or her client of the right to consular access under the Vienna Convention on Consular Relations. However, the court has declined to say whether Article 36 of the Vienna Convention creates an individually enforceable right to consular notification. *State v. Lopez*, 633 N.W.2d 774, 782 (Iowa 2001); *Ledezma*, 626 N.W.2d at 150. "A 'majority of courts assume, without deciding, such a right does exist, and then hold the requested remedy inappropriate or the defendant did not prove he was prejudiced by the alleged Article 36 violation.'" *Lopez*, 633 N.W.2d at 782 (quoting *Ledezma*, 626 N.W.2d at 151).

A defendant must show actual prejudice, which requires the defendant prove that (1) he did not know of his right; (2) he would have availed himself of the right had he known of it; and (3) there was a likelihood that the contact with the consulate would have resulted in assistance to him. *Id*. at 783. Further, "'it is extremely doubtful that the violation should result in the overturning of a final judgment of conviction *without some showing that the violation had an effect on the* trial.'" *Id*. (quoting *Breard v. Greene*, 523 U.S. 371, 377, 118 S. Ct. 1352, 1355, 140 L. Ed. 2d 529, 538 (1998) (emphasis added)).

In the present case, even assuming that defense counsel did have a duty to inform Garcia of his right to consular access, we find that Garcia has failed to

show prejudice. Garcia specifically asserts that had he contacted the consulate, an official from the consulate would have attended the guilty plea proceeding and brought the failures of the interpreter to the attention of the district court; as a result he would have been able to plead guilty. However, this assertion is not supported by Cuevas's testimony. Cuevas indicated that the Mexican Consulate has a small staff, but a four-state territory to monitor, which included 488 counties. This makes it impossible to attend hearings on a regular basis. Had Garcia contacted the Mexican Consulate and indicated he was having difficulty with the interpreter, Cuevas testified that officials would have verified the interpreter's qualifications with the district court. The district court had specifically noted at the plea proceedings that McCarney was qualified and had previously assisted the district court numerous times. Any further investigation by the consulate would have consisted of reviewing the transcript of a hearing and making sure it comported with what Garcia's attorney reported to the consulate.

Moreover, as previously discussed, it was not the interpreter that prevented Garcia from pleading guilty, but rather Garcia's denial of his participation in the acts leading up to the murder. Cuevas specifically testified that the consulate gives no legal advice regarding pleading guilty. Therefore, as Garcia cannot establish prejudice, this ineffective-assistance-of-counsel claim must fail.

Upon our review, we find that Garcia's ineffective-assistance-of-counsel

claims are without merit. We have considered all of Garcia's arguments on appeal and affirm the district court.[6]

AFFIRMED.

Vaitheswaran, J. concurs specially.

[6] On March 4, 2009, Garcia filed a pro se motion requesting the supreme court retain his appeal. He also requested emergency remand and permission to file supplemental briefs. On March 17, 2009, our supreme court denied his request that they retain his appeal. We deny his request for remand and supplemental briefing.

VAITHESWARAN, J. (concurring specially)

I specially concur in the portion of the majority opinion which concludes that Garcia was not prejudiced by the translation of his guilty plea proceeding. The majority correctly points out that the law "requires continuous word for word translation of everything relating to the trial a defendant conversing in English would be privy to hear." *Thongvanh v. State*, 494 N.W.2d 679, 681 (Iowa 1993) (quoting *United States v. Joshi*, 896 F.2d 1303, 1309 (11th Cir. 1990)). Certified interpreter Michael Piper identified 669 major errors in the guilty plea proceeding. The majority characterizes most of these errors as "grammatical errors and omissions of words that were not required for an understandable translation." I respectfully disagree with this characterization. Mr. Piper identified 408 "major errors" in the translation of the guilty plea proceedings, which he defined as those that are "likely to skew the meaning of the original." These "major errors" included a misstatement of the State's burden of proof, the interpreter's incorrect translation of the word "burglary" as "robbery," and the interpreter's editorial comment, "No, no, no," when the court asked Garcia if it was his intention to plead guilty. I believe these errors made a mockery of the "continuous word for word translation" standard our highest court has adopted. *Id.*; *see also Ledezma v. State*, 626 N.W.2d 134, 149 (Iowa 2001) (refusing to condone misconduct by court-appointed interpreters).

Having said that, it is apparent from the transcript that Garcia back-pedaled from his initial admission that he and his associates went to the house because they intended "to beat up a guy." It is not apparent that he back-pedaled because of his interpreter's "no, no, no" advice. Because Garcia's

reluctance to admit key facts (as opposed to the inaccuracy of the translation or his interpreter's advice) was the sole ground for rejection of the plea agreement, I cannot conclude there was a reasonable probability that the district court would have accepted the plea if those errors did not occur. *See Ledezma*, 626 N.W.2d at 143–44 ("[A]n applicant must meet 'the burden of showing that the decision reached would reasonably likely have been different absent the errors.'") (quoting *Strickland v. Washington*, 466 U.S. 668, 696, 104 S. Ct. 2052, 2069, 80 L. Ed. 2d 674, 699 (1984)). For this reason, I agree with the majority's rejection of this ineffective-assistance-of-counsel claim.