IN THE COURT OF APPEALS OF IOWA

No. 8-119 / 07-0344
Filed February 27, 2008

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JAMES KENDALL ATKINSON,
Defendant-Appellant.

Appeal from the Iowa District Court for Story County, Steven P. Van Marel, District Associate Judge.

James Atkinson appeals his conviction and sentence following his guilty plea. **AFFIRMED.**

Andrew J. Boettger of Hastings & Gartin, L.L.P., Ames, for appellant.

Thomas J. Miller, Attorney General, Robert P. Ewald, Assistant Attorney General, Stephen Holmes, County Attorney, and Stephen Owen, Assistant County Attorney, for appellee.

Considered by Mahan, P.J., and Eisenhauer and Baker, JJ.

BAKER, J.

James Atkinson appeals his conviction and sentence following his guilty plea, contending his trial counsel rendered ineffective assistance. Because he has failed to establish his counsel failed to perform an essential duty, we affirm.

I. Background and Facts

On November 20, 2006, Atkinson was charged with manufacturing or possession with intent to manufacture methamphetamine in violation of Iowa Code section 124.401(1)(b)(7) (2005), a class B felony. On January 2, 2007, the charge was reduced to possession of precursors with intent to manufacture methamphetamine in violation of section 124.401(4)(b), a class D felony.

On January 8, 2007, Atkinson pled guilty to the reduced charge. The plea agreement specified, in pertinent part, that the parties agreed to jointly recommend a prison term and that, at the time of sentencing, Atkinson would be allowed to put on evidence of his eligibility for the drug treatment program offered at the Story County Jail. The court accepted Atkinson's plea and advised him of his right to file a motion in arrest of judgment. At the time of the plea, the plea agreement was described by the prosecutor as:

> In exchange for this plea to the amended charge, the parties will jointly recommend a $750 fine plus surcharges, court costs, and fees, five-year prison term, the mandatory DNA profiling, and a 180-day driver's license revocation. This will resolve all charges arising against the defendant arising from the incident outlined in the trial information.
>
> The one additional caveat, Your Honor, which was agreed to today, is that at the time of sentencing, although both parties will ask for prison, Mr. Atkinson will be allowed to put on evidence to show his eligibility for the drug treatment program offered in the Story County Jail.

Defense counsel agreed.

In a letter submitted to the court on January 23, 2007, Atkinson stated he had "joined the Story County Jail Drug Treatment program." He also stated he "would like to stay and be sentenced for the length of my program."

On February 13, 2007, Atkinson filed a motion in arrest of judgment and motion to withdraw his guilty plea stating, among other allegations, that his plea was the result of ineffective assistance and misconduct by defense counsel in that counsel had "misrepresented the plea agreement." At his February 21, 2007 sentencing hearing, Atkinson withdrew the motions, specifically withdrawing each allegation individually. At the hearing, when given the opportunity to make a statement before the imposition of sentence, Atkinson stated:

> I would ask the court's mercy and ask the court [to] be sentenced to the drug program . . . . [I]t was my understanding of the plea agreement I would do drug program offered at Story County Jail in alternative of prison.

The district court then immediately asked both the prosecuting attorney and defense counsel if they knew of any legal cause why the sentence should not be pronounced. Neither counsel made an objection. Atkinson was sentenced to an indeterminate prison term not to exceed five years. Atkinson appeals.

II. Merits

Because a criminal defendant's right to reasonably effective assistance of trial counsel is derived from the Sixth Amendment of the United States Constitution, we review ineffective assistance claims de novo. *State v. Wills*, 696 N.W.2d 20, 22 (Iowa 2005). When an ineffective assistance claim is raised on direct appeal, "the court may decide the record is adequate to decide the claim or may choose to preserve the claim for determination" under postconviction relief

procedures. Iowa Code § 814.7(3). Because the trial record is often inadequate to allow us to resolve the claim, we frequently preserve an ineffective assistance claim for possible postconviction proceedings to enable a complete record to be developed. *State v. Truesdell*, 679 N.W.2d 611, 616 (Iowa 2004). "Preserving ineffective assistance of counsel claims that can be resolved on direct appeal wastes time and resources." *Id.* We therefore address the claim on direct appeal when the record is adequate. *Id.* Here, we find the record is adequate to resolve Atkinson's ineffective assistance claim.

To establish that his trial counsel rendered ineffective assistance, Atkinson must prove by a preponderance of the evidence both that his counsel failed to perform an essential duty and that prejudice resulted. *State v. Simmons*, 714 N.W.2d 264, 276 (Iowa 2006). To prove the first prong, Atkinson must overcome a "strong presumption that his counsel's actions were reasonable under the circumstances and fell within the normal range of professional competency." *State v. Cook*, 565 N.W.2d 611, 614 (Iowa 1997) (citations omitted). To prove the prejudice prong, Atkinson must prove "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) (citing *Strickland v. Washington*, 466 U.S. 668, 694, 104 S. Ct. 2052, 2068, 80 L. Ed. 2d 674, 698 (1984)). "We may dispose of an ineffective-assistance-of-counsel claim if [Atkinson] fails to meet either the breach of duty or the prejudice prong." *Cook*, 565 N.W.2d at 614.

> A guilty plea results in a waiver of several constitutional rights. For the waiver to be valid, there must be an intentional relinquishment of known rights. Due process therefore requires that a defendant enter a guilty plea voluntarily and intelligently.

> If a plea is not intelligently and voluntarily made, the failure by counsel to file a motion in arrest of judgment to challenge the plea constitutes a breach of an essential duty. To enter a guilty plea voluntarily and intelligently means the defendant has a full understanding of the consequences of a plea.

State v. Philo, 697 N.W.2d 481, 488-89 (Iowa 2005) (internal citations and quotation marks omitted).

Atkinson contends his defense counsel was ineffective in failing to clarify his "disparate understanding of the plea agreement before allowing the court to proceed to sentencing." Atkinson contends the statement in his letter to the court that he "would like to stay and be sentenced for the length of my program" casts doubt on his understanding of the plea agreement. He notes that the motion in arrest of judgment asserts he was misled by counsel regarding the terms of the plea agreement. Atkinson asserts that his statement at the sentencing hearing, that he understood he would do the jail drug program as an alternative to prison, was in direct contradiction to the earlier statement that he withdrew his ineffective assistance claim. He contends his counsel should have addressed this discrepancy before allowing the court to proceed.

Atkinson's motion in arrest of judgment, where he alleged that he was misled by counsel regarding the terms of the plea agreement, does not establish he misunderstood the agreement. The record clearly shows Atkinson withdrew the allegation when he withdrew his motion. At the time of sentencing, both the prosecutor and defense counsel again outlined the understanding of the plea agreement. When allowed to speak, Atkinson did not disagree with the plea agreement as articulated. Further, prior to stating he understood he would be sentenced to the jail drug program instead of prison, he requested the court's

mercy and asked to be sentenced to the drug program. We can infer from his requests at the sentencing hearing, and the letter stating that he "would like to stay" in the program, that Atkinson understood the plea agreement and court's discretion in sentencing.

We conclude that Atkinson entered his guilty plea voluntarily and intelligently with a full understanding of the consequences of the plea. His trial counsel, therefore, did not fail to perform an essential duty by failing to file a motion in arrest of judgment to challenge the plea. Accordingly, Atkinson failed to prove the essential duty prong of the ineffective-assistance-of-counsel test. Because he failed to prove that prong, we need not consider the prejudice prong.

AFFIRMED.