

IN THE COURT OF APPEALS OF IOWA

No. 8-674 / 08-0044
Filed September 17, 2008

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JOSE VICTOR CRUZ-RIVAS,
Defendant-Appellant.

Appeal from the Iowa District Court for Jasper County, Thomas W. Mott,
District Associate Judge.

Criminal defendant contends his trial attorney was ineffective in allowing
the admission of unfavorable character evidence. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Robert Ranschau, Assistant
Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Linda Hines, Assistant Attorney
General, Steve Johnson, County Attorney, and James W. Cleverley, Jr. and
Susan Wendel, Assistant County Attorneys, for appellee.

Considered by Mahan, P.J., and Vaitheswaran and Doyle, JJ.

VAITHESWARAN, J.

A jury found Jose Victor Cruz-Rivas guilty of assault on a correctional officer causing injury. Iowa Code § 708.3A(3) (2005). On appeal, Cruz-Rivas contends his trial attorney was ineffective in allowing the admission of unfavorable character evidence.

To prevail on an ineffective assistance of counsel claim, a defendant must show that (1) counsel breached an essential duty and (2) prejudice resulted. See *Strickland v. Washington*, 466 U.S. 668, 690–92, 104 S. Ct. 2052, 2066, 80 L. Ed. 2d 674, 695–96 (1984). While ineffective assistance of counsel claims are usually preserved for postconviction relief proceedings, they may be resolved on direct appeal when the record is complete enough to permit a ruling. *State v. Nitchee*, 720 N.W.2d 547, 553 (Iowa 2006). The record before us is adequate to address the issue.

That record reveals the following. During defense counsel's cross-examination of a correctional officer, the officer made reference to past conduct of Cruz-Rivas:

Q. You had no problems previously with Mr. Cruz-Rivas; correct? A. Problems in regards to what?

Q. Anything. A. Well, yeah. We would ask him if he was going to class and various things, and he did not like to tell us where he was going. He seemed to be an argumentative individual, and he did not like to inform us of his whereabouts. And sometimes when he was going—needed to be at class and various places, he wouldn't tell us that, and then he would blame us for him being late a lot.

The officer continued:

Mr. Cruz-Rivas constantly would shut his door, not go to class, and then they would call over and ask us why he was not at

class. And we don't—we don't know what all their individual schedules are. It's their responsibility to report such.

Defense counsel did not move to strike these responses. On redirect, the State called a prison nurse who testified as follows:

Q. Did he argue about pill line? A. Yes. He was on medication that he didn't understand the dosage for, and we would discuss that every morning.

Q. Same-- A. Some days, depending on what the pharmacy would send, they would send a large dose cut in half or a regular tablet that was the correct dose, and we would discuss that frequently in the morning.

Q. You say, "discuss"—you said, "discuss," or was there an argument? A. More of an argument, I guess, if it was the right dose or not.

Q. Was that on a regular basis? A. Yes.

Q. Is Mr. Cruz-Rivas the kind of person that's confrontive with others? A. Yes.

Defense counsel did not object to this evidence.

Defense counsel may have had reasonable strategic reasons for allowing the admission of this evidence. See *State v. Risdal*, 404 N.W.2d 130, 133 (Iowa 1987) ("Whether twenty-twenty hindsight tells us trial counsel was wise or unwise in selecting this strategy for cross-examination, common sense and experience teach that the strategy was well within the range of reasonable professional competence.") We need not resolve that question, as it is clear from our de novo review that Cruz-Rivas suffered no prejudice. See *State v. McKettrick*, 480 N.W.2d 52, 56 (Iowa 1992) ("[A] reviewing court can affirm a conviction on direct appeal if the defendant has failed to prove prejudice, without deciding whether counsel's representation was incompetent.").

To establish prejudice, Cruz-Rivas had to show a reasonable probability that, without counsel's errors, the result would have been different. *State v.*

Hopkins, 576 N.W.2d 374, 378 (Iowa 1998). The evidence quoted above related to Cruz-Rivas's failure to keep correctional officers informed of class schedules and disagreements about medicine dosage. This evidence was fairly innocuous. See *McKettrick*, 480 N.W.2d at 59. More importantly, it had little bearing on the key question of whether Cruz-Rivas assaulted a correctional officer. See *State v. Carey*, 709 N.W.2d 547, 559 (Iowa 2006).

Finally, the State's evidence was strong. *Id.* According to Correctional Officer Vanderwerf, Cruz-Rivas became upset when he was told he was late for breakfast. Because he looked like he would start boxing or hitting, Officer Vanderwerf decided to handcuff him. As the officer started doing so, Cruz-Rivas "spun" on him and started "throwing punches." The two fell to the floor. Cruz-Rivas clawed the officer on his face, leaving seven scratches.

Another officer testified that she saw Cruz-Rivas pointing his finger at Officer Vanderwerf's face and clenching his fists. She began running towards the two men and called for backup. Cruz-Rivas continued to fight Officer Vanderwerf with his free hand. Although the officer admitted she did not see the entire incident, she corroborated key aspects of Officer Vanderwerf's testimony.

A third officer testified that Cruz-Rivas slapped and punched Vanderwerf while the two were on the ground. He stated he had to restrain the inmate in order to stop him from flailing.

We recognize Cruz-Rivas provided a different rendition, but his version could not be reconciled with that of the officers. *Id.* at 560. For this reason, we conclude there is no reasonable probability that the outcome would have been different had defense counsel prevented the cited evidence of Cruz-Rivas's prior

behavior from entering the record. See *State v. Shanahan*, 712 N.W.2d 121, 138 (Iowa 2006).

AFFIRMED.