

**IN THE COURT OF APPEALS OF IOWA**

No. 8-815 / 07-1493  
Filed November 13, 2008

**EDWARD CHARLES KENDALL,**  
Applicant-Appellant,

**vs.**

**STATE OF IOWA,**  
Respondent-Appellee.

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Appeal from the Iowa District Court for Linn County, Douglas R. Russell,  
Judge.

Applicant appeals the district court's decision denying his request for postconviction relief from his guilty pleas to attempted murder, willful injury, first-degree burglary, and second-degree theft. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Martha Lucey, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Richard J. Bennett, Assistant Attorney General, Harold Denton, County Attorney, and Todd D. Tripp, Assistant County Attorney, for appellee State.

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

**DOYLE, J.**

**I. Background Facts and Proceedings.**

Edward Kendall was charged with attempted murder, in violation of Iowa Code section 707.11 (2005); willful injury, in violation of section 708.4; and first-degree burglary, in violation of sections 713.1 and 713.3(1)(c). The State alleged Kendall had broken into the home of his estranged wife and stabbed her approximately twenty times. In a separate trial information, Kendall was charged with second-degree theft, in violation of sections 714.1(6) and 714.2(2), based on the issuance of checks from a closed account.

On April 13, 2006, Kendall entered into a plea agreement with the State, whereby he pled guilty to the charges against him and the State recommended that he receive concurrent sentences. At the plea hearing, Kendall testified he was satisfied with the advice and services of his attorney and he had enough time to confer with his attorney about the offenses.

Kendall asked to proceed immediately to sentencing and acknowledged that he was waiving his right to file a motion in arrest of judgment. The district court sentenced Kendall to a term not to exceed twenty-five years on the attempted murder charge, ten years on the willful injury charge, twenty-five years on the burglary charge, and five years on the theft charge, to be served concurrently. Kendall did not appeal.

On December 29, 2006, Kendall filed a pro se petition for postconviction relief, which raised, among other issues, a claim that he received ineffective assistance because his trial counsel did not request a competency hearing prior to the plea proceeding. He claimed that at the time of the plea proceeding he

was operating under a serious mental disease or defect. Counsel was appointed for Kendall, and on April 13, 2007, counsel filed an amended and supplemental application for postconviction relief that incorporated Kendall's pro se application. The amended application also specifically stated a claim of ineffective assistance based on trial counsel's failure to request a competency hearing.

At the postconviction hearing Kendall testified his trial counsel, Julie Trachta, should have been alerted to the need for a competency hearing because he was "[s]peaking of demons and hearing the voices of demons" at the time he was arrested. The deposition testimony of Trachta was admitted, as follows:

Q. At any point in time while you were representing Mr. Kendall did you feel like you needed to get a competency evaluation? A. No, I didn't.

Trachta stated that Kendall explained he had been talking about "the demons of the pain and the suffering that [his wife] had put on him, and that he needed to get those bad feelings out . . . ." Trachta stated Kendall made other statements which showed a logical thought process.

The district court denied Kendall's request for postconviction relief. The court noted that one of several issues raised by Kendall was a claim his trial counsel was ineffective "in failing to request a competency hearing." The court did not specifically address this claim, but concluded "there is no evidence in the record to support a finding that Attorney Trachta was ineffective in assisting the Applicant with his case." Kendall appeals the district court's decision.

## **II. District Court Ruling.**

Kendall claims the district court erred by failing to rule on the issue he raised in his pro se application for postconviction relief—that trial counsel provided ineffective assistance by failing to obtain a competency evaluation to establish whether he was competent to enter a guilty plea. Postconviction proceedings are civil actions and are generally reviewed for the correction of errors at law. Iowa R. App. P. 6.4; *Bugley v. State*, 596 N.W.2d 893, 895 (Iowa 1999).

In the present case, the district court noted the issue. The court found that Kendall's pleas were "knowing, intelligent and voluntary," and further found generally that Kendall had failed to show he received ineffective assistance of counsel. The district court's ruling was sufficient as it responded to the issue raised. *State v. Allen*, 402 N.W.2d 438, 441 (Iowa 1987).

## **III. Ineffective Assistance.**

Kendall contends he received ineffective assistance due to postconviction counsel's failure to raise and present evidence that trial counsel was ineffective in failing to request a competency hearing prior to his guilty plea. Kendall claims postconviction counsel should have done more to present the issue of whether he was competent at the time of the guilty plea proceedings. He claims counsel should have presented his medical records and should have obtained a formal competency evaluation for the postconviction hearing.

We review claims of ineffective assistance of counsel de novo. *State v. Bergmann*, 600 N.W.2d 311, 313 (Iowa 1999). To establish a claim of ineffective assistance of counsel, an applicant must show (1) the attorney failed to perform

an essential duty and (2) prejudice resulted to the extent it denied applicant a fair trial. *State v. Shanahan*, 712 N.W.2d 121, 136 (Iowa 2006). Absent evidence to the contrary, we assume that the attorney's conduct falls within the wide range of reasonable professional assistance. *State v. Hepperle*, 530 N.W.2d 735, 739 (Iowa 1995).

We first note a challenge to a plea proceeding based on a claim the court should have held a competency hearing should be raised by a motion in arrest of judgment. *State v. Stanley*, 344 N.W.2d 564, 570 (Iowa Ct. App. 1983); *see also* Iowa R. Crim. P. 2.24(3)(a) ("A defendant's failure to challenge the adequacy of a guilty plea proceeding by motion in arrest of judgment shall preclude the defendant's right to assert such challenge on appeal."). Kendall did not file a motion in arrest of judgment, and on appeal he does not set forth any reason for his failure to preserve error on this specific issue, such as ineffective assistance of counsel. *See State v. Bearse*, 748 N.W.2d 211, 218 (Iowa 2008) (noting the ineffective assistance of counsel may present sufficient reason for failing to file a motion in arrest of judgment). Furthermore, at the postconviction hearing Kendall admitted it was his idea to have the sentencing the same day as the guilty plea, thereby waiving his ability to file a motion in arrest of judgment.<sup>1</sup>

In addition, even if the issue had been preserved, we determine Kendall is unable to show he was prejudiced by the performance of his postconviction counsel or the performance of his trial counsel. Section 812.3(1) provides:

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<sup>1</sup> On appeal, Kendall asserts the district court should have inquired into his mental health situation at the time of the plea proceedings. This also is an issue which should have been raised in a motion in arrest of judgment. *See* Iowa R. Crim. P. 2.24(3)(a). Kendall's failure to file a motion in arrest of judgment, or to present a sufficient reason for not filing such a motion, precludes discussion of this issue.

If at any stage of a criminal proceeding the defendant or the defendant's attorney, upon application to the court, alleges specific facts showing that the defendant is suffering from a mental disorder which prevents the defendant from appreciating the charge, understanding the proceedings, or assisting effectively in the defense, the court shall suspend further proceedings and determine if probable cause exists to sustain the allegations. The applicant has the burden of establishing probable cause.

The district court may also schedule a competency hearing on its own motion.

Iowa Code § 812.3(1).

“When the defendant's competency during trial court proceedings is challenged on appeal, our task is to examine the information before the trial court to determine if an unresolved question of the defendant's competency reasonably appeared.” *Stanley*, 344 N.W.2d at 571. Under the statute, a competency hearing should be held if the record contains information “from which a reasonable person would believe a substantial question of defendant's competency exists.” *State v. Rieflin*, 558 N.W.2d 149, 152 (Iowa 1996).

In considering competency, “the critical question is ‘whether [the defendant] has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of the proceedings.’” *State v. Lucas*, 323 N.W.2d 228, 232-33 (Iowa 1982) (quoting *Dusky v. United States*, 362 U.S. 402, 402, 80 S. Ct. 788, 789, 4 L. Ed. 2d 824, 825 (1960)). The court should consider (1) the defendant's irrational behavior, (2) any demeanor at trial that suggests a competency problem, and (3) any prior medical opinion on the defendant's competency to stand trial. *Rieflin*, 558 N.W.2d at 152-53.

We examine the information before the district court at the time of the plea proceedings to determine if “an unresolved question of the defendant’s competency appeared.” See *Stanley*, 344 N.W.2d at 571. The evidence presented at the postconviction hearing shows Kendall did not exhibit signs of incompetency. Trachta testified:

It was very important to him, in my opinion, for me to understand that he was a viable, productive citizen prior to this happening, that he had a job, he worked hard – typically, more than one. He was very involved in his church.

She testified Kendall’s statements showed he was aware of what he was doing and what he had done. She stated Kendall was able to articulate very clearly the reasons for his actions.

Regarding Kendall’s statements at the time he was arrested about demons, Trachta stated,

After meeting with Ed a couple of times, and discussing those, the explanations he had were about the demons of the pain and the suffering she had put on him, and that he needed to get those bad feelings out . . . .

Trachta testified Kendall also made statements after the crime that “showed a certain methodic and a lucid reasoning on the behalf of Mr. Kendall, and a logical thought process.”

Based on the evidence presented by Kendall’s counsel relevant to the time of the plea proceedings, we determine the evidence before the court at that time would not cause a reasonable person to conclude Kendall’s mental competency was at issue. See *Rieflin*, 558 N.W.2d at 152. The evidence does not show Kendall would have been declared incompetent under section 812.3 if trial counsel had requested a competency hearing. We therefore conclude

Kendall has failed to show he was prejudiced by trial counsel's failure to request a competency hearing.

#### **IV. Pro Se Issues.**

**A.** In a pro se brief, Kendall claims the district court should have found he received ineffective assistance of counsel during the plea proceedings.<sup>2</sup> In particular, Kendall asserts Trachta should have further investigated the condition of his mental health before advising him to plead guilty. This issue goes to Kendall's competency to plead guilty, which has already been addressed.

**B.** Kendall contends the district court improperly found he did not receive ineffective assistance of counsel from Trachta due to her failure to file a motion to suppress his statements made to law enforcement officers at the time of his arrest. The court found, "based on the conversations Attorney Trachta had with the Applicant and her belief that the Applicant understood the *Miranda* rights he was given, Attorney Trachta made a strategic decision not to file a motion to suppress." Generally, we will not second-guess reasonable trial strategy. *State v. Wissing*, 528 N.W.2d 561, 564 (Iowa 1995). We conclude Kendall has not shown ineffective assistance of counsel on this ground.

**C.** Kendall claims the district court should have found he received ineffective assistance due to trial counsel's failure to request a competency hearing or a mental health evaluation. These issues have already been addressed.

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<sup>2</sup> Kendall includes in this argument a claim that during the plea proceedings the district court "did not painstakingly inform him of his constitutional rights . . . ." This issue was not raised before the district court, and we conclude it has not been preserved for this appeal. See *State v. Jefferson*, 574 N.W.2d 268, 278 (Iowa 1997) (noting we do not consider issues raised for the first time on appeal).

**D.** Kendall asserts the district court erred by failing to review and consider his pro se brief. He also claims the court failed to rule on all issues presented to the court. After a thorough review of the district court's ruling, we find it adequately responded to the issues raised. *State v. Allen*, 402 N.W.2d 438, 441 (Iowa 1987).

**V. Disposition.**

Considering all of the issues raised in this postconviction action, we conclude Kendall has failed to show he is entitled to postconviction relief. We affirm the decision of the district court.

**AFFIRMED.**