

IN THE COURT OF APPEALS OF IOWA

No. 8-975 / 07-2112
Filed January 22, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

RONDELL MANDRAY CROPP,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, George L. Stigler, Bruce B. Zager, and James C. Bauch, Judges.

Rondell Mandray Cropp appeals from the judgment and sentence for robbery in the first degree and willful injury. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Patricia Reynolds, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sharon Hall, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Joel A. Dalrymple, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Mahan and Miller, JJ.

MAHAN, J.

Rondell Mandray Cropp appeals from the judgment and sentence for robbery in the first degree and willful injury. He contends the district court abused its discretion in allowing the State to withdraw from the plea agreement. He further asserts his trial counsel was ineffective (1) in failing to reassert his challenge to the State's withdrawal from the plea agreement before the trial judge and (2) in failing to challenge the State's remedy for his failure to perform his obligations under the agreement. We affirm.

I. Background Facts and Proceedings.

Cropp was charged with robbery in the first degree and willful injury on March 13, 2006. On July 24, 2006, Cropp and the State entered into a plea agreement conditioned upon acceptance by the district court. Pursuant to the memorandum of the plea agreement, which was signed by Cropp, his attorney, and the State, the State agreed to allow Cropp to plead guilty to robbery in the second degree and willful injury and serve concurrent terms in exchange for Cropp's full cooperation and truthful testimony against all charged codefendants. The memorandum also included a "Special Conditions" provision, which provided in relevant part:

If, in the sole discretion of the Black Hawk County Attorneys Office, the Defendant fails to satisfactorily complete the above terms of this agreement, this agreement shall become null and void and the State will proceed against the defendant as charged in the original Trial Information on the offense and charge of Robbery in the First Degree. Further, if the defendant violates, reneges or fails to satisfactorily complete any term of this agreement, any statements or sworn testimony provided by the defendant at any time may and will be used against the defendant.

The court accepted the plea agreement as knowing, voluntary, and supported by a factual basis.

On December 22, 2006, during a deposition of Cropp in connection with charges pending against a codefendant, the prosecutor announced that Cropp had breached the terms of the plea agreement and gave Cropp and his attorney notice that the State was withdrawing from the agreement. Thereafter, the State filed a motion for a status hearing on the plea agreement. On March 15, 2007, after a hearing, the district court granted the State's motion to withdraw from the plea agreement and reinstated the original charges against Cropp.

Cropp waived his right to a jury trial, and the court convicted him as charged. He was sentenced to a term of imprisonment not to exceed twenty-five years on the robbery in the first degree charge and up to ten years on the willful injury charge, to run consecutively. Cropp now appeals.

II. Scope and Standards of Review.

Plea agreements must comply with basic standards of fair play. *State v. Bearse*, 748 N.W.2d 211, 215 (Iowa 2008). Our supreme court looks with disapproval upon prosecutors who withdraw plea agreements unless there is good cause or good reason. *Id.* (“A prosecutor must take care to properly carry out all obligations and promises of the state in good faith.”); *State v. Lummus*, 449 N.W.2d 95, 100 (Iowa Ct. App. 1989). The State may not unilaterally withdraw from a plea agreement without providing some basis for its action or affording some sort of due process, and in order to withdraw from the plea agreement, the State must show the defendant failed to live up to his or her end of the bargain. *State v. Foy*, 574 N.W.2d 337, 339 (Iowa 1998). Because plea

agreements require a defendant to waive fundamental rights, we hold prosecutors and courts to “the most meticulous standards of both promise and performance.” *Bearse*, 748 N.W.2d at 215. Where either the terms or the spirit of the agreement are violated, reversal of the conviction or vacation of the sentence is required. *Id.*

We conduct a de novo review of alleged constitutional violations. *State v. Decker*, 744 N.W.2d 346, 353 (Iowa 2008). We therefore conduct a de novo review of ineffective assistance of counsel claims. *State v. Maxwell*, 743 N.W.2d 185, 195 (Iowa 2008). Unless the record on direct appeal is adequate to address these issues, a claim of ineffective assistance of counsel is generally preserved for postconviction proceedings. *Bearse*, 748 N.W.2d at 214.

III. Merits.

A. Withdrawal from the Plea Agreement.

Cropp claims the district court abused its discretion in allowing the State to withdraw from the plea agreement. He contends he substantially complied with the agreement and the plea should be reinstated.

Where a prosecutor breaches a plea agreement, the remedy is either specific performance of the agreement or withdrawal of the guilty plea. *State v. Carrillo*, 597 N.W.2d 497, 501 (Iowa 1999); *Foy*, 574 N.W.2d at 339. When the court has accepted a plea based on a plea agreement, the State may not unilaterally withdraw from the agreement without providing some basis for its action or affording some sort of due process. *Foy*, 574 N.W.2d at 339. There must be mutual performance of a plea agreement. *Id.* The State has no obligation to provide the defendant the anticipated benefits of the bargain if the

defendant fails to perform under the agreement. *State v. Hamrick*, 595 N.W.2d 492, 495 (Iowa 1999); *Foy*, 574 N.W.2d at 339. In order to withdraw from the plea agreement, the State must show the defendant failed to live up to his or her end of the bargain. *Foy*, 574 N.W.2d at 339. Whether the State has carried its burden is determined by examining the record at the time of sentencing. *Id.* at 339-40.

In this case, the court held a hearing on the State's assertion that Cropp had not complied with the terms of the plea agreement. The court reviewed Cropp's statements to law enforcement on January 23, 2006; February 28, 2006; and March 2, 2006. The court determined Cropp's statements in those three interviews substantially contradicted statements he made in his subsequent deposition on December 22, 2006. The court therefore concluded Cropp had "breached the terms and conditions of the plea bargain to provide full, complete and truthful statements as to his knowledge of the events of January 12, 2006."

We agree. In his December 22, 2006 deposition, Cropp attempted to provide protection to the codefendants. Specifically, he failed to mention the name of the codefendant who shot the victim until he was specifically asked. He also misstated the amount of drugs he and his codefendants had planned to acquire from the victim. Cropp further offered excuses and attempted to confuse details about the crime, despite the fact that he had repeatedly testified about such details in prior interviews. Only after the prosecutor gave notice to Cropp that the State was withdrawing the plea agreement did Cropp offer to testify about matters he avoided before, and specifically, to details about the crime he claimed to have forgotten.

We find the State gave Cropp more than enough opportunity to comply with the terms of the agreement. We conclude the court did not abuse its discretion and had ample basis to find that Cropp had not performed his obligations under the terms of the plea agreement.

B. Ineffective Assistance of Counsel.

Cropp argues his trial counsel was ineffective (1) in failing to reassert his challenge to the State's withdrawal from the plea agreement before the trial judge and (2) in failing to challenge the State's remedy for his failure to perform his obligations under the agreement. Ordinarily, we preserve ineffective assistance of counsel claims for postconviction proceedings to allow the facts to be developed and give the allegedly ineffective attorney an opportunity to explain his or her conduct, strategies, and tactical decisions. See *Bearse*, 748 N.W.2d at 214; *State v. DeCamp*, 622 N.W.2d 290, 296 (Iowa 2001). Because we find the record is sufficient to address Cropp's ineffective assistance of counsel claims on direct appeal, we now address those claims and find them to be without merit.

We therefore affirm Cropp's convictions.

AFFIRMED.