

**IN THE COURT OF APPEALS OF IOWA**

No. 9-279 / 08-1391  
Filed May 29, 2009

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**TAYLOR WAYNE LANGE,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Linn County, Patrick R. Grady (guilty plea) and Robert E. Sosalla (sentencing), Judges.

A defendant appeals following his conviction for willful injury causing bodily injury. **AFFIRMED.**

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

Thomas J. Miller, Attorney General, Karen Doland, Assistant Attorney General, Harold Denton, County Attorney, and Nicholas Maybanks, Assistant County Attorney, for appellee.

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

**MANSFIELD, J.**

Taylor Wayne Lange pled guilty to willful injury causing bodily injury in violation of Iowa Code section 708.4(2) (2007). He appeals from the judgment and sentence following his guilty plea and contends (1) his trial counsel were ineffective for failing to object to the State's breach of the plea agreement and (2) the district court abused its discretion by failing to examine and consider the sentencing exhibits submitted by his counsel. For the reasons stated herein, we affirm.

**I. FACTS AND PROCEEDINGS.**

Lange and the victim attended high school together. According to the victim's sworn statement, on April 24, 2007, Lange called the victim and left a threatening message on the cell phone that he "would beat the s\_\_\_ out of me and break the windows of my car." The school guidance counselor suggested that the victim report Lange's recorded threat to the Linn County Sheriff's Department, but she declined to do so at that time. Lange thanked her for not doing so. Two days later, on April 26, the victim picked up Lange in her car. She drove a short distance and parked the car. The two of them started talking. Lange thereupon grabbed the victim and forced her to perform oral sex and to have intercourse with him. At the time, she was seventeen years old; Lange was sixteen.

The victim was later admitted to the hospital where an examination revealed tears in the vaginal area and bruising in the vaginal area and on her arm. When questioned by the Linn County Sheriff's Department, Lange claimed that the sex was consensual but also commented, "I hear what I want to hear."

On June 6, 2007, the State charged Lange with harassment in the second degree and sexual abuse in the third degree. However, on or about May 2, 2008, the parties reached a plea agreement. Under that agreement, an amended and substituted trial information was filed charging Lange with willful injury causing bodily injury. Lange agreed to plead guilty to that offense, admitting the essential facts, and the State agreed to recommend that Lange receive a suspended sentence with a term of probation in a halfway house.

Sentencing followed on August 6, 2008. At that time, the sentencing judge had before him the victim's written statement as well as a presentence investigation report that noted Lange's lack of contrition and recommended five years' imprisonment rather than probation. The presentence report concluded:

This is a very serious offense that involved injury to another. The defendant accepts no responsibility for his actions. He believes he is the victim in this offense. The defendant was on juvenile supervision when charged with this offense. Probation supervision does not appear sufficient to maintain the safety of the community. A period of incarceration will hold the defendant accountable and will serve to protect the community.

In accordance with the plea agreement, the assistant county attorney recommended at the hearing that Lange be placed on probation at a halfway house. However, he also recommended that Lange participate in the sex offender treatment program while at the halfway house and that a five-year no-contact order with the victim be imposed. The assistant county attorney explained that the State's recommendation was based on "discussions with the victim and the entire discovery process of this case."

Lange's counsel then submitted transcripts of several depositions to the court, explaining how he believed they called into question the victim's version of

events. He also submitted the DVD of Lange's interrogation by the sheriff's department. Lange's mother testified, and Lange and his counsel made various statements to the court. At the conclusion of the hearing, the district court accepted the recommendation contained in the presentence report, rather than that of the prosecutor, and sentenced Lange to five years' imprisonment.

Lange now appeals. He argues that the State breached its plea agreement by recommending that Lange receive sexual offender treatment and a five-year no-contact order with the victim, and that his counsel were ineffective for not objecting to this breach. In addition, Lange contends the district court abused its discretion by sentencing him without actually reviewing the exhibits he filed at the sentencing hearing.

## **II. STANDARD OF REVIEW.**

We review Lange's ineffective-assistance-of-counsel claim *de novo*. *Collins v. State*, 588 N.W.2d 399, 402 (Iowa 1998). We review challenges to sentencing for correction of errors at law. Iowa R. App. P. 6.4; *State v. Liddell*, 672 N.W.2d 805, 815 (Iowa 2003). "A sentence will not be upset on appellate review unless the defendant demonstrates an abuse of trial court discretion or a defect in the sentencing procedure . . . ." *Liddell*, 672 N.W.2d at 815; *State v. Grandberry*, 619 N.W.2d 399, 401 (Iowa 2000).

## **III. ANALYSIS.**

Lange first asserts that his counsel were constitutionally ineffective for failing to object to the assistant county attorney's alleged breach of the plea agreement at the sentencing hearing. "If an ineffective-assistance-of-counsel claim is raised on direct appeal from the criminal proceedings, we may decide

the record is adequate to decide the claim or may choose to preserve the claim for postconviction proceedings.” *State v. Straw*, 709 N.W.2d 128, 133 (Iowa 2006). Generally, we do not adjudicate ineffective-assistance-of-counsel claims on direct appeal as it is rare the trial record will be adequate to resolve the claim. *Id.* Rather, we generally preserve the claim for postconviction relief proceedings to allow for development of the record. *Id.* However, when the record is adequate, we will consider such claims on direct appeal. *State v. Leckington*, 713 N.W.2d 208, 217 (Iowa 2006). In the present case, the question whether the State breached the plea agreement can be determined on the record before us; thus, we conclude the record is adequate to consider Lange’s ineffective-assistance-of-counsel claim on direct appeal.

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); *Collins*, 588 N.W.2d at 401. We recognize that failure to object to the breach of a plea agreement can constitute ineffective assistance of counsel. See *State v. Horness*, 600 N.W.2d 294 (Iowa 1999). However, in this instance, we reject such a claim for the straightforward reason that we believe there was no breach. In our view, the recommendations that Lange receive sex offender treatment and an order of no contact with the victim were not inconsistent with and did not undermine the State’s recommendation of probation. “We conclude that the prosecutor’s recommendation of sentencing terms additional to, and not

inconsistent with, those specified in the plea agreement did not constitute a breach.” *State v. Potts*, 979 P.2d 1223, 1225 (Idaho Ct. App. 1999).

Both of these recommendations were unexceptional as terms of probation. Furthermore, they were consistent with Lange’s guilty plea. The theory behind the “willful injury” plea was that Lange had willfully injured the victim during the course of having sexual intercourse with her, *even if* the act of intercourse could have been regarded as consensual. Accordingly, we conclude that neither mandatory sex offender treatment nor a five-year no-contact order “undercut the benefit of the State’s promised sentencing recommendations.” *Horness*, 600 N.W.2d at 299.

The Idaho appellate court’s decision in *Potts* presents a similar factual scenario. *Potts*, 979 P.2d at 1224. There, the court held the prosecution did not breach its plea agreement by recommending that the defendant submit to sex offender treatment after he pled guilty to a reduced charge of felony injury to a child, rather than rape and lewd conduct with a minor. *Id.* at 1225. As the court explained,

Because the prosecutor’s additional recommendations were not inconsistent with or incompatible with the plea agreement terms and did not expressly or impliedly signal dissatisfaction with, or an intent to retreat from, the agreement, we conclude that the plea agreement was not breached.

*Id.*

Lange also argues that the district court abused its discretion because it did not actually review his sentencing exhibits before pronouncing sentence. We reject this argument for two separate reasons. First, we agree with the State that error has not been preserved. This is not an “illegal” sentence. *See Tindell v.*

*State*, 629 N.W.2d 357, 359 (Iowa 2001) (stating an illegal sentence is one not authorized by statute). There is no question that the sentence imposed by the district court was within the parameters authorized by the legislature. Rather, Lange is raising a procedural challenge to the manner in which the district court arrived at the sentence. But his counsel made no such objection at the time. See *id.* (discussing that a claim of procedural error in sentencing is subject to the normal error-preservation rules).

Second, on the record, we find no abuse of discretion. On July 9, 2008, the presentence investigator filed her report that recommended imprisonment for Lange. However, Lange did not file his sentencing exhibits “to rebut that recommendation” until after the commencement of the sentencing hearing on August 6, 2008. Lange’s counsel then summarized each exhibit for the court and explained how he believed it was relevant. As Lange’s counsel stated, the general purpose of these exhibits was to attempt to show the sex was consensual and to call into question the credibility of the victim’s account. At the end of the sentencing hearing, the district court expressed the view that whether the sex was consensual was irrelevant, because the offense was willful injury and Lange had pled guilty to that.

We see no abuse of discretion here. Lange did not file his exhibits in advance of the hearing. At the hearing, his counsel was given the opportunity to summarize each exhibit; the district court listened to those summaries, decided it did not need to peruse the exhibits themselves, and explained to counsel why it did not need to do so. “Fundamental fairness” did not require the district court to do more.

For the foregoing reasons, we affirm Lange's guilty plea and sentence.

**AFFIRMED.**