

**IN THE COURT OF APPEALS OF IOWA**

No. 9-957 / 08-1305  
Filed January 22, 2010

**TRACYE KNIGHT,**  
Applicant-Appellant,

**vs.**

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

---

Appeal from the Iowa District Court for Marshall County, Timothy J. Finn,  
Judge.

Tracye Knight appeals from the district court's denial of his application for  
postconviction relief. **AFFIRMED.**

Mary E. Kennedy, Waterloo, for appellant.

Thomas J. Miller, Attorney General, Bridget A. Chambers, Assistant  
Attorney General, and Jennifer Miller, County Attorney, for appellee.

Considered by Eisenhauer, P.J., Potterfield, J., and Mahan, S.J.\*  
Danilson, J. takes no part.

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

**POTTERFIELD, J.****I. Background Facts and Proceedings**

On February 13, 2003, the State filed a trial information charging Tracye Knight with two counts of sexual abuse in the third degree in violation of Iowa Code sections 709.1 and 709.4 (2001), and one count of sexual exploitation of a minor in violation of Iowa Code section 728.12. On April 3, 2003, the State filed a second trial information charging Knight with three additional counts of sexual exploitation of a minor. On February 16, 2004, the State amended the first trial information to remove one of the counts of sexual abuse in the third degree and replace it with lascivious acts with a child in violation of Iowa Code section 709.8.

On February 16, 2004, Knight entered an *Alford* plea to lascivious acts with a child and two counts of sexual exploitation of a minor.<sup>1</sup> On that same date, the court placed on the record a plea agreement whereby at sentencing the State would move to dismiss one count of sexual abuse in the third degree and two counts of sexual exploitation of a minor. The State further agreed not to resist Knight's request for concurrent sentences.

On March 15, 2004, Knight appeared for sentencing. The district court dismissed a charge of third-degree sexual abuse and two charges of sexual exploitation of a minor, per the plea agreement, and sentenced Knight to a total of twenty-five years on the remaining three charges, with the sentences running consecutively.

---

<sup>1</sup> In *North Carolina v. Alford*, 400 U.S. 25, 37, 91 S. Ct. 160, 167, 27 L. Ed. 2d 162, 171 (1970), the Supreme Court found a defendant may "consent to the imposition of a prison sentence even if he is unwilling or unable to admit his participation in the acts constituting the crime."

On March 21, 2006, Knight filed a pro se application for postconviction relief alleging his trial counsel was ineffective for pressuring him into entering a guilty plea, refusing to take his case to trial for monetary reasons, allowing him to plead guilty to charges other than those he had agreed to, and failing to advise him regarding a motion in arrest of judgment. On September 25, 2006, Knight's counsel filed an application to amend the petition. Hearing on Knight's application was April 16, 2008. In a ruling filed July 21, 2008, the court denied Knight's application for postconviction relief. Knight now appeals, arguing the district court erred in failing to find his counsel was ineffective for the above-listed reasons.

## **II. Standard of Review**

We review Knight's claim of ineffective assistance of counsel de novo. *Taylor v. State*, 352 N.W.2d 683, 684 (Iowa 1984). Although we review constitutional issues de novo, we give weight to the trial court's findings on credibility of witnesses. *Id.*

## **III. Ineffective Assistance of Counsel**

In order to prove that his counsel was ineffective, Knight must show that: (1) his counsel failed to perform an essential duty; and (2) prejudice resulted from that failure. *Id.* To establish the first prong of the test, Knight must show that his counsel did not act as a "reasonably competent practitioner" would have. *State v. Simmons*, 714 N.W.2d 264, 276 (Iowa 2006). There is a strong presumption that counsel performed competently. *Id.* To satisfy the second prong, prejudice, Knight must show that but for counsel's unprofessional errors, he would not have pleaded guilty and would have insisted on going to trial. *Irving v. State*, 533

N.W.2d 538, 541 (Iowa 1995). If we can dispose of Knight's claim under the prejudice prong, we need not evaluate his counsel's performance. *Id.*

#### **A. Counsel's Advice**

Knight asserts his counsel pressured him to enter an *Alford* plea and advised him that he would receive concurrent sentences or probation. We find Knight cannot prove prejudice on these claims. Under Knight's plea agreement, the State agreed to dismiss three of Knight's six charges. This was a very favorable agreement, especially given the seriousness of the charges against Knight, which carried a potential sixty-year sentence, and the overwhelming evidence of his guilt. Knight videotaped and photographed himself engaging in sex acts with minors and also wrote a journal detailing the sex acts he had engaged in with minors. By accepting the plea agreement, Knight avoided the high likelihood that he would be convicted of all six charges against him. Further, Knight testified at the plea hearing that no one had made any definite promises or predictions concerning the sentences he would receive on the charges. Thus, it is not reasonable to believe Knight's bare assertion that had he known that he could receive consecutive sentences, he would not have pleaded guilty and would have gone to trial.

#### **B. Factual Basis**

Knight also asserts his counsel was ineffective in advising him to plead guilty to lascivious acts with a child when there was no factual basis for the crime because none of the alleged victims were under the age of sixteen.<sup>2</sup> Knight's

---

<sup>2</sup> Iowa Code section 702.5 defines "child" as "any person under the age of fourteen years."

journal details his engagement in sex acts with a thirteen-year-old girl, in which he specifically mentions her age, and the minutes of testimony contain her statement to the police that she began a sexual relationship with Knight at age thirteen. Thus, there was a factual basis for the charge of lascivious acts with a child, and counsel was not ineffective. See *State v. Brooks*, 555 N.W.2d 446, 448 (Iowa 1996) (“[W]here a factual basis exists for the plea, counsel usually will not be found ineffective for allowing the defendant to plead guilty.”).

### **C. Lack of Funds**

Knight next asserts his counsel was ineffective for refusing to take his case to trial because of Knight’s lack of funds. Knight’s trial counsel testified at the postconviction hearing that while he likely discussed expenses with Knight as an issue of which Knight needed to be aware, he also discussed with Knight the option of going to trial. However, Knight’s counsel testified he advised Knight to accept the plea agreement because he believed Knight was unlikely to succeed at trial. In reviewing this issue, we give weight to the district court’s findings that counsel was more credible than Knight. The postconviction trial court found that Knight’s counsel’s testimony was credible and Knight’s was not because “the transcript of the prior proceedings is consistent with [trial counsel’s] testimony and almost totally inconsistent with Mr. Knight’s testimony.” Credible evidence in the record supports the postconviction court’s findings. As discussed above, given the number and seriousness of charges against Knight, we conclude Knight’s trial counsel was not ineffective in advising him to accept the favorable plea agreement.

#### **D. Explanation of Charges**

Knight asserts trial counsel was ineffective for leading him to believe the plea agreement required a guilty plea for one class C felony, one aggravated misdemeanor, and one serious misdemeanor, when the plea agreement actually included Knight's guilty pleas to three felonies. The record establishes that, at least by the day of his plea hearing, if not before, Knight knew he would be pleading to three felonies. Knight acknowledged that on the day of the plea hearing, trial counsel informed him that under the plea agreement, he would be pleading to three felonies. The district court judge advised Knight at the time of the guilty plea hearing that he was pleading guilty to three felonies, and Knight confirmed that was what he intended to do. Knight had multiple opportunities to decline to enter his *Alford* pleas to the three charges, but he failed to do so. Knight has failed to prove that his counsel did not inform him of the offenses to which he would be pleading.

#### **E. Motion in Arrest of Judgment**

Knight asserts his trial counsel failed to consult with or advise him regarding a motion in arrest of judgment. It is the district court's duty to advise the defendant of his right to file a motion in arrest of judgment. *State v. Loye*, 670 N.W.2d 141, 149 (Iowa 2003). The court fulfilled that duty. Further, Knight cannot prove prejudice on this claim. As discussed above, Knight has not proved that, but for counsel's errors, he would have withdrawn his *Alford* pleas and proceeded to trial on the six charges at issue.

Knight cannot prevail on his claims of ineffective assistance of counsel.

**AFFIRMED.**