

IN THE COURT OF APPEALS OF IOWA

No. 1-558 / 11-0519
Filed September 8, 2011

STATE OF IOWA,
Plaintiff-Appellee,

vs.

VANIA GUADARRAMA,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Robert B. Hanson,
Judge.

Vania Guadarrama appeals from the judgment and sentence entered following her guilty plea to possession of a controlled substance with intent to deliver. **AFFIRMED.**

Patrick W. O'Bryan, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney General, John P. Sarcone, County Attorney, and Stephanie L. Cox, Assistant County Attorney, for appellee.

Considered by Eisenhauer, P.J., and Potterfield and Tabor, JJ.

EISENHAUER, P.J.

Vania Guadarrama appeals from the judgment and sentence entered following her guilty plea to possession of a controlled substance with intent to deliver. Guadarrama argues her counsel was ineffective because her guilty plea was not knowingly, voluntarily, and intelligently entered. She claims the court should have allowed her to withdraw her plea of guilty. We affirm.

On December 23, 2010, Guadarrama was charged by trial information with two counts: (1) possession of a controlled substance (methamphetamine) with intent to deliver and (2) failure to possess a tax stamp. See Iowa Code §§ 124.401(1)(b)(7), 453B.3, .12 (2009). Guadarrama faced consecutive terms and serving the full one-third minimum term. See *id.* § 902.9(2), (5). The State made a plea offer to Guadarrama in February, and the court scheduled a plea hearing in March. The plea agreement called for Guadarrama to plead guilty to the possession with intent to deliver charge, in exchange for the State recommending a one-third reduction of the mandatory minimum sentence, suspension of the minimum fine, and dismissal of the tax stamp charge.

On March 1, 2011, Guadarrama entered a plea of guilty pursuant to the agreement. She waived time to file a motion in arrest of judgment and agreed to proceed immediately to sentencing. Guadarrama was sentenced to twenty-five years in prison with a requirement to serve a mandatory one-third before becoming eligible for parole. The mandatory minimum sentence was reduced by one-third due to her pleading guilty.

The next day, on March 2, 2011, Guadarrama sent a letter to the court seeking to withdraw her guilty plea. The court forwarded the letter to counsel,

and defense counsel responded and indicated no avenue existed to challenge the plea other than a postconviction relief action. Guadarrama then filed a motion to reconsider the sentence. After finding her ineligible for reconsideration because the sentence required a minimum sentence of confinement, the court denied her motion. See Iowa Code § 902.4. Guadarrama now appeals.

Guadarrama cannot directly challenge the voluntariness of her guilty plea because she waived her time to file a motion in arrest of judgment contesting the plea. See Iowa R. Crim. P. 2.24(3)(a). An exception is allowed if the failure to preserve error is a result of ineffective assistance of counsel. *State v. Philo*, 697 N.W.2d 481, 485 (Iowa 2005). Our review of ineffective assistance of counsel claims is de novo. *Id.* “Although claims of ineffective assistance of counsel are generally preserved for postconviction relief proceedings, we will consider such claims on direct appeal where the record is adequate.” *State v. Bearnse*, 748 N.W.2d 211, 214 (Iowa 2008) (quoting *State v. Horness*, 600 N.W.2d 294, 297 (Iowa 1999)).

The record before us details the minutes of evidence, as well as the plea and sentencing hearing transcript. We find the record sufficient to review Guadarrama’s ineffective-assistance-of-counsel claim on direct appeal.

To prevail on her claim, Guadarrama must show her attorney failed to perform an essential duty and prejudice resulted. See *State v. Fannon*, 799 N.W.2d 515, 519 (Iowa 2011). Failure to perform an essential duty occurs when counsel’s performance falls below the normal range of competence; however, we presume counsel “performed within the normal range of competence.” See *id.* To establish prejudice, Guadarrama must show counsel’s “deficit performance so

prejudiced [her] as to give rise to the reasonable probability that, but for counsel's errors, the result of the proceeding would have been different." See *Dunbar v. State*, 515 N.W.2d 12, 15 (Iowa 1994). Guadarrama has the burden to prove by a preponderance of the evidence that counsel was ineffective. See *id.*

Guadarrama claims counsel was ineffective and her plea was not intelligent and voluntary because counsel (1) failed to adequately explain things to her prior to the guilty plea and (2) advised her to waive her rights to file a motion in arrest of judgment and to have a presentence investigation report (PSI) prepared before sentencing.¹

Due process "requires that a defendant enter a guilty plea voluntarily and intelligently." *Philo*, 697 N.W.2d at 488. "When complaining about the adequacy of an attorney's representation, it is not enough to simply claim that counsel should have done a better job." *Dunbar*, 515 N.W.2d at 15. Here, Guadarrama's allegations of ineffective assistance are general in nature. At the plea/sentencing hearing her defense counsel agreed with the prosecutor's statement of the plea agreement terms and then stated:

I have explained to [Guadarrama] that she could wait [fifteen] days before being sentenced. I've explained to her what a motion in arrest of judgment is, which would have to be filed within [forty-five] days, but not less than five days before sentencing to attack the legality of this plea proceeding. And she understands that [the court] would be sentencing her today without the use of the PSI. . . .

¹ We find no basis for reversal based on Guadarrama's broad claim "the trial court failed to inform her that her waiving her right to file a motion in arrest of judgment . . . would have no impact at all on other pending or potentially pending cases in Marshall County." If Guadarrama believes she did not receive what she was promised with respect to charges in Marshall County, her remedy is to file an action in that county. In Polk County she was sentenced in accordance with her plea agreement.

Next, the court's lengthy colloquy with Guadarrama reviewed her background, the charge and its elements, the potential punishment, and her trial rights. The court explained a PSI and a motion in arrest of judgment. In response to each of the court's questions Guadarrama stated she understood and had no questions. The record does not show any confusion on the part of Guadarrama as to the plea agreement or waiver for immediate sentencing.

We conclude Guadarrama has failed to allege "specific ways in which counsel's performance was inadequate" and has failed to "identify how competent representation probably would have changed the outcome." See *id.* For example, Guadarrama does not propose what a PSI report would have revealed or how anything reported would have affected the result obtained below. Guadarrama asks us to rule the trial court erred in not allowing her to withdraw her guilty plea when she wrote the letter to the judge. To do so we would have to find counsel ineffective for allowing her to plead guilty without understanding the consequences. Nothing in this record supports her contention. We find no error; accordingly, we affirm her conviction and sentence.

AFFIRMED.