

IN THE COURT OF APPEALS OF IOWA

No. 3-1042 / 12-2057
Filed December 5, 2013

IVAN FLORES,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Plymouth County, Jeffrey L. Poulson, Judge.

Ivan Flores appeals the district court's dismissal of his application for postconviction relief. **AFFIRMED.**

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

Thomas J. Miller, Attorney General, Tyler J. Buller, Assistant Attorney General, Mathias Robinson, County Attorney, and Darin J. Raymond, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Mullins and McDonald, JJ.

VOGEL, P.J.

Ivan Flores appeals the district court's dismissal of his application for postconviction relief, asserting the district court erred in failing to address all of the claims raised in his petition, and further erred in finding trial counsel was not ineffective. Flores also argues postconviction relief counsel was ineffective for failing to amend the petition to challenge trial counsel's erroneous advice regarding total punishment and failing to assure the district court ruled on all issues presented by Flores. Because we conclude the district court adequately addressed all claims raised by Flores and correctly found trial counsel was not ineffective, nor was postconviction relief counsel ineffective, we affirm.

I. Factual and Procedural Background

On April 3, 2009, Flores pleaded guilty to robbery in the first degree, in violation of Iowa Code sections 711.1 and 711.2 (2009). This charge was based on the events of January 18, 2009, when Flores and some of his friends broke into an apartment "to get money." One assailant carried a knife, one had a box cutter, and Flores carried a hatchet. At some point during the incident, one of the residents was threatened with the box cutter. All suspects were apprehended in the getaway car, and a five-inch fixed-blade knife as well as a hatchet were recovered.

Subsequent to his plea, Flores was sentenced to a term of incarceration not to exceed twenty-five years. He moved for reconsideration of his sentence, arguing the knife that was recovered did not constitute a "dangerous weapon," undermining the factual basis for his plea. His motion was denied, and Flores did not file a direct appeal.

On August 26, 2009, Flores filed a pro se application for postconviction relief, after which counsel was appointed. The application asserted trial counsel was ineffective and that there was no factual basis for the plea. The district court denied the application, and Flores appeals.

II. Standard of Review

We review the dismissal of an application for postconviction relief for correction of errors at law. *Castro v. State*, 795 N.W.2d 789, 792 (Iowa 2011). With regard to Flores’s claims of ineffective assistance of counsel, we review those claims de novo. *Id.* To succeed on an ineffective-assistance claim, the defendant must show, first, that counsel breached an essential duty, and second, that he was prejudiced by counsel’s failure. *State v. Straw*, 709 N.W.2d 128, 133 (Iowa 2006). Under the first prong, counsel’s performance is measured “against the standard of a reasonably competent practitioner with the presumption that the attorney performed his duties in a competent manner.” *Id.* (internal citations omitted). It is the defendant’s burden to prove both prongs by a preponderance of the evidence, and if the defendant fails to establish prejudice, his claim may be disposed of on that prong alone. *State v. Maxwell*, 743 N.W.2d 185, 195–96 (Iowa 2008). This same standard applies to ineffective-assistance claims arising from a guilty plea. *Hill v. Lockhart*, 474 U.S. 52, 57–59 (1985).

III. Whether the District Court Properly Addressed Flores’s Claims

Flores first argues the district court failed to address or rule on his argument that counsel was ineffective for failing to research the law, allowing Flores to plead guilty to a crime for which there was no factual basis, and failing to inform Flores his conduct did not violate the statute, in violation of Iowa Code

section 822.7. He claims the case must be remanded so the district court may make the proper findings.

In its order, the district court summarized Flores's arguments, stating:

First, Mr. Flores alleges that there was no factual basis to support the plea He also challenges the effectiveness of his counsel for failing to properly investigate the crime, for failing to advise him of his right to file a Motion in Arrest of Judgment, for failing to advise him of his right to appeal, and for pressuring him into agreeing to a plea agreement when he wished to proceed to trial.

The court then found Flores's trial counsel "adequately investigated the facts of the case and met all of her professional obligations as Mr. Flores's counsel." The court then proceeded with its reasoning as to why a factual basis was present for Flores's plea.

On our review of the record, we find the district court's reasoning was enough to substantially comply with Iowa Code section 822.7's requirement that the court must address each issue—though not necessarily each allegation—raised by the petitioner. See *Gamble v. State*, 723 N.W.2d 443, 446 (Iowa 2006). Therefore, Flores's claim is without merit.

IV. Whether Trial Counsel Was Ineffective

Flores next claims the district court erred in finding trial counsel was not ineffective because no factual basis existed to support his plea. He bases this contention on the argument the knife found by police is not a dangerous weapon as defined by Iowa Code section 702.7, considering it was not the box cutter/utility knife as described by the witness. He further asserts counsel did not advise him of the nature of the charges against him, did not fully investigate the

evidence, and allowed him to proceed with a plea that was not knowing and voluntary.

Within this section, Flores also argues the district court employed an improper standard when evaluating whether prejudice occurred. However, Flores did not preserve error on this claim—no motion to amend or enlarge was filed, and it is clear the district court did not consider this claim. *See Lamasters v. State*, 821 N.W.2d 856, 863 (Iowa 2012). Therefore, we decline to address the merits of this argument.

Moreover, the evidence supports the conclusion there were three weapons carried into the residence by the four defendants. Flores admitted he was armed with a hatchet “for defensive purposes.” Although a knife with a five-inch blade and the hatchet were both recovered, the box-cutter described by the victim was not. However, the district court noted one of the co-defendants admitted a dangerous weapon was used in the robbery in his plea proceedings. *See State v. Ortiz*, 789 N.W.2d 761, 768 (Iowa 2010) (finding there was a factual basis for the plea because the defendant admitted in his colloquy the existence of a dangerous weapon). Given these facts, the postconviction court properly concluded a factual basis existed for Flores’s plea. We agree with that finding, as well as the district court’s conclusion counsel performed all her duties in a proper and adequate manner. Therefore, we affirm the district court.

V. Whether Postconviction Relief Counsel was Ineffective

Flores’s final argument asserts postconviction relief counsel was ineffective because counsel failed to amend the petition to challenge trial

counsel's advice regarding the possible total punishment and also failed to assure the district court ruled on all of Flores's claims.

With respect to Flores's assertion regarding the total punishment, he cannot establish prejudice. He was charged with robbery in the first degree, a class "B" felony, and burglary in the first degree, a class "B" felony, both of which carry a maximum sentence of twenty-five years.¹ The State acknowledges trial counsel gave erroneous advice about the potential sentence Flores was facing if he went to trial—fifty years would have been the maximum potential punishment, rather than seventy years, which is what trial counsel told Flores it could be. However, Flores has failed to establish the outcome of the proceeding would have been different had he received the correct advice, that is, that he would have proceeded to trial had he known he faced a fifty-year sentence as opposed to a seventy-year sentence. At no point during the proceeding did Flores conclusively establish he would have preferred going to trial. Rather, trial counsel's testimony established Flores wished to plead guilty and was adamant that he not go to trial. Specifically, the following exchange occurred:

Q: Throughout the case, was this stance that Mr. Flores took that he did not want to go to trial, was that consistent throughout your representation when you met with him?

A: Yes. And it's—in a way, it's sort of uncomfortable because there were times where I thought maybe he should go to trial before I'd interviewed everybody, but he said he didn't want to. He wanted the best deal he could get.

Given this evidence, Flores has not met his burden to show he was prejudiced by counsel's failure to accurately advise him of the sentencing

¹ He was also charged with conspiracy to commit the robbery and conspiracy to commit the burglary. Had he been convicted of all counts, the conspiracy convictions and sentences would have merged with the public offenses.

consequences. Because this is a meritless claim, postconviction relief counsel did not breach an essential duty by failing to amend the petition to include this argument. Therefore, Flores's claim cannot succeed.

Having considered all of Flores's claims, we affirm the district court's dismissal of his petition for postconviction relief.

AFFIRMED.