IN THE COURT OF APPEALS OF IOWA

No. 3-609 / 12-1200
Filed August 7, 2013

JEFFREY WAYNE DILLON,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Des Moines County, Michael J. Schilling, Judge.

An applicant appeals from the denial of his postconviction relief application. **AFFIRMED.**

Thomas Hurd of Glazebrook, Moe, Johnston & Hurd, L.L.P., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Thomas H. Miller, Assistant Attorney General, Patrick C. Jackson, County Attorney, and Amy Beavers, Assistant County Attorney, for appellee State.

Considered by Vogel, P.J., and Bower, J., and Goodhue, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2013).

GOODHUE, S.J.

Applicant appeals from a ruling entered June 6, 2012, denying his request for postconviction relief based on a claim of ineffective assistance of counsel.

I. Background Facts and Proceedings

Applicant pleaded guilty to possession of a precursor of methamphetamine. On June 27, 2005, the applicant was sentenced to a term not to exceed five years, but was granted probation. Subsequently the applicant pleaded guilty to a federal charge and was sentenced to a federal institution. The Iowa Department of Correctional Services filed a report of violations, and thereafter a detainer was filed based on the alleged probation violation. The applicant filed a notice of place of imprisonment and demand for final disposition of the report of violation. A court order was issued holding that the Interstate Agreement on Detention Act did not apply and that the outstanding warrant would remain active.

The applicant filed this request for postconviction relief on February 14, 2012. At that time he remained incarcerated in the federal institution where he was serving the sentence on the federal charge. The report of violations remained unresolved waiting his release. The possibility remains that on his release, probation will be revoked and the applicant will be faced with serving what he terms "consecutive sentences." The applicant alleges ineffective assistance of counsel based on trial counsel's failure to advise him of the possibility of being required to serve "consecutive sentences."

The State asserts the three following defenses: (1) the applicant's claim is barred by the statute of limitations; (2) the applicant's claim of "consecutive

sentences" is only a possibility at this point, and is therefore anticipatory, leaving the applicant without standing or prejudice to pursue his claim; and (3) counsel's alleged failure related to an indirect or collateral result of the applicant's plea of guilty, and therefore counsel had no duty to advise the applicant of the "consecutive sentence" that might be imposed.

II. Standard of Review

Ineffective-assistance-of-counsel claims raised in a postconviction relief proceeding are based on a statutory right, but because of the constitutional nature, are reviewed de novo. *Lado v*. *State*, 804 N.W.2d 248, 250 (Iowa 2011). The review of the State's statute-of-limitations defense is for correction of errors at law. *Harrington v*. *State*, 659 N.W.2d 509, 519 (Iowa 2003).

III. *Discussion*

Subject to exceptions not relevant to this proceeding, postconviction relief "applications must be filed within three years from the date the conviction or decision is filed." Iowa Code § 822.3 (2011). The applicant's right to file for post conviction relief expired on June 27, 2008.

Even if timely filed, the applicant's claim fails on the merits. To support a claim of ineffective assistance of counsel a proponent must prove by a preponderance of the evidence (1) counsel failed to perform an essential duty, and (2) counsel's failure resulted in prejudice. *State v*. *Clark*, 814 N.W.2d 551, 567 (Iowa 2012).

Counsel, as well as the court, is only obligated to advise a defendant of the direct consequences of his plea. *Saadiq v*. *State*, 387 N.W.2d 315, 326 (Iowa 1986). The applicant relies on *Padilla v*. *Kentucky*, 130 S. Ct. 1473 (2010).

Padilla held that counsel's failure to advise a defendant of the likelihood of a deportation after a plea of guilty breached an essential duty, and the case needed to be remanded on the issue of prejudice. *Padilla*, 130 S. Ct. at 1486-87. Because deportation has such a close connection to the criminal process and conviction, the distinction between direct and collateral consequences are ill-suited to evaluate an ineffective assistance of counsel claim when deportation is the result of a criminal conviction. *Id*. at 1486. As the trial court in this matter stated, "*Padilla* may alter the categorization of deportation from a collateral consequence . . . to a direct consequence . . . but *Padilla* did not directly hold that the distinction between direct and collateral consequences is improper." It has been held, and remains the law, that there are numerous collateral consequences of a guilty plea that need not be pointed out by the court or counsel, including what effect a plea might have on future criminal activity or a conviction. *State v*. *Hallock*, 765 N.W.2d 598, 605 (Iowa Ct. App. 2009).

The applicant's subsequent federal conviction and the delay in the revocation hearing are not direct consequences of his plea of guilty, or even a reasonably expected result. Counsel had no duty to advise the applicant of the indirect result of his plea of guilty.

The applicant's probation has not been revoked. He has not been incarcerated day one of the "consecutive sentence" of which he complains. When the applicant pleaded guilty there was only one charge pending and no existing preceding charge. The court did not order consecutive sentences, and if the applicant's probation is revoked he will only be serving the sentences the court imposed. He will be serving the state of Iowa sentence after a subsequent

sentence imposed by a different governmental or sentencing authority, but not a "consecutive sentence" imposed by the court. Prejudice could be present if the applicant had been sentenced to consecutive sentences at the time of sentencing and he had not been advised by the court or counsel that consecutive sentences were a possibility. *See State v*. *White*, 587 N.W.2d 240, 245-46 (Iowa 1998). Here, there was no contemporary or antecedent sentence to which a consecutive sentence could be attached. There was no consecutive sentence ordered, nor was one possible.

AFFIRMED.