IN THE COURT OF APPEALS OF IOWA

No. 3-833 / 12-2143
Filed October 23, 2013

STEVEN CHARLES COONRAD,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Buchanan County, Joel A. Dalrymple, Judge.

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

Mark C. Smith, State Appellate Defender, and Theresa R. Wilson, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Tyler J. Buller, Assistant Attorney General, Shawn M. Harden, County Attorney, Jenalee Zaputil, Assistant County Attorney, and Mathias Robinson, Legal Intern, for appellee State.

Considered by Vogel, P.J., and Vaitheswaran and Doyle, JJ.

DOYLE, J.

Steven Coonrad appeals from the judgment and sentence entered following his guilty plea to lascivious acts with a child. Coonrad raises several claims relating to the district court's failure to order and use a presentence investigation (PSI) report at sentencing.

Iowa Code section 901.2 (2009) states in pertinent part:

> The court shall order a presentence investigation when the offense is any felony punishable under section 902.9, subsection 1, paragraph "a", or a class "B", class "C", or class "D" felony. A presentence investigation for any felony punishable under section 902.9, subsection 1, paragraph "a", or a class "B", class "C", or class "D" felony shall not be waived.

The Iowa Supreme Court has interpreted this provision to mean that a court cannot waive the preparation of a PSI report but can waive its use. *State v. Thompson*, 494 N.W.2d 239, 241 (Iowa 1992).

Coonrad contends his plea and postconviction counsel were ineffective in failing to challenge the "unknowing and involuntary waiver of the use of a presentence investigation report." During the plea proceeding, defense counsel advised the court Coonrad wished to be sentenced immediately, and "would waive time for sentencing." The court subsequently engaged in colloquy with Coonrad, explaining he had the right to have a PSI report prepared and considered "in order to make a determination about sentencing," but the report could be waived. Following inquiry by the court, Coonrad confirmed he wanted to waive his right to delay the time prior to sentencing and the use of a PSI report. We find nothing in the record to suggest Coonrad's waiver of the use of

the PSI report was other than knowing and voluntary.[1] *See e.g.*, *id.* (observing the defendant was aware the PSI report could be considered by the court for sentencing purposes but "did not want to wait for the report to be completed and chose immediate sentencing").

The court went "along with the agreement entered into [between Coonrad and] the County Attorney" and entered a sentence as authorized by statute. Coonrad now claims the court imposed "an illegal and procedurally defective sentence" when it "did not order the preparation" of a PSI report as required by section 901.2. Insofar as Coonrad claims his sentence was illegal, we observe the sentence entered by the court is within parameters provided by statute. Coonrad's challenge to the alleged illegality and procedural infirmity of his sentence is not properly before this court. *See Tindell v. State*, 629 N.W.2d 357, 359 (Iowa 2001) (stating that rule allowing correction at any time does not apply to sentences that, because of procedural errors, are illegally imposed; rather, the challenged sentence "must be one not authorized by statute").

Sensing this error preservation barrier, in the alternative, Coonrad raises his contention in the guise of an ineffective assistance of counsel claim. He alleges his plea counsel was ineffective in failing to challenge "the 'waiver' of preparation" of a PSI report. This claim is founded upon the following colloquy by the court:

> [T]he Court usually has a pre-sentence investigation report that the Court utilizes in order to make a determination about sentencing. It is your right to have that pre-sentence investigation report

[1] We further note that even assuming, *arguendo*, Coonrad met his burden to show counsel breached an essential duty, he has not shown a reasonable probability that, but for counsel's failure to challenge his waiver, his sentence would have been different.

> prepared, and then you also have the right to review it with your counsel for accuracy. Are you informing this Court that you wish to waive your right to have a pre-sentence investigation report prepared?

Coonrad responded, "Yes."

Despite the court's reference to the PSI report being *prepared*, it is apparent the focus of the court's inquiry was in regard to whether Coonrad wished to waive the court's consideration of that report "in order to make a determination about sentencing." As the State claims, "Coonrad's only evidence for his ineffective-assistance-of-counsel claim is the court's poor word choice in its colloquy," but "[d]espite the court's language, Coonrad's waiver was functionally a waiver of use"—"the court did not treat the waiver as a waiver of preparation." Indeed, in the judgment order, the court ordered Coonrad to "cooperate in the preparation of a PSI to follow him to his place of confinement." The Department of Corrections subsequently prepared an "Informal Report," containing Coonrad's offender summary and criminal history, which was sent to Coonrad's correctional facility and the Iowa Board of Parole.[2]

In our de novo review, *see Ennenga v. State*, 812 N.W.2d 696, 701 (Iowa 2012), we find Coonrad's plea counsel did not provide ineffective assistance in failing to challenge the knowing and voluntary nature of his waiver of the use of a PSI report, or the waiver of "preparation" of such report. *See State v. Dalton*, 674 N.W.2d 111, 119 (Iowa 2004) (stating a defendant's failure to prove either the

[2] Even assuming, *arguendo*, Coonrad met his burden to show counsel breached an essential duty on this claim, he has not presented any evidence to show a reasonable probability that, but for counsel's failure, the result of the proceedings would have been different. Coonrad also argues a PSI "may have been of assistance to both Coonrad and the District Court when it came time for the court to reconsider Coonrad's sentence." We agree with the State, under the circumstances presented, that "this cannot show prejudice for a determination of plea counsel's ineffective assistance of counsel."

breach-of-duty or prejudice prong results in failure of an ineffective-assistance-of-counsel claim). We further find Coonrad's postconviction counsel did not provide ineffective assistance in failing to allege trial counsel's ineffectiveness on these grounds. *See State v. Dudley*, 766 N.W.2d 606, 620 (Iowa 2009) (observing counsel has no duty to raise a meritless issue). We affirm the order denying Coonrad's application for postconviction relief.

AFFIRMED.