IN THE COURT OF APPEALS OF IOWA

No. 3-994 / 12-1453
Filed December 5, 2013

ROBERT EUGENE MARTIN,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Pottawattamie County, Timothy O'Grady, Judge.

Applicant appeals the decision of the district court denying his request for postconviction relief from his convictions for homicide by vehicle, leaving the scene of an accident, and driving while suspended or revoked. **AFFIRMED.**

Brian S. Munnelly, Omaha, Nebraska, for appellant.

Thomas J. Miller, Attorney General, Darrel Mullins, Assistant Attorney General, Matthew D. Wilber, County Attorney, and Marilyn Popp-Reyes, Assistant County Attorney, for appellee State.

Considered by Mullins, P.J., McDonald, J., and Mahan, S.J.*

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

MAHAN, S.J.

I. Background Facts & Proceedings.

On August 27, 2006, after drinking ten beers, Robert Martin drove his ex-wife's vehicle in Pottawattamie County. Martin did not have a driver's license. It was raining that day, and the road was wet. Martin lost control of the vehicle, and it struck Ralph Mathews, who died as a result of his injuries.

Immediately after the accident, Martin called his ex-wife, Gail Daugherty, and told her he had just hit someone. He told her he was going to take the license plates off the vehicle. When officers arrived at the scene, the vehicle had no license plates. However, officers found old citations naming Martin inside the vehicle.

Officers obtained a description of a person wearing blue jeans, a black shirt, and a ball cap running from the scene. After a firefighter and bystanders pointed out the direction the person ran, officers apprehended Martin, who matched the description of the driver. Martin had a strong odor of alcoholic beverages. He was arrested at that time for public intoxication and informed of his *Miranda* rights. A blood test showed he had an alcohol level of .160, and a breath test showed the level was .126—both above the legal limit.

Martin was charged with homicide by vehicle, in violation of Iowa Code section 707.6A (2005); leaving the scene of an accident, in violation of section 321.261; and driving while license suspended or revoked, in violation of section 321J.21. He waived his right to a speedy trial. The case was tried to the court. Martin's defense was that the accident was due to the weather and not his intoxication. He testified his vehicle had hydroplaned. He also presented the

testimony of an accident investigation expert, George Lynch, who stated Martin lost control of the vehicle when it began to hydroplane.

The district court found Martin guilty of homicide by vehicle, leaving the scene of an accident, and driving while license suspended or revoked. The court specifically found Martin was not a credible witness. Martin was sentenced to terms of twenty-five years, five years, and one year, to be served concurrently. He appealed, and his conviction was affirmed on appeal. *See State v. Martin*, No. 07-0608, 2008 WL 141203 (Iowa Ct. App. Jan. 16, 2008).

Martin filed an application for postconviction relief, claiming he received ineffective assistance because defense counsel (1) failed to file a motion to suppress; (2) failed to fully investigate the case; (3) failed to obtain a plea offer from the State; and (4) advised him to waive his right to a speedy trial. The parties stipulated the matter would be submitted to the court on the underlying criminal file, briefs, affidavits, and depositions of defense counsel and the prosecutor.

The district court denied the application for postconviction relief. The court found a motion to suppress would have been meritless because officers had probable cause to arrest Martin. The court determined Martin had not shown he was prejudiced because defense counsel did not obtain an expert earlier. The court also determined Martin had not shown he received ineffective assistance because the State did not offer him a plea bargain. Finally, the court concluded Martin had not shown the result of the trial would have been different if he had not waived his right to a speedy trial. Martin now appeals.

II. Standard of Review.

We review claims of ineffective assistance of counsel de novo. *Ennenga v. State*, 812 N.W.2d 696, 701 (Iowa 2012). To establish a claim of ineffective assistance of counsel, an applicant must show (1) the attorney failed to perform an essential duty and (2) prejudice resulted to the extent it denied applicant a fair trial. *State v. Carroll*, 767 N.W.2d 638, 641 (Iowa 2009). "In determining whether an attorney failed in performance of an essential duty, we avoid second-guessing reasonable trial strategy." *Everett v. State*, 789 N.W.2d 151, 158 (Iowa 2010). In order to show prejudice, an applicant must show that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *State v. Madsen*, 813 N.W.2d 714, 727 (Iowa 2012). An applicant has the burden to show by a preponderance of the evidence that counsel was ineffective. *See State v. McKettrick*, 480 N.W.2d 52, 55 (Iowa 1992).

III. Ineffective Assistance.

A. Martin contends he received ineffective assistance because his defense counsel did not file a motion to suppress. He claims the officers did not have probable cause to arrest him without a warrant. He asserts all of the evidence obtained after his arrest, including the results of the blood and breath tests, should be suppressed.

An officer may arrest a person without a warrant if there is probable cause for the arrest. *State v. Christopher*, 757 N.W.2d 247, 250 (Iowa 2008). Under Iowa Code section 804.7(3), an officer may make an arrest without a warrant if the officer "has reasonable grounds for believing that an indictable public offense been committed and has reasonable grounds for believing that the person to be

arrested has committed it." The standard "reasonable grounds for belief" is tantamount to probable cause. *State v. Freeman*, 705 N.W.2d 293, 298 (Iowa 2005). An officer has probable cause, "if the totality of the circumstances as viewed by a reasonable and prudent person would lead that person to believe that a crime has been or is being committed and that the arrestee committed or is committing it." *Id*.

In denying Martin's application for postconviction relief, the district court determined the officers had probable cause to arrest him. The vehicle involved in the accident contained old citations with Martin's name on them. Witnesses observed a man fleeing the scene. They provided officers with a description and told officers the direction the man had fled. When officers went in that direction, they found Martin, who matched the description and who identified himself as Robert Martin. On approaching Martin, the officers noticed he had a strong odor of an alcoholic beverage.

We conclude the officers had probable cause to arrest Martin. If a motion to suppress had been filed, it would not have been successful. We do not find an attorney has provided ineffective assistance by failing to pursue a meritless issue. *See State v. Brothern*, 832 N.W.2d 187, 192 (Iowa 2013).

B. Martin contends he received ineffective assistance because his defense counsel did not fully investigate the case. He asserts defense counsel should have been more diligent in obtaining an expert who would have been available to investigate the accident before his ninety-day speedy trial rights expired. Defense counsel approached Lynch, an accident investigator, as a potential expert to investigate the circumstances of the accident, but Lynch was

not available within the ninety-day period. On the advice of defense counsel, Martin waived his right to a speedy trial, and Lynch was retained as an expert on Martin's behalf.

We determine Martin has not shown he was prejudiced by the actions of his defense counsel. He has presented no evidence to show that if an expert had been identified within the ninety-day period, the result of the trial would have been different. *See State v. Anfinson*, 758 N.W.2d 496, 502 (Iowa 2008) (noting applicant had failed to demonstrate a reasonable probability of success on issues she claimed defense counsel should have raised). Martin has also not identified any expert who would have been willing to testify in his defense within that time period or what that expert would have done differently. *See Dunbar v. State*, 515 N.W.2d 12, 15 (Iowa 1994) (claiming that defense counsel did not fully investigate a case requires an applicant to state what an investigation would have revealed or how anything discovered would have affected the result of the trial). Furthermore, in her deposition, the prosecutor stated that if Martin had not waived his right to a speedy trial, the State would have been prepared for trial within the ninety-day timeframe. Thus, Martin has not shown that if an expert had been identified earlier, it would have changed the result of the case.

C. Martin claims defense counsel did not do enough to obtain a plea bargain for him. He asserts that if a plea bargain had been offered to him, he would have accepted it.

We first note a defendant has no right to be offered a plea. *State v. Long*, 814 N.W.2d 572, 583 (Iowa 2012). Second, defense counsel testified he attempted to obtain a plea agreement for Martin, but the State was not willing to

offer a deal. Defense counsel also stated the prosecutor told him "there would be no deals because of the gentleman's death." The prosecutor also stated that in "cases like this where people are badly hurt or killed, I generally don't offer plea agreements." The State has no obligation to offer a plea bargain. *Id.* Because a defendant does not have a right to be offered a plea bargain, the denial of the opportunity to obtain a plea bargain would not cause a defendant undue prejudice. *Id.* We determine Martin has not shown he received ineffective assistance of counsel on this ground.

D. Finally, Martin contends he received ineffective assistance because defense counsel pressured him to waive his right to a speedy trial. This claim is related, in part, to Martin's assertion that defense counsel should have obtained an expert within the ninety-day timeframe. He asserts that if defense counsel had obtained an expert earlier, the State would have realized it was unprepared for trial because of a mistake in the State's accident report. He theorizes that if the State realized it was unprepared for trial, it would have offered him a plea bargain, which he would have accepted.

Defense counsel testified Martin agreed to waive his right to a speedy trial so they could obtain Lynch as an expert in investigating the accident. When Lynch reviewed the State's accident report, he discovered some mistakes or inaccuracies in the report. Martin now claims that if he had been aware of these mistakes earlier, he would not have waived his right to a speedy trial. It is only because Martin did waive his right to a speedy trial, however, that Lynch was retained as an expert on his behalf and Martin12/2/13 became aware of the mistakes. Martin's argument contains logical inconsistencies and is too

theoretical to show he received ineffective assistance of counsel. *See Dunbar*, 550 N.W.2d at 15 (noting an "applicant must state the specific ways in which counsel's performance was inadequate, and identify how competent representation probably would have changed the outcome").

We affirm the decision of the district court denying Martin's application for postconviction relief.

AFFIRMED.