IN THE COURT OF APPEALS OF IOWA

No. 3-042 / 11-0482
Filed April 10, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

SCOTT ALLAN MASON,
Defendant-Appellant.

Appeal from the Iowa District Court for Decatur County, Michael D. Huppert (motion dismiss), Gary G. Kimes (motion for expert witness), and David L. Christensen (trial), Judges.

Defendant appeals his conviction arguing trial counsel rendered ineffective assistance. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Stephan J. Japuntich, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Kyle Hanson, Assistant Attorney General, and Lisa Hynden Jeanes, County Attorney, for appellee.

Considered by Eisenhauer, C.J., and Danilson and Bower, JJ.

EISENHAUER, C.J.

I. Background Facts and Proceedings.

Defendant Scott Mason lived on a farm next to the Hamakers' farm. Based on damage to the Hamakers' livestock trailer, Mason was charged with second-degree criminal mischief and stalking, second offense. The stalking count was later dismissed on Mason's motion.

Mason filed notice of intent to rely upon defenses of insanity and/or diminished responsibility and also filed an application for funds for a psychiatric evaluation. The State resisted his application. The district court denied his request for expert witness funds, and Mason appealed. On appeal, we concluded the district court abused its discretion, stating: "Our review of Mason's mental health records . . . shows he has a history of mental health problems. The allegations against him include instances of bizarre behavior. The appointment of an expert *may* prove beneficial in the development of his defense." *State v. Mason*, No. 08-1859, 2009 WL 4842793, at *3 (Iowa Ct. App. Dec. 17, 2009). We remanded for appointment of an expert. Mason employed Dr. Logan as an expert witness in forensic psychiatry.

In January 2011, Mason waived his right to a jury trial. During his colloquy with the court, Mason stated he had not been hospitalized or had psychiatric care in the last six months and was not presently taking medication. After the court accepted his waiver of jury trial, the State and Mason stipulated to a trial on the minutes of testimony.

According to the minutes, William Hamaker, Sharon Hamaker, Justin Hamaker, and Merlin Bell were present at the Hamaker home on April 26, 2008.

Mason pulled into the Hamaker driveway in a white pickup truck. Mason drove up the driveway while yelling, cussing, and "making no sense at all." When the Hamakers came to the door, Mason made an obscene gesture toward them. Mason continued driving erratically around the driveway and exited onto the road. Mason stopped his truck on the road several times, exited, and yelled. During one of these stops, Mason threw a cooler from his truck onto the ground. At one point, Mason put his truck in reverse, accelerated backwards at a high rate of speed, and collided with the Hamakers' livestock trailer causing damage. Mason then drove up the road and was arrested by sheriff's deputies. In addition to the minutes of testimony, the State introduced Exhibit 1, listing the damages to the livestock trailer. Mason presented no evidence or exhibits.

The trial court ruled from the bench:

> Having had an opportunity prior to taking the bench to review the minutes of testimony and having an opportunity now to examine Exhibit Number 1 . . . and based upon the . . . actual damages to the victims' livestock trailer and the cost of repairs . . . the Court finds that the state has proved all of the following elements of criminal mischief:
>
> 1. On or about the 26th day of April, 2008, the defendant, Scott Mason, damaged a livestock trailer belonging to William and Sharon Hamaker;
>
> 2. The defendant acted with the specific intent to damage the livestock trailer;[1]
>
> 3. When the defendant damaged the livestock trailer, he did not have the right to do so.
>
> And based upon the evidence, the Court determines that the cost of repairing the property is more than $500 but not more than $1000. And, therefore, the defendant is guilty of the [lesser-included offense] of criminal mischief in the third degree.

Mason was sentenced to a term of imprisonment not to exceed two years.

[1] We find no merit to Mason's claim the district court failed to address specific intent.

Mason appeals arguing trial counsel was ineffective in failing to file a motion for a new trial based on the district court's failure to address his insanity and diminished responsibility defenses.[2] Mason contends he was prejudiced because "the record contains evidence tending to prove [he] was not in possession of the requisite specific intent" when the trailer was damaged.

II. Scope and Standards of Review.

Ineffective-assistance claims are reviewed de novo. *State v. Clark*, 814 N.W.2d 551, 560 (Iowa 2012). Although ineffective-assistance claims are generally preserved for postconviction relief proceedings, we will resolve the claims on direct appeal where the record is adequate. *State v. Truesdell*, 679 N.W.2d 611, 616 (Iowa 2004). We conclude the record is adequate.

III. Merits.

To prevail, Mason must prove by a preponderance of the evidence his trial attorney failed to perform an essential duty and this failure resulted in prejudice. *State v. Straw*, 709 N.W.2d 128, 133 (Iowa 2006). We may dispose of Mason's ineffective-assistance claim if he fails to prove *either* the duty or the prejudice prong. *See State v. Lane*, 743 N.W.2d 178, 184 (Iowa 2007). As to the duty prong, Mason has to establish counsel's performance was outside the range of normal competency. *DeVoss v. State*, 648 N.W.2d 56, 64 (Iowa 2002). We

[2] Mason asserts the court's ruling is quite minimal. However, because Mason stipulated the minutes accurately stated the facts and because the court specifically incorporated the minutes into the record at the hearing, there was no practical reason for the judge to restate the minutes as findings in either his ruling from the bench or his written verdict. The court stated: "I'm not going to read the minutes of testimony into the record because of the length of those, but it's been stipulated that those are the facts the court is to use in making a determination in this matter."

recognize "a strong presumption trial counsel's conduct fell within the wide range of reasonable professional assistance." *Id*.

The fact Mason stipulated to a trial on the minutes of testimony and presented no evidence in support of his defenses after hiring an expert indicates Dr. Logan's testimony would not have been helpful. With no evidence in the record to support the defenses, a motion seeking a new trial was meritless and would have been overruled by the court. Mason's trial attorney had "no duty to pursue a meritless issue." *See State v. Utter*, 803 N.W.2d 647, 652 (Iowa 2011). Because we conclude Mason's trial attorney did not breach an essential duty, we need not address the prejudice element of his ineffective-assistance claim.

AFFIRMED.