**IN THE COURT OF APPEALS OF IOWA**

No. 3-126 / 12-0290
Filed March 27, 2013

**DEWAYNE CRAFT,**
Applicant-Appellant,

**vs.**

**STATE OF IOWA,**
Respondent-Appellee.

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Appeal from the Iowa District Court for Black Hawk County, Bradley J. Harris, Judge.

Applicant appeals the district court decision denying his request for postconviction relief. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Nan Jennisch, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Richard J. Bennett, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Kim Griffith, Assistant County Attorney, for appellee State.

Considered by Vogel, P.J., Doyle, J., and Huitink, S.J.*

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

**HUITINK, S.J.**

**I. Background Facts & Proceedings.**

On November 27, 2007, DeWayne Craft was charged with murder in the first degree for the death of his girlfriend. Craft signed a written plea agreement in which he pleaded guilty to second-degree murder, in violation of Iowa Code sections 707.1 and 707.3 (2007). The plea agreement also provided Craft would waive his right to file a motion in arrest of judgment, to file an appeal, and to challenge the conviction in postconviction proceedings.

A plea hearing was held on December 22, 2008. The district court accepted Craft's guilty plea to second-degree murder. Craft asked for immediate sentencing. He was sentenced to a term of imprisonment not to exceed fifty years and was informed by the court he would be required to serve a mandatory minimum of seventy percent of that sentence.

On August 18, 2009, Craft filed a pro se application for postconviction relief, claiming he received ineffective assistance because his defense counsel failed to ensure: (1) his guilty plea was knowing and voluntary; (2) the record reflected a factual basis for his plea; and (3) his waiver of the right to appeal and the right to file a postconviction application was knowing and voluntary.

The State filed a motion to continue, stating it intended to file a motion to dismiss because Craft had waived his right to file an application for postconviction relief. Although no motion to dismiss was ever filed, the matter was set for a hearing. Craft filed a written resistance to dismissal.

The district court held a hearing on whether the postconviction application should be dismissed. It entered an order on October 28, 2011, stating that

"[b]ased on the application, the answer and the record herein, the court is satisfied that the applicant is not entitled to post-conviction relief and no purpose would be served by further proceedings." The court stated it intended to dismiss the application. The court's statements were based on the merits of Craft's claims, rather than the State's waiver arguments, which remained under advisement.

Craft made a written reply, adding an additional claim that he received ineffective assistance because his defense counsel told him he would not have to serve the seventy-percent mandatory minimum because the legislature would change the law. He attached affidavits from himself, his mother, and his sister. He also attached a letter from defense counsel containing the following paragraph:

> Please keep in mind that the legislature can amend Iowa Code Section 902.12 and require that either more or less time be served. (At one time that code section required a person to serve 85% of the sentence). If the code section changes to require less time, that will apply to you. If the change requires more time, that will not apply to you.

The district court entered an order on December 28, 2011. The court found Craft was not precluded from filing a postconviction action based upon the terms of the plea agreement. The court denied the State's motion to dismiss. The court denied Craft's application for postconviction relief on the merits. It found counsel's letter did not make a definite statement the seventy-percent minimum sentence would change in a few years. The court also noted that at the guilty plea proceedings Craft stated he was acting voluntarily and no threats or promises had been made to him.

Craft filed a motion to enlarge or amend pursuant to Iowa Rule of Civil Procedure 1.904(2), claiming summary disposition of his application for postconviction relief was inappropriate because of the existence of material issues of fact. The district court denied his motion. Craft now appeals.

**II. Standard of Review.**

In general, we review the district court's denial of an application for postconviction relief for the correction of errors at law. *Lamasters v. State*, 821 N.W.2d 856, 862 (Iowa 2012). When an applicant raises claims of a constitutional nature, however, our review is de novo. *Id*. 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 an applicant a fair trial. *State v. Carroll*, 767 N.W.2d 638, 641 (Iowa 2008).

**III. Postconviction Application.**

The State contends Craft waived his right to file an application for postconviction relief at the time he entered his guilty plea. We note the district court denied the State's motion to dismiss on the ground Craft had waived his right to file an application for postconviction relief. The State did not appeal the district court's decision denying its motion to dismiss. "A party that neither appeals nor cross-appeals can have no greater relief or redress on appeal than was accorded it by the trial court." *Boyd v. Boyd & Boyd, Inc.*, 386 N.W.2d 540, 544 (Iowa Ct. App. 1986). Therefore, we do not address this issue.[1] *See Estate of Ryan v. Heritage Trails Assocs., Inc.*, 745 N.W.2d 724, 729 (Iowa 2008)

[1] Because of our conclusion on this issue, we also do not need to address Craft's claim he received ineffective assistance due to counsel's failure to ensure his waiver of the right to file a postconviction application was knowing and voluntary.

(finding a party that had not filed an appeal or cross-appeal had not preserved for review an issue it sought to raise on appellate review).

If we were to address the State's claims, we would affirm the district court's determination that Craft was not precluded from filing an application for postconviction relief based on the terms of the plea agreement. We agree with the district court's conclusion that if Craft breached the plea agreement by filing an application for postconviction relief, the proper remedy would be to rescind the plea agreement, not dismiss his application for postconviction relief. *See State v. Foy*, 574 N.W.2d 337, 339 (Iowa 1998) (noting if a defendant breaches a plea agreement, "the State has no obligation to provide the defendant the anticipated benefits of the bargain"). The State, however, was not asking for the plea agreement to be rescinded.

**IV. Evidentiary Hearing.**

Craft claims the district court erred in dismissing his postconviction relief action without affording him an evidentiary hearing. He claims he received ineffective assistance because his defense counsel led him to believe the mandatory minimum sentence for second-degree murder would be reduced by a future change in the law. He claims his guilty plea was not voluntary and knowing because it was based on the erroneous advice of defense counsel.

There are two methods for summary disposition of an application for postconviction relief found in Iowa Code section 822.6 (2009). *See Poulin v. State*, 525 N.W.2d 815, 816 (Iowa 1994). The first method is based on the court's initiative. *Id.* Section 822.6 provides:

> When a court is satisfied, on the basis of the application, the answer or motion, and the record, that the applicant is not entitled to postconviction relief and no purpose would be served by any further proceedings, it may indicate to the parties its intention to dismiss the application and its reasons for dismissal. The applicant shall be given an opportunity to reply to the proposed dismissal. In light of the reply, or on default thereof, the court may order the application dismissed or grant leave to file an amended application or direct that the proceedings otherwise continue. Disposition on the pleadings and record is not proper if a material issue of fact exists.

The second method is initiated upon the motion of either party and is comparable to a motion for summary judgment. *Id*. Regarding this method section 822.6 provides:

> The court may grant a motion by either party for summary disposition of the application, when it appears from the pleadings, depositions, answers to interrogatories, and admissions and agreements of fact, together with any affidavits submitted, that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.

Summary disposition may be proper if there are no genuine issues of material fact. *Collins v. State*, 588 N.W.2d 399, 402 (Iowa 1998). "A fact issue is generated if reasonable minds can differ on how the issues should be resolved, but if the conflict in the record consists only of the legal consequences flowing from undisputed facts, entry of summary judgment is proper." *Summage v. State*, 579 N.W.2d 821, 822 (Iowa 1998). A court will consider all materials available to it in the light most favorable to the party opposing the motion for summary judgment. *Manning v. State*, 654 N.W.2d 555, 560 (Iowa 2002).

When an applicant has pleaded guilty, in order to show prejudice due to ineffective assistance of counsel, the applicant must show he would not have entered a guilty plea but for the breach of duty by counsel. *Castro v. State*, 795

N.W.2d 789, 793 (Iowa 2011). A claim of ineffective assistance of counsel may be decided on the issue of prejudice alone. *Ledezma v. State*, 626 N.W.2d 134, 142 (Iowa 2001).

A review of the transcript from the guilty plea proceeding shows Craft denied any threats or promises had been made to him in association with the plea proceeding. Both the prosecutor and the court noted that by pleading guilty to second-degree murder Craft would be required to serve seventy percent of a fifty-year sentence. Craft stated on the record he understood the maximum and minimum penalties for the offense. Also, on the record the court established a factual basis for each element of the offense. The district court accepted Craft's guilty plea and found it had been voluntarily entered.

During the sentencing portion of the proceedings, defense counsel stated in reference to the seventy-percent mandatory minimum:

> We don't believe that's a mandatory minimum that should be set forth in the sentence, that it should be at the discretion of the parole board. And regardless of whether in the judgment and sentence, if that code section changed, DeWayne would get the benefit of that. But we do recognize that is a discretion of the Parole Board, that he must serve that amount of time before he is eligible for parole, . . . .

It is clear that during the guilty plea and sentencing proceedings Craft was clearly informed more than once that he would be required to serve a mandatory minimum of seventy percent of the fifty-year sentence. Also, during these proceedings defense counsel clearly stated he would get the benefit *if* there was a change in the code section regarding the mandatory minimum for his sentence. "[T]here is no requirement that a petitioner be allowed a hearing on allegations which directly contradict the record, unless a minimum threshold of credibility is

met." *Foster v. State*, 395 N.W.2d 637, 638 (Iowa 1986). We conclude the record in this case directly contradicts Craft's claim he entered a guilty plea based on defense counsel's statement that the mandatory minimum for his sentence would be changed by the legislature within a few years.

We also find the record directly contradicts Craft's claims he received ineffective assistance due to defense counsel's failure to ensure his guilty plea was knowing and voluntary and to ensure there was a factual basis in the record for his plea. Craft has not presented any argument to support his claim his plea was not knowing and voluntary. *See Dunbar v. State*, 515 N.W.2d 12, 15 (Iowa 1994) (noting in a claim of ineffective assistance "it is not enough to simply claim that counsel should have done a better job"). Furthermore, the record shows the district court carefully determined there was a factual basis for Craft's guilty plea. *See State v. Rodriquez*, 804 N.W.2d 844, 849 (Iowa 2011) (finding if there is a factual basis for a guilty plea, then a claim of ineffective assistance based on counsel's failure to ensure a factual basis must fail).

We conclude the district court properly denied Craft's application for postconviction relief.

**AFFIRMED.**