IN THE COURT OF APPEALS OF IOWA

No. 3-268 / 12-1550
Filed April 24, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ROBERT HAROLD RICE,
Defendant-Appellant.

Appeal from the Iowa District Court for Tama County, Douglas S. Russell (plea) and Marsha Beckelman (sentencing), Judges.

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

Mark C. Smith, State Appellate Defender, and Rachel C. Regenold, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Martha A. Trout, Assistant Attorney General, and Brent D. Heeren, County Attorney, for appellee.

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

EISENHAUER, C.J.

Robert Harold Rice entered a plea of guilty to four counts of third-degree burglary[1] pursuant to a written plea agreement under Iowa Rule of Criminal Procedure 2.10(2).[2] Rice agreed to join in the State's recommendation for three concurrent five-year sentences and one consecutive five-year sentence, and he agreed to make restitution. The State agreed to dismiss the remaining counts and to decline to file enhanced theft charges.[3] The prosecutor stated: "We're hoping to bind the court to the agreement in terms of the time and the incarceration. He'll make restitution for all of the offenses."

After Rice agreed to the terms of the plea, the court stated:

> THE COURT: Now, I want to tell you about Rule of Criminal Procedure 2.10. This provides that at the time of sentencing the judge will have two options. It can . . . approve your plea agreement and make it the judgment of the Court or . . . reject your plea agreement. If . . . the Court rejects your plea agreement, then you would have a right to withdraw your guilty pleas and start over. Do you understand?
>
> RICE: Yes.
>
> THE COURT: All right. Now, I don't know without reading a presentence investigation report whether I would go with this plea agreement or not, but I want you to understand that those are the two things that may happen at the sentencing.
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> RICE: Okay. I understand.

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[1] The four counts involved two Tama County cases: FECR013435 and FECR013491.

[2] Iowa Rule Criminal Procedure 2.10(2) states:

> *Advising court of agreement*. If a plea agreement has been reached by the parties the court shall require the disclosure of the agreement in open court at the time the plea is offered. Thereupon, if the agreement is conditioned upon concurrence of the court in the charging or sentencing concession made by the prosecuting attorney, the court may accept or reject the agreement, or may defer its decision as to acceptance or rejection until receipt of a presentence report.

[3] In a companion case in another county, Rice agreed to enter a plea of guilty and to run sentences concurrently with the sentences herein.

The court issued an order stating Rice's guilty pleas were taken pursuant rule 2.10(2).

At the sentencing hearing, five people made victim impact statements. Defense counsel stated he had fully discussed a rule 2.10 plea with Rice and "we are here to join in the recommendation made by the State in sentencing him to three concurrent counts and one consecutive count." Counsel also requested the court impose the minimum fines and suspend the fines "because we have agreed to incarceration."

The court asked Rice if he would like to make a statement while noting it "was rule 2.10 plea, and the sentence that was agreed upon is binding upon the court." After Rice's statement, the court sentenced him in accordance with the plea agreement, stating one reason for the sentence is "the guilty plea . . . was a plea taken pursuant to rule 2.10(2) of the Iowa Rules of Criminal Procedure." The court suspended the minimum fines and ordered restitution.

Rice appeals and argues trial counsel rendered ineffective assistance during the sentencing hearing by failing to object to four victim impact statements made by people allegedly not qualifying as victims under Iowa Code section 915.10(3) (2011). Rice asserts the court might have imposed a more lenient sentence if these improper statements had been excluded, and he seeks a remand for resentencing.

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. To prevail, Rice 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 Rice's claim on *either* the duty or the prejudice prong. *See State v. Lane*, 743 N.W.2d 178, 184 (Iowa 2007).

As to the duty prong, Rice must establish counsel's performance was outside the range of normal competency. *DeVoss v. State*, 648 N.W.2d 56, 64 (Iowa 2002). We recognize "a strong presumption trial counsel's conduct fell within the wide range of reasonable professional assistance." *Id*.

Assuming four people making statements do not qualify as victims under the statute, defense counsel had no duty to object to their statements in the circumstances of this case. The court agreed to be bound by the terms of the plea agreement in accordance with Iowa Rule of Criminal Procedure 2.10(2). "The sentence of imprisonment was therefore not the product of the exercise of trial court discretion but of the process of giving effect to the parties' [rule 2.10(2) plea] agreement." *State v Snyder*, 336 N.W.2d 728, 729 (Iowa 1983). Although the court may have listened to the allegedly improper statements, the court's comments, as detailed above, demonstrate the court recognized its sentencing discretion was limited to the plea agreement. Rice agreed to, and the court imposed, the sentence the parties agreed upon. Rice's attorney had "no duty to pursue a meritless issue." *See State v. Utter*, 803 N.W.2d 647, 652 (Iowa 2011).

Because we conclude Rice's trial attorney did not breach an essential duty, we need not address the prejudice element of his ineffective-assistance claim.

AFFIRMED.