IN THE COURT OF APPEALS OF IOWA

No. 3-348 / 12-0830
Filed July 10, 2013

CATRICIA SHELBURN,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Story County, Dale E. Ruigh, Judge.

Catricia Shelburn appeals from the district court order denying her application for postconviction relief. **AFFIRMED.**

Aaron S. Fultz of Law Office of Aaron S. Fultz, Ames, for appellant.

Thomas J. Miller, Attorney General, Darrel Mullins, Assistant Attorney General, Stephen Holmes, County Attorney, and Mary Howell Sirna, Assistant County Attorney, for appellee.

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

BOWER, J.

Catricia Shelburn appeals from the district court order denying her application for postconviction relief. Shelburn argues the district court erred in finding that her trial counsel was not ineffective by failing to assess the strength of a justification or intoxication defense, and by failing to properly advise her on whether to accept or reject a plea offer. Because we find counsel was not ineffective when limiting the investigation into a battered women's syndrome defense, and Shelburn was not prejudiced in any other way, we affirm.

I. Background Facts and Proceedings

On August 25, 2007, Catricia Shelburn stabbed and killed Larry Brown. Shelburn was charged with murder in the first degree, in violation of Iowa Code sections 707.1 and 707.2 (2007). Tomas Rodriguez and Raymond Reel were appointed as counsel to defend Shelburn. Rodriguez and Reel began investigating possible defenses, including intoxication and battered women's syndrome (BWS).[1]

Before Rodriguez and Reel could complete their investigations, however, Shelburn was presented with a plea offer that would reduce her charge to murder in the second degree.

Shelburn argues that her attorneys did not inform her of the possibility of raising either defense. She also claims her attorneys did not advise her in deciding whether to accept the plea offer. The plea offer did contain a deadline, and during the period it was available to her, Shelburn spoke with her attorneys

---

[1] Rodriguez and Reel, each of whom was employed as a public defender, used a private investigator employed by the public defender's office to begin the investigation.

and members of her family about her decision. Despite stating, at the time of her plea, that she understood the choices before her, she now claims that her minimal education and illiteracy prevented her from understanding the situation.[2] Shelburn now argues that she would not have accepted the plea offer if she had known a BWS or intoxication defense was available to her.

Shelburn accepted the plea offer and was sentenced to a term not to exceed fifty years with a requirement that she serve seventy percent of the term before she is eligible for parole.[3]

Shelburn filed her application for postconviction relief on February 11, 2009. Trial was held on September 7, 2011. In its order denying the application, the district court concluded Shelburn was not misled as to the terms of the plea, she was not pressured to accept the plea, she understood the proceedings, and her trial counsel was not ineffective for failing to investigate and assert the defenses.

II. Standard of Review

Claims of ineffective assistance of counsel are reviewed de novo. *Ennenga v. State*, 812 N.W.2d 696, 701 (Iowa 2012).

III. Discussion

Shelburn raises two separate claims of ineffective assistance of counsel. First, she claims her counsel was ineffective by failing to adequately investigate

---

[2] In addition to arguments about the available defenses, Shelburn also claims the terms of her plea were not adequately explained to her. Specifically, she alleges that she was led to believe that she would only serve half of the mandatory minimum of thirty-five years. This argument was not directly raised on appeal.

[3] For reasons not entirely clear on the record, two plea hearings were held. Shelburn did not raise any concern about her available defenses during either hearing.

and explain to her the BWS and intoxication defenses. Second, she argues that counsel was ineffective by failing to advise her as to whether she should accept or reject the plea offer.

We begin by noting that Shelburn's plea alters the usual ineffective-assistance-of-counsel analysis. Guilty pleas, when accepted by the court, are meant to be final adjudications of guilt. *State v. LaRue*, 619 N.W.2d 395, 397 (Iowa 2000). The State has a right to anticipate the finality of the defendant's decision to accept the plea. *Id.* "Following a valid guilty plea only those challenges that are fundamental to the plea itself still remain available to the defendant." *Id.* Shelburn may escape the finality of her guilty plea by showing that her counsel was ineffective in connection with the plea and that the error made her plea unintelligent or involuntary. *See State v. Utter*, 803 N.W.2d 647, 651 (Iowa 2011). In addition to the usual showing that counsel acted ineffectively, she must also show prejudice by displaying a reasonable probability she would have proceeded to trial but for the errors of counsel. *Id.* at 654.

A. Battered Women's Syndrome

Shelburn argues counsel was ineffective for failing to properly investigate and advise her as to the strength of a BWS defense. The district court found the claim does not inhere to the plea itself and, therefore, does not render it unintelligent or involuntary. The district court also found the ineffective-assistance-of-counsel claim lacks merit. The question before us is whether Shelburn's counsel was ineffective for failing to investigate the BWS defense and whether that ineffectiveness caused her to plead guilty.

Before her ineffectiveness claim may succeed, Shelburn must establish that her counsel was ineffective and that the ineffectiveness of her counsel prejudiced her in some way. *Ledezma v. State*, 626 N.W.2d 134, 142 (Iowa 2001).

To be effective, counsel has a duty to engage in a reasonable investigation or make a reasonable determination that a particular investigation is unnecessary. *Strickland v. Washington*, 466 U.S. 668, 691 (1984). "In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." *Id.* Counsel need not investigate every possible defense, no matter how implausible its effect; but rather the investigatory decisions must be reasonable under the given circumstances. *Wiggins v. Smith*, 539 U.S. 510, 533 (2003). When examining an incomplete investigation, we are to determine whether the choices made were reasonable when deciding to limit the investigation. *Strickland*, 466 U.S. at 690–91; *King v. State*, 797 N.W.2d 565, 571 (Iowa 2011). The investigation must be reasonable under the circumstances, or a reasonable decision must be made that the investigation was unnecessary. *Ledezma*, 626 N.W.2d at 146. Counsel need not proceed with an investigation when information provided by the defendant or others makes it clear the investigation would be fruitless. *Id.*

Though not binding upon us, we have previously acknowledged that BWS is not a defense unto itself, but instead offers jurors a window through which a justification claim of self-defense may be understood in a particular case. *State*

v. Price, No. 07-1659, 2008 WL 5234351, at *6 (Iowa Ct. App. Dec. 17, 2008). When a defense of BWS is presented, the State may disprove it by establishing any one of the following: (1) the defendant initiated or continued the fatal incident, (2) the defendant did not believe there was an imminent danger requiring deadly force, (3) the defendant did not have a reasonable grounds for believing deadly force was necessary, or (4) the force actually employed was not reasonable. *See State v. Nunn*, 356 N.W.2d 601, 604 (Iowa Ct. App. 1984) (reversed on other grounds by *State v Reeves*, 636 N.W.2d 22, 26 (Iowa 2001)). If Shelburn's counsel believed the State was likely to disprove any one of these requirements, counsel would be justified in stopping any investigation into the defense.

Shelburn was charged by trial information on September 5, 2007. The plea was not entered until the following January. Counsel was aware of the violent history between Shelburn and Brown and had ample time to conduct an investigation into possible defenses. Counsel contacted an expert on BWS who educated them on the defense and instructed them to investigate key witnesses and family members.[4] Counsel concluded, based upon admissions made by Shelburn to law enforcement, that the BWS justification defense would have been very difficult to pursue. We find this to be a reasonable decision. Competent evidence indicated, before the stabbing, Shelburn was chasing and

[4] The investigation and accompanying interviews were conducted before counsel spoke with the BWS expert. We reject the implication that the investigation was less complete or sufficient because it preceded the expert's recommendations. The information gathered by the experienced investigator would have been helpful in assessing the defense even though it was gathered before the expert's guidance was secured.

threatening Brown, and others had taken a knife away from Shelburn on multiple occasions. The police report indicated that, immediately following the stabbing, witnesses described Shelburn as the aggressor who refused to leave Brown alone. At least one witness was prepared to testify that Brown had been sleeping at the time he was stabbed. Because, Shelburn instigated the attack, we find counsel's decision to limit the investigation into the BWS defense to be a reasonable trial strategy.

B. Intoxication

Shelburn also argues her counsel was ineffective for failing to adequately investigate and advise her on the defense of intoxication. Again, Shelburn must establish both that her counsel was ineffective and the ineffectiveness prejudiced her. *Ledezma*, 626 N.W.2d at 142. Assuming without deciding counsel was ineffective for failing to properly investigate issues of intoxication, we cannot say Shelburn was prejudiced. Intoxication is a limited defense which, in this case, may only serve to reduce the charge of first-degree murder to second-degree murder. *See* Iowa Code § 701.5; *State v. Caldwell*, 385 N.W.2d 553, 557 (Iowa 1986) (holding that because intoxication is not a defense, but rather a method by which a defendant may attack the intent element of a crime, it may not be used to mitigate murder to manslaughter). Though we are only concerned with the question of whether the failure to investigate the intoxication claim would have impacted Shelburn's decision to accept the plea, we find Shelburn's insistence that she would have proceeded to trial, but for the allegedly ineffective investigation into the intoxication defense, to be unpersuasive. Armed with a

well-investigated intoxication claim, the best result Shelburn could have received at trial was second-degree murder, the same charge offered by the State. We do not believe she would have proceeded to trial in such a circumstance. Lacking prejudice, Shelburn's ineffective-assistance claim fails.

C. Advice of Counsel

Shelburn argues her counsel were ineffective by failing to advise her as to whether she should accept or reject the plea offer. She argues that the plea bargain process is an especially important portion of the process and counsel's failure to advise her as to whether to accept or reject the plea left her essentially without the benefit of counsel.

There is support for the proposition that counsel must provide a client with actual advice on the propriety of accepting or rejecting a plea offer. *See, e.g.*, *Purdy v. United States*, 208 F.3d 41, 44–45 (2d Cir. 2000). Though we are not bound by the decision, we have previously held that there are circumstances where counsel is not required to offer an explicit recommendation. *See Haskins v. State*, No. 99-0901, 2000 WL 1724541, at *3–5 (Iowa Ct. App. Nov. 20, 2000). Because we find that Shelburn suffered no prejudice, however, we do not address whether counsel performed effectively in this case.

To show prejudice Shelburn must prove that she would have proceeded to trial but for the alleged ineffectiveness of counsel. In the present circumstances she has failed to do so. Shelburn's claim requires us to find that counsel should have recommended she reject the plea bargain and that she would have followed

that advice if offered.[5] We cannot say counsel should have recommended she reject the offer for reasons detailed above. Rejecting the plea offer would have required her to stand trial and a life sentence if convicted with defenses unlikely to be successful. The intoxication claim would have left her where she stands today, and the BWS justification defense had little chance of success, as reflected in the reasoned investigatory decisions made by counsel. Because we cannot say that in order to be effective counsel must have recommended proceeding to trial on these facts, Shelburn is unable to show prejudice. We agree with the analysis of the district court.

AFFIRMED.

[5] We also reject any argument that Shelburn is prejudiced because counsel did not advise her to reject the plea. There can be no prejudice connected to the plea itself if the argument requires us to find that Shelburn would have dismissed the advice of counsel and rejected the plea.