

IN THE COURT OF APPEALS OF IOWA

No. 3-445 / 12-1694
Filed June 26, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CASARIS AMALIA CANTARERO-DIAZ,
Defendant-Appellant.

Appeal from the Iowa District Court for Wapello County, Kirk A. Daily,
District Associate Judge.

Casaris Amalia Cantarero-Diaz appeals her conviction for the crime of
identity theft, in violation of Iowa Code section 715A.8(3) (2011). **AFFIRMED.**

Dan Vondra of Cole & Vondra, L.L.P., Iowa City, for appellant.

Thomas J. Miller, Attorney General, Elisabeth Reynoldson, Assistant
Attorney General, and Lisa Holl, County Attorney, for appellee.

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

BOWER, J.

Casaris Amalia Cantarero-Diaz appeals her conviction for the crime of identity theft, in violation of Iowa Code section 715A.8(3) (2011). Cantarero-Diaz argues her trial counsel was ineffective in failing to advise her of the immigration consequences of her decision to plead guilty. On appeal, we find the record is insufficient to pass upon the merits of her arguments and preserve her ineffective assistance-of-counsel claim for postconviction relief.

I. Background Facts and Proceedings

Cantarero-Diaz was arrested after an Iowa Department of Transportation investigation revealed she had obtained an Iowa driver's license under two different names. The minutes of testimony further alleged Cantarero-Diaz had used one of the licenses to obtain employment where her compensation was in excess of \$1000. She was charged with identity theft with intent to obtain a benefit worth over \$1000, in violation of Iowa Code section 715A.8, a class "D" felony.

Cantarero-Diaz was appointed counsel and provided with an interpreter due to her inability to understand the English language. She entered a written guilty plea to a lesser included charge under the same code section, an aggravated misdemeanor. Cantarero-Diaz was sentenced, under the terms of a plea agreement, to a suspended sentence not to exceed two-years. She argues on appeal her trial counsel was ineffective for failing to advise her of the immigration consequences associated with her guilty plea.

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

Cantarero-Diaz alleges her trial counsel was ineffective for failing to advise her of the immigration consequences of her plea, and she was prejudiced because had she known of the immigration consequences, she would not have entered a guilty plea.

An ineffective-assistance-of-counsel claim requires a demonstration of both ineffective assistance and prejudice. *Ledezma v. State*, 626 N.W.2d 134, 142 (Iowa 2001) (citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984)). The ineffective-assistance prong requires proof the attorney performed below the standard demonstrated by a reasonably competent attorney as compared against prevailing professional norms. *Id.* The prejudice prong requires proof that, but for the ineffective assistance, “the result of the proceeding would have been different.” *Strickland*, 466 U.S. at 694. When the defendant has entered a guilty plea, prejudice must be shown by demonstrating that the ineffective assistance rendered the plea unintelligent or involuntary. *See State v. Carroll*, 767 N.W.2d 638, 643-44 (Iowa 2009) (discussing the limited number of appealable issues which survive the presumed finality of a guilty plea).

When an ineffective-assistance-of-counsel claim is raised on direct appeal, we may consider the merits if the record is adequate to do so, or we may preserve the claim for postconviction relief proceedings. *State v. Straw*, 709

N.W.2d 128, 133 (Iowa 2006). Rarely is the record adequately developed on direct appeal providing us with the information necessary to resolve the claim. See *State v. Atley*, 564 N.W.2d 817, 833 (Iowa 1997).

Counsel has a duty to advise the client of the “direct collateral consequences of a plea bargain.” *Daugenbaugh v. State*, 805 N.W.2d 591, 594 (Iowa 2011) (citing *Padilla v. Kentucky*, 559 U.S. 356 (2010)). The record in this case does not provide any indication of what advice or information Cantarero-Diaz’s trial counsel gave her before she entered her plea. We do not know if she was informed of the possible immigration consequences, or if she was informed and now regrets her decision to plead guilty. The record is devoid of any testimony or evidence from Cantarero-Diaz which would satisfy the prejudice element.

Cantarero-Diaz’s asks us to apply a per se rule in cases of this type and presume the presence of immigration consequences after a guilty plea. Cantarero-Diaz also asks us to establish a per se rule presuming prejudice anytime immigration consequences are possible. We decline to do so. Her ineffective-assistance-of-counsel claim is therefore preserved for postconviction relief.

AFFIRMED.