IN THE COURT OF APPEALS OF IOWA

No. 6-784 / 06-0076
Filed March 28, 2007

HEIDI ANN ANFINSON,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Scott D. Rosenberg, Judge.

Heidi Anfinson appeals the district court's denial of her application for postconviction relief. **AFFIRMED.**

Alfredo Parrish and Brandon Brown of Parrish, Kruidenier, Moss, Dunn, Boles, Gribble, and Cook, L.L.P., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Sheryl A. Soich and Cristen Douglass, Assistant Attorneys General, John P. Sarcone, County Attorney, and Joe Weeg, Assistant County Attorney, for appellee State.

Heard by Mahan, P.J., and Miller and Vaitheswaran, JJ.

VAITHESWARAN, J.

Heidi Anfinson appeals the district court's dismissal of her application for postconviction relief. We affirm.

I. Background Facts and Proceedings

Heidi and Michael Anfinson had a son, Jacob. When Jacob was fifteen days old, Michael discovered that he was missing. The police were notified. They obtained a written statement from Heidi Anfinson and interviewed her at the police station. Heidi eventually led police to Saylorville Lake, where they discovered Jacob's body.

The State charged Heidi Anfinson with first-degree murder and child endangerment pursuant to Iowa Code sections 707.1, 702.2, 726.6(1) and 726.6(2) (1997). The first trial resulted in a mistrial. At a second trial involving the same charges, a jury found her guilty of second-degree murder. On appeal, our court affirmed the judgment and conviction but preserved several claims for postconviction relief. *State v. Anfinson*, No. 00-0511 (Iowa Ct. App. July 3, 2002).

Anfinson filed an application for postconviction relief. Following an evidentiary hearing, the district court dismissed the application. This appeal followed.

II. Analysis

Anfinson contends trial counsel was ineffective in: (A) failing to investigate or pursue an insanity or diminished responsibility defense prior to the suppression hearing and at trial; (B) failing to seek suppression of a written

statement Anfinson provided to police, and portions of her first police interview; (C) failing to object to certain trial testimony; and (D) improperly advising her on the factual basis required to satisfy the State's plea offer. Our review of these constitutional issues is de novo. *Ledezma v. State*, 626 N.W.2d 134, 141 (Iowa 2001).

To prevail on a claim of ineffective assistance of counsel, an applicant must show (1) a failure to perform an essential duty, and (2) resulting prejudice. *Strickland v. Washington*, 466 U.S. 668, 690, 104 S. Ct. 2052, 2066, 80 L. Ed. 2d 674, 695 (1984). A court need not always address both elements. *Ledezma*, 626 N.W.2d. at 142. "If the claim lacks prejudice, it can be decided on that ground alone without deciding the attorney performed deficiently." *Id*.

A. Insanity or Diminished Capacity

Anfinson contends "trial counsel provided ineffective assistance of counsel by failing to investigate an insanity or diminished capacity defense that could have been utilized at a suppression hearing or during trial as an affirmative legal defense." In a detailed ruling, the district court determined that trial counsel should have investigated Anfinson's mental state. The court nevertheless rejected Anfinson's ineffective assistance of counsel claim on the ground that she did not prove she was prejudiced by this breach. The court noted that "no expert testimony was provided at the postconviction trial in this matter to demonstrate that Ms. Anfinson suffered from insanity or diminished responsibility at or about the time of Jacob's death." The court also stated that, even if such evidence had been presented, it was "not clear whether that would have been sufficient for a

defense of insanity or diminished responsibility." Finally, the court stated "the fact that Ms. Anfinson was found guilty of second-degree murder and not first-degree murder after a first trial resulted in a hung jury indicates that [defense counsel's] strategy was not without merit."

We will only address the prejudice prong of Anfinson's claim. On this prong, Anfinson argues that, had evidence of postpartum depression been introduced as part of the defenses of diminished responsibility and insanity, that evidence would have "negated the malice aforethought element included in the murder charges" and would have negated "the specific intent to commit a crime."

We begin with the defense of diminished responsibility or capacity. Even if we assume that postpartum depression may be a basis for such a defense, a proposition for which there is no Iowa authority,[1] it is well-established that diminished responsibility cannot negate the element of malice aforethought and is not a defense to general intent crimes. *State v. Artzer,* 609 N.W.2d 526, 531 (Iowa 2000); *State v. Plowman*, 386 N.W.2d 546, 547 (Iowa 1986); *State v. McVey*, 376 N.W.2d 585, 588 (Iowa 1985); *Veverka v. Cash*, 318 N.W.2d 447, 449 (Iowa 1982); *State v. Gramenz*, 256 Iowa 134, 142, 126 N.W.2d 285, 290 (Iowa 1964). The crime the jury found Anfinson guilty of committing was second-degree murder. This crime required proof of malice aforethought and did not

[1] In *State v. Khouri*, 503 N.W.2d 393, 394 (Iowa 1993), the Iowa Supreme Court rejected a defense assertion that the doctrine of diminished capacity should be expanded to encompass extreme emotional disturbance.

require proof of specific intent.[2] Under the cited precedent, the defense of diminished responsibility could not have negated these elements. Because Anfinson was not found guilty of first-degree murder, a crime to which the defense of diminished responsibility might have applied, but was instead found guilty of second-degree murder, a crime to which the defense of diminished responsibility did not apply, she suffered no prejudice by counsel's failure to investigate this defense.

As for the insanity defense, none of the experts testified that Anfinson met the standard at the time of Jacob's death. Iowa Code § 701.4. Therefore, there is no reasonable probability that, had this defense been raised, it would have been successful.

B. Suppression of Statements Provided to Police

Anfinson next contends "defense counsel should have investigated" the defenses of diminished responsibility and insanity prior to the suppression hearing in order to "demonstrate she did not know what she was doing and that her statements to the police were not voluntary." We have addressed most of this argument above. We turn to the portion of the argument asserting that defense counsel should have challenged the police officers' failure to give her *Miranda* warnings before taking a written statement from her and before the first eleven minutes of questioning at the police station. As the trial court found,

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[2]The jury was instructed that the State would have to prove the following elements of second-degree murder:

> 1. On or about the 20th day of September, 1998, the defendant drowned Jacob Anfinson.
> 2. Jacob Anfinson died as a result of drowning.
> 3. The defendant acted with malice aforethought.

The jury was also instructed that "Murder in the Second Degree does not require a specific intent to kill another person."

Anfinson was not in custody during the times those statements were elicited. Therefore, *Miranda* was not triggered. *State v. Countryman*, 572 N.W.2d 553, 557 (Iowa 1997) ("*Miranda* warnings are not required unless there is both custody and interrogation."). However, even if she was in custody, she has not pointed to anything in the written statement or in the first eleven minutes of the interview that, if suppressed, may reasonably have resulted in a different outcome. She simply asserts that, because the written statement was read to the jury, her "credibility and truthfulness" were prejudiced. We conclude this assertion is too general to address. *See Dunbar v. State*, 515 N.W.2d 12, 15 (Iowa 1994). Accordingly, we reject this ineffective-assistance-of-counsel claim.

C. Trial Testimony Regarding Anfinson's "Mental State"

Prior to trial, the State filed a motion in limine requesting the exclusion of any testimony concerning the defenses of insanity, intoxication and diminished responsibility. The district court granted the motion, stating "None of the witnesses in the trial should make any reference to the Defendant's mental state."

At trial, several police officers testified to Anfinson's lack of emotion. Trial counsel did not object to this testimony. Anfinson contends his inaction amounted to ineffective assistance.

At the postconviction relief trial, trial counsel explained that he did not object to the cited testimony because the district court's ruling on the motion in limine only addressed legal defenses and not demeanor evidence. The district court accepted this explanation, stating:

> The order granting the motion in limine directed that witnesses in the trial should make no reference to the defendant's mental state. It did not preclude observations concerning her demeanor. The evidence that was elicited by the various police officers was admissible as to the Applicant's demeanor. It does not appear to this Court to have violated the Court's order upon the motion in limine.

We agree with this reasoning. *See* Black's Law Dictionary 463 (8th ed. 1999) (defining "demeanor" as "[o]utward appearance or behavior, such as facial expressions, tone of voice, gestures and the hesitation or readiness to answer questions."). *See also Schrier v. State*, 347 N.W.2d 657, 665 (Iowa 1984) (finding demeanor evidence "relevant and material" to the jury's understanding of the events and "a legitimate basis for inferring consciousness of guilt"). As the police officers' testimony about Anfinson's demeanor did not violate the district court's ruling on the motion in limine, trial counsel was not ineffective in failing to object to it.

D. Factual Basis For State's Plea Offer

The State offered Anfinson the opportunity to plead guilty to child endangerment. Anfinson rejected this offer. In an on-the-record discussion of the plea offer, Anfinson stated she was unwilling to plead guilty to the crime because it called for her to admit to three separate acts of child endangerment. Additionally, she testified she was unwilling to admit that she knew the baby was alive when she took him to the lake.

On direct appeal, Anfinson's counsel asserted that trial counsel was ineffective in failing to inquire about an *Alford* plea.[3] We rejected this ineffective-

[3] An *Alford* plea is a variation of a guilty plea in which the defendant does not admit participation in the acts constituting the crime but consents to the imposition of a

assistance-of-counsel claim, noting that *Alford* pleas, like other pleas, required a factual basis and there was no showing of "three separate acts of child endangerment."

Following the postconviction relief hearing, Anfinson asked to amend the petition to conform to the proof with respect to the guilty plea discussion by trial counsel. The district court allowed the amendment but rejected the claim. The court stated:

> Ms. Anfinson further claims that [defense counsel] failed to properly instruct her about all the plea offers made by the State of Iowa. Specifically, when [defense counsel] explained to her the offer made by the State to plead to three acts of child endangerment of which one of the acts required a serious injury to the child, he misrepresented the necessary factual basis. However, the record is clear that no factual basis could have been made because Ms. Anfinson was consistent in her belief that any "serious injury" was an accident and that Jacob was not alive when placed in Saylorville Lake. (Transcript of postconviction proceedings, pages 286-87, 321-23). The Court finds that the [Applicant's] position regarding plea offers and any alleged ineffectiveness by [defense counsel] are without merit. Ms. Anfinson has consistently maintained up to the time of and including the postconviction trial that any injury including the death of Jacob was an accident. Further, there was no factual basis upon which such a plea could have been made based upon Ms. Anfinson's consistent and stated position concerning the events leading up to and including the death of Jacob. No essential duty was neglected by [defense counsel] in this regard and this issue is without merit.

On appeal from this ruling, Anfinson contends "trial counsel failed to fully apprise [her] of the child endangerment plea offer because he was under the false impression that she would have to admit that she placed her child in Saylorville Lake while he was still alive." She suggests that she could have pled guilty to child endangerment based on three acts other than her placement of the baby in

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sentence. *North Carolina v. Alford,* 400 U.S. 25, 37, 91 S. Ct. 160, 167, 27 L. Ed. 2d 162, 171 (1970)*; State v. Burgess*, 639 N.W.2d 564, 567 n.1 (Iowa 2001).

the lake. She states, for example, that trial counsel could have advised her to plead guilty based on her earlier placement of the baby in the bathtub and based on other acts that might have occurred before the day of young Jacob's death. Postconviction counsel does not elaborate on what those prior incidents might have been. We conclude this ineffective assistance of counsel claim is too speculative to decide on the merits. *See Dunbar,* 515 N.W.2d at 15.

II. Disposition

We affirm the dismissal of Anfinson's postconviction relief application.

AFFIRMED.