IN THE COURT OF APPEALS OF IOWA

No. 7-063 / 06-0390
Filed April 25, 2007

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DANIEL JOSEPH DAWSON,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Nancy S. Tabor, Judge.

Daniel Joseph Dawson appeals from his convictions and sentences for murder in the second degree, assault with intent to inflict serious injury, and domestic abuse assault, second offense. **AFFIRMED.**

Daniel Joseph Dawson, Anamosa, pro se.

Mark C. Smith, State Appellate Defender, and Patricia Reynolds, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Mary Tabor and Ann E. Brenden, Assistant Attorneys General, William E. Davis, County Attorney, and Joseph A. Grubisich, Assistant County Attorney, for appellee.

Heard by Huitink, P.J., and Zimmer and Vaitheswaran, JJ.

HUITINK, P.J.

Daniel Joseph Dawson appeals from his convictions and sentences for murder in the second degree, assault with intent to inflict serious injury, and domestic abuse assault, second offense. We affirm.

I. Background Facts and Proceedings

On September 28, 2005, the State filed a three-count trial information charging Dawson with murder in the first degree (Count I), willful injury (Count II), and domestic abuse assault (Count III). All three charges were based on allegations that Dawson beat and stabbed Debra Mead to death at their home in Davenport on August 18, 2005. Dawson would subsequently claim Mead's death was accidental and pleaded not guilty to all charges in the trial information.

The trial record includes the following evidence: On August 18, 2005, Dawson called 911. A recording of his conversation with the 911 operator indicates Dawson stated he had his last fight with Mead and that she was "pretty much dead." The responding police officers' dashboard video of their initial encounter with Dawson indicates Dawson made several incriminatory statements, including "[he had] been through this with her twice before and this was the last time"; "I was tired of dealing with her"; "I stabbed her with my fucking knife. She's dead now"; "that fucking bitch ain't gonna threaten me no more"; and "Her psychiatrist can't help her now."

The record also indicates the police officers found Mead lying on the kitchen floor with a knife protruding from her chest and that Mead died en route to the hospital. The medical examiner's report indicates Mead suffered multiple

blunt trauma injuries, multiple stab wounds, and died as a result of a stab wound to the chest.

Dawson's trial testimony included the details of his domestic relationship with Mead, two prior convictions for domestic abuse assault, as well as a description of the physical altercation culminating in Mead's death. Although Dawson admitted stabbing Mead, he also testified that it was Mead who first reached for the knife and that during the ensuing struggle over the knife, they fell to the floor and the knife accidentally entered her chest.

The jury returned verdicts finding Dawson guilty of the lesser-included offenses of murder in the second degree, assault with intent to inflict serious injury, and domestic abuse assault. The trial court entered judgment of conviction and sentence in accordance with the verdict. On appeal, Dawson, through his appellate counsel and a pro se brief, raises a host of issues. The issues included in appellate counsel's brief are:

I. Trial counsel was ineffective:
   a. For failing to object to prejudicial hearsay in written form.
   b. For failing to object to prior crimes evidence.
   c. For failing to object to jury instruction 20, which failed to require the jury to find that Mr. Dawson had been convicted of a prior domestic abuse assault.

II. The court erred in sentencing Mr. Dawson without giving reasons for consecutive sentences.

In his pro se brief, Dawson argues trial counsel was ineffective because:

I. Trial counsel's failure to file a motion to suppress statements based on a pre-*Miranda* violation.

II. Trial counsel's failure to call witnesses from the bar they visited on the day of the incident.

III. Trial counsel's failure to voir dire the jury that was impaneled with regards to domestic abuse violence.

IV. Trial counsel's failure to object to autopsy photographs that were introduced at his trial that were prejudicial.

V. Trial counsel's failure to obtain victim's medical/criminal record which denied him his right to present a defense.

II. Standard of Review.

Our review of ineffective assistance of counsel claims is de novo. *State v. Tejeda*, 677 N.W.2d 744, 754 (Iowa 2004). Our review of sentencing errors is for correction of errors at law. *State v. Thomas*, 547 N.W.2d 223, 225 (Iowa 1996).

III. Ineffective Assistance of Counsel.

Ineffective assistance of counsel claims are an exception to the general error preservation rule. *State v. Bergmann*, 633 N.W.2d 328, 332 (Iowa 2001). We ordinarily preserve claims of ineffective assistance of counsel raised on direct appeal for postconviction proceedings to allow full development of the facts surrounding counsel's conduct. *State v. Atley*, 564 N.W.2d 817, 833 (Iowa 1997). "Only in rare cases will the trial record alone be sufficient to resolve the claim." *Id*. However, when the record is adequate, the appellate court should decide the claim on direct appeal. *State v. Truesdell*, 679 N.W.2d 611, 616 (Iowa 2004). Preserving ineffective assistance of counsel claims that can be resolved on direct appeal wastes time and resources. *Id*.

The test to be applied to a claim of ineffective assistance of counsel is whether under the entire record and the totality of the circumstances counsel's performance was within the range of normal competency. *Meier v. State*, 337 N.W.2d 204, 206 (Iowa 1983). When the claim is grounded on counsel's failure to take some action, the defendant must demonstrate: (1) counsel failed to perform an essential duty and (2) prejudice resulted. *Id*. The defendant bears the burden of demonstrating ineffective assistance of counsel, and both prongs

of the claim must be established by a preponderance of the evidence before relief can be granted. *Ledezma v. State*, 626 N.W.2d 134, 142 (Iowa 2001). The defendant must show there is a reasonable probability that, but for counsel's unprofessional error, the result of the proceeding would have been different. *Gering v. State*, 382 N.W.2d 151, 153-54 (Iowa 1986). A reasonable probability is a probability sufficient to undermine confidence in the outcome. *Taylor v. State*, 352 N.W.2d 683, 685 (Iowa 1984). There is no reasonable probability of a different result if the evidence against the defendant is overwhelming. *See State v. Newell*, 710 N.W.2d 6, 32 (Iowa 2006); *Wenmark v. State*, 602 N.W.2d 810, 817 (Iowa 1999). In assessing counsel's conduct, we note that "[i]mprovident trial strategy, miscalculated tactics, and mistakes in judgment do not necessarily amount to ineffective assistance of counsel." *State v. McKettrick*, 480 N.W.2d 52, 55 (Iowa 1992). We need not determine whether trial counsel's performance was deficient before examining the prejudice component of the defendant's ineffective-assistance claim. *State v. Tate*, 710 N.W.2d 237, 240 (Iowa 2006).

Even if we assume without deciding that all of Dawson's ineffective assistance of counsel claims are properly before us, and that counsel breached an essential duty in each of the particulars claimed, Dawson's ineffective assistance of counsel claims fail because he cannot establish the requisite prejudice. The evidence against Dawson is fairly characterized as overwhelming. During his initial encounter with police officers and again at trial, Dawson admitted stabbing Mead. Dawson also admitted a prior incident of domestic abuse assault, as well as physically abusing Mead prior to stabbing her to death. The medical evidence indicates Mead suffered bruises, abrasions, as

well as multiple stab wounds during the course of the altercation with Dawson. Based on our de novo review of the record, we conclude there is no reasonable probability of a different result and Dawson suffered no prejudice as a result of counsel's alleged breach of an essential duty. We accordingly reject all of Dawson's ineffective assistance of counsel claims and affirm on this issue.

IV. Sentencing.

Dawson's final argument is the trial court erred in sentencing him without giving reasons for consecutive sentences. Dawson was sentenced to a term of fifty years on Count I and a term of two years on Count III. The trial court ordered that these sentences run consecutively. The trial court must state on the record its reasons for imposing consecutive sentences. *State v. Jacobs*, 607 N.W.2d 679, 690 (Iowa 2000). Although the reasons need not be detailed, at least a cursory explanation must be provided to allow appellate review of the trial court's discretionary action. *Id*. Dawson claims the trial court provided no explanation for the imposition of consecutive sentences. The following is the relevant portion of the sentencing transcript:

> Mr. Dawson, this is a case where there is just an inexcusable and horrible waste of two lives, to begin with, and many others that have been affected on both sides of this courtroom today. It was a horrible crime, horrible circumstances. I did listen to the trial, and I think that you need to know that I find it even more offensive that there were several times during this incident you could have stopped short of what eventually happened. You followed the victim into the kitchen. Didn't have to do that. You went past the unlocked door of your trailer; you could have left the situation. You did not do that. In this case I believe that accountability and the public safety dictate the sentence. And for those reasons, and pursuant to Iowa law, you will be sentenced under Count 1, murder in the second degree, to be confined for a term not to exceed fifty years . . . . As to Count 3, the domestic assault, I will order that you be confined for a term not to exceed

> two years, that you pay court-appointed fees for that, and I'm going to order that the sentences run consecutive to one another.

Dawson contends the trial court provided no reason for imposing consecutive sentences. In support of his contention, he notes the supreme court found sentencing errors in *State v. Jacobs,* 607 N.W.2d at 690, and *State v. Uthe*, 542 N.W.2d 810, 816 (Iowa 1996). In *Jacobs*, the trial court imposed a combination of sentences to run concurrently and consecutively for a term not to exceed thirty years. *Jacobs*, 607 N.W.2d at 690. In its remarks imposing the sentence, the trial court characterized the defendant's actions as "despicable" and "cold and calculated." *Id*. It noted the defendant had preyed upon "the very people who could least afford it. *Id*. The supreme court found the trial court failed to state reasons for imposing consecutive sentences and remanded the case for resentencing. *Id*. In *Uthe*, the defendant was convicted of three charges, and the trial court ordered the sentences to run consecutively. *Uthe*, 542 N.W.2d at 816. At the sentencing, the trial court refused to grant probation "because it [was] unwarranted to protect the public from further criminal activity by the defendant and would [have] unduly lessen[ed] the seriousness of the offense." *Id*. The supreme court found the trial court had failed to provide "even a terse explanation of why it imposed consecutive, as opposed to concurrent, sentences for the three offenses." *Id.* The supreme court also found there was nothing else in the sentencing colloquy which would enable it to review the court's reasoning. As a result, Uthe's sentence was vacated. *Id.*

We find Dawson's case is distinguishable from *Jacobs* and *Uthe*. In both cases, the defendants were eligible for an ameliorative sentencing option.

Jacobs could have received a suspended sentence, which was recommended by the presentence investigator. *Jacobs*, 607 N.W.2d at 690. Uthe was eligible for probation. *Uthe*, 542 N.W.2d at 816. The State points out Dawson "was not entitled to consideration of an ameliorative sentencing option because he was convicted of second-degree murder, a forcible felony." Iowa Code §§ 702.11 and 907.3. Additionally, the reasons need not be specifically tied to the imposition of consecutive sentences, but may be found from the reasons expressed for the overall sentencing plan. *State v. Johnson*, 445 N.W.2d 337, 343 (Iowa 1989). The trial court indicated it had read the presentence investigation and reviewed the record. The trial court noted it also had information because it had presided over the trial. Immediately before imposing the sentence, the trial court discussed the nature of the crime, the opportunities Dawson had to walk away and prevent the crime from happening, and its belief that "accountability and the public safety dictate[d] the sentence." We find these reasons sufficient to uphold the imposition of consecutive sentences.

AFFIRMED.