IN THE COURT OF APPEALS OF IOWA

No. 9-278 / 08-1292
Filed May 6, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JUAN DONTAE SHELTON,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, J. Hobart Darbyshire (plea) and Mark D. Cleve (sentencing), Judges.

Juan Shelton appeals from his conviction and sentence for robbery in the second degree. **AFFIRMED.**

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

Thomas J. Miller, Attorney General, Kyle Hanson, Assistant Attorney General, Michael J. Walton, County Attorney, and Kelly Cunningham, Assistant County Attorney, for appellee.

Considered by Vaitheswaran, P.J., and Potterfield and Doyle, JJ.

DOYLE, J.

Juan Shelton appeals from his conviction and sentence following his plea of guilty to robbery in the second degree. He contends his trial counsel was ineffective for failing to file a motion in arrest of judgment based on the court's failure to review with him the constitutional rights he was waiving by pleading guilty. Upon our review, we affirm.

I. Background Facts and Proceedings.

According to the complaint and affidavit filed April 3, 2008, and minutes of testimony, on March 15, 2008, Shelton and two others entered a Davenport Hy-Vee parking lot in a van with the intent to rob someone and randomly chose a victim. Shelton, armed with a .22 caliber revolver, got out of the van and approached the victim. The victim entered the store before Shelton could rob him. When Shelton and one of his accomplices entered the store, they were captured on the store's video surveillance system. Once in the store, Shelton told the victim he was armed with a gun. The victim was forced to leave the store with Shelton and get into the van, where he was robbed and beaten. After the van drove to a nearby alley, the victim escaped by opening the door and jumping from the van.

By trial information filed April 11, 2008, Shelton was charged with robbery in the first degree (Count 1), in violation of Iowa Code section 711.2 (2007); kidnapping in the second degree (Count 2), in violation of section 710.3; felon in possession of firearm (Count 3), in violation of section 724.26; and attempted burglary in the first degree (Count 4), in violation of section 713.4. Following a plea agreement, Shelton agreed to enter a plea of guilty to a lesser-included

charge of robbery in the second degree under Count 1, and in return the State agreed to dismiss counts 2, 3, and 4 at the time of sentencing. After the court accepted his plea, Shelton was sentenced to ten years imprisonment, with credit for the time he spent in the Scott County Jail. The sentence was subject to the seventy percent mandatory minimum under section 902.12(5). Shelton timely filed his notice of appeal on August 8, 2008. He contends his counsel was ineffective in not filing a motion in arrest of judgment.

II. Scope and Standard of Review.

Failure to file a motion in arrest of judgment generally precludes challenges to a guilty plea on appeal. Iowa Rs. Crim. P. 2.24(3)(*a*), 2.8(2)(*d*); *State v. Kress*, 636 N.W.2d 12, 19 (Iowa 2001). However, the failure to file a motion in arrest of judgment will not preclude the claim if the failure was the result of ineffective assistance of counsel. *State v. Bearse*, 748 N.W.2d 211, 218 (Iowa 2008); *Kress*, 636 N.W.2d at 19.

Our review of ineffective assistance of counsel claims is de novo. *State v. Straw*, 709 N.W.2d 128, 133 (Iowa 2006). We typically preserve these claims for postconviction relief although we will resolve them on direct appeal if the record is adequate. *State v. Ray*, 516 N.W.2d 863, 865 (Iowa 1994). We conclude the record in this case is adequate to decide this issue.

III. Discussion.

Shelton claims his trial counsel was ineffective for failing to file a motion in arrest of judgment because the court that took his plea failed to review with him the constitutional rights he was waiving by pleading guilty. For the reasons that follow, we disagree.

To establish ineffective assistance of counsel, Shelton must prove (1) his attorney's performance fell below "an objective standard of reasonableness" and (2) "the deficient performance prejudiced the defense." *Strickland v. Washington*, 466 U.S. 668, 687-88, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984). To prove the first prong, failure to perform an essential duty, Shelton must overcome a strong presumption of counsel's competence and show that under the entire record and totality of circumstances counsel's performance was not within the range of normal competency. *Osborn v. State*, 573 N.W.2d 917, 922 (Iowa 1998). To prove the second prong, resulting prejudice, Shelton must show that counsel's failure worked to his actual and substantial disadvantage so there exists a reasonable probability that but for counsel's error, he would not have entered the plea and would have insisted on going to trial. *State v. Meyers*, 653 N.W.2d 574, 578-79 (Iowa 2002). Prejudice is not presumed. *See Straw*, 709 N.W.2d at 137-38. On appeal we may reject an ineffective assistance of counsel claim if the defendant fails to prove either prong. *State v. Query*, 594 N.W.2d 438, 445 (Iowa Ct. App. 1999).

There is no dispute that the court failed to review with Shelton the constitutional rights he was waiving by pleading guilty. This review is required under Iowa Rule of Criminal Procedure 2.8(2)(*b*)(4). *State v. Moore*, 638 N.W.2d 735, 738-39 (Iowa 2002). But, in analyzing Shelton's claim, we need not determine whether his trial counsel's performance was deficient before examining the prejudice component of his ineffective-assistance claim. *State v. Tate*, 710 N.W.2d 237, 240 (Iowa 2006).

On appeal, Shelton claims that had he been properly informed of his constitutional rights, he would not have pled guilty and would have insisted on going to trial on all charges. Standing alone, this statement is barely more than a conclusory claim of prejudice, and as the supreme court stated in *Meyers*, 653 N.W.2d at 579, "conclusory claim[s] of prejudice" are not sufficient to satisfy the prejudice element. As pointed out by the State, nothing in the record supports Shelton's assertion he would have insisted on going to trial had the court fully explained his rights before accepting the guilty plea.

Shelton was originally charged with robbery in the first degree, a class B felony; kidnapping in the second degree, a class B felony; felon in possession of a firearm, a class D felony; and attempted burglary, a class C felony. He faced twenty-five years imprisonment on each of the class B felonies, ten years on the class C felony, and five years on the class D felony. By going to trial, Shelton risked being sentenced to sixty-five years imprisonment, as well as imposition of substantial fines. *See* Iowa Code § 902.9. He faced a mandatory minimum seventy percent on the twenty-five and ten year sentences. *See id.* § 902.12(4), (5). By pleading to only one count of robbery in the second degree, Shelton faced a sentence of ten years imprisonment with imposition of the mandatory minimum seventy percent and no fine.

The waiver of constitutional rights is certainly a very serious matter, but it strains credulity to think Shelton would have rejected a very favorable plea agreement and insisted on going to trial on all charges had he been informed of the constitutional rights he was waiving at his plea hearing. He claims the State's case was built on hearsay and speculative evidence that undermines confidence

in the outcome of the trial. We disagree. Under all the circumstances presented to us, we find no reasonable probability Shelton would have rejected the plea agreement and insisted on going to trial had he been informed at his plea hearing of the constitutional rights he was waiving. Because Shelton has failed to prove the prejudice prong of the *Strickland* test, we affirm Shelton's conviction and sentence.

AFFIRMED.