

IN THE COURT OF APPEALS OF IOWA

No. 9-368 / 08-0112
Filed June 17, 2009

RODNEY FITZGERALD JACKSON,
Applicant-Appellant,

vs.

STATE OF IOWA,
Respondent-Appellee.

Appeal from the Iowa District Court for Woodbury County, Duane E. Hoffmeyer, Judge.

Rodney Jackson appeals the district court decision denying his application for postconviction relief. **AFFIRMED.**

Mark C. Smith, State Appellant Defender, and Stephan Japuntich, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Kyle Hanson, Assistant Attorney General, Patrick Jennings, County Attorney, and J. Aaron Kirsch, Assistant County Attorney, for appellee State.

Considered by Mahan, P.J., and Eisenhauer and Mansfield, JJ.

MAHAN, P.J.

Rodney Jackson appeals the district court decision denying his application for postconviction relief. He alleges he received ineffective assistance of trial counsel. We affirm.

I. Background Facts and Proceedings.

Jackson was arrested on May 27, 2005, for possession of drug paraphernalia. Officer Chad Sheehan of the Sioux City Police Department took Jackson to the Woodbury County Jail, where Jackson threatened and spit on Officer Sheehan. He was charged with inmate assault-bodily fluids, a class D felony. Assistant Public Defender Steven Pals was appointed to represent Jackson, and on June 2, 2005, Pals filed a motion to dismiss and a motion for bond reduction on Jackson's behalf. On June 6, 2005, the State filed a trial information charging Jackson with assault on a peace officer, a serious misdemeanor.¹ On June 8, 2005, Jackson entered a written plea of guilty to assault on a peace officer. He was sentenced to ten days in jail and given credit for ten days served and ordered to pay a \$250 fine plus surcharge. He was then released from the Woodbury County Jail.²

On August 22, 2005, a hearing was held on Jackson's violations of probation based on his arrests and convictions stemming from the incidents that

¹ After Jackson was charged with this lesser offense, the court dismissed Jackson's prior motion to dismiss. Bond was reduced from \$10,000 to \$4,000.

² Previous to the above incident, Jackson had entered a plea and was convicted of theft in the first degree on May 19, 2005. His ten-year sentence was suspended, and he was put on probation for three years. Additionally, on May 26, 2005, Jackson had been arrested for public intoxication and failure to obey a police officer. Jackson did not report the arrest to his probation officer, in violation of the terms of his probation.

took place on May 26, 2005 and May 27, 2005. The court revoked Jackson's probation and imposed the ten-year sentence.

On November 10, 2005, Jackson filed a handwritten application for postconviction relief, alleging ineffective assistance of counsel. As Jackson stated in his application:

1. I was promised by my attorney, Steven C. Pals. He stated that if I (Rodney Jackson) plead guilty to assault of a peace officer that he (Steven C. Pals) would make sure that I (Rodney Jackson) would not violated my probation.
2. He (Steven C. Pals) also stated to me that he didn't have time to fight my case.
3. I feel that my constitution rights was violated, also violation of Amendment 6 and 14.
4. I believe that due to my race (a black male) that I am not receiving the proper legal representation.

Following a hearing on August 2, 2007, the district court denied Jackson's application.³ Jackson now appeals.

II. Scope and Standard of Review.

We review postconviction relief proceedings for errors at law. Iowa R. App. P. 6.4; *Millam v. State*, 745 N.W.2d 719, 721 (Iowa 2008). Under this standard, we affirm if the court's fact findings "are supported by substantial evidence and if the law was correctly applied." *Harrington v. State*, 659 N.W.2d 509, 520 (Iowa 2003). Those claims concerning alleged constitutional violations, including ineffective assistance of counsel claims, are reviewed de novo. *Id.*; *State v. Decker*, 744 N.W.2d 346, 353 (Iowa 2008). We give weight to the lower court's determination of witness credibility. *Millam*, 745 N.W.2d at 721.

³ Jackson also filed two other applications for postconviction relief, alleging numerous claims stemming from his other convictions. We evaluated Jackson's appeal of the court's dismissal on summary judgment of those applications in *Jackson v. State*, No. 08-0838 (Iowa Ct. App. Mar. 26, 2009).

III. Merits.

Jackson contends his trial counsel was ineffective by failing to inform Jackson of the collateral consequences of his guilty plea. He further argues he suffered prejudice as a result of his counsel's alleged errors.

To establish a claim of ineffective assistance of counsel, a defendant must prove (1) counsel failed to perform an essential duty and (2) prejudice resulted to the extent it denied the defendant a fair trial. *State v. Maxwell*, 743 N.W.2d 185, 195 (Iowa 2008). A defendant's failure to prove either element by a preponderance of the evidence is fatal to a claim of ineffective assistance. *State v. Polly*, 657 N.W.2d 462, 465 (Iowa 2003).

The test for the first element is objective: whether counsel's performance was outside the range of normal competency. *Millam*, 745 N.W.2d at 721. We start with a strong presumption that counsel's conduct was within the wide range of reasonable professional assistance. *DeVoss v. State*, 648 N.W.2d 56, 64 (Iowa 2002). We presume the attorney performed competently, and the defendant must present an affirmative factual basis establishing inadequate representation. *Millam*, 745 N.W.2d at 721. It is not enough for a postconviction applicant to assert that defense counsel should have done a better job. *Dunbar v. State*, 515 N.W.2d 12, 15 (Iowa 1994). Ineffective assistance of counsel claims "involving tactical or strategic decisions of counsel must be examined in light of all the circumstances to ascertain whether the actions were a product of tactics or inattention to the responsibilities of an attorney guaranteed a defendant under the Sixth Amendment." *Ledezma v. State*, 626 N.W.2d 134, 143 (Iowa 2001).

The test for the second element is whether the defendant can prove there is a reasonable probability that, without counsel's errors, the outcome of the proceedings would have been different. *Millam*, 745 N.W.2d at 722; *Ledezma*, 626 N.W.2d at 143. A reasonable probability is one that undermines confidence in the outcome. *Millam*, 745 N.W.2d at 722. To establish prejudice, the defendant must "state the specific ways in which counsel's performance was inadequate and how competent representation would have changed the outcome." *Rivers v. State*, 615 N.W.2d 688, 690 (Iowa 2000) (quoting *Bugley v. State*, 596 N.W.2d 893, 898 (Iowa 1999)).

Jackson claims his counsel assured him that he would not be in violation of his probation on his previous theft case if he entered a plea agreement for the present assault on a peace officer charge. He alleges he would have refrained from signing the plea agreement had he known his probationary status would be affected. Jackson further argues his counsel failed to investigate the charge or sufficiently discuss the case and the consequences of his plea with him.⁴ However, the district court determined Jackson was familiar with the plea agreement and understood the constitutional rights he would be giving up by signing the agreement. As the court stated in its postconviction order:

The written plea of guilty shows Mr. Jackson understood the plea agreement and the sentence he would receive prior to the court accepting his guilty plea. The written plea of guilty contains Mr. Jackson's signature and the sentencing order filed and signed by Judge Hensley shows Mr. Jackson signed it too.

⁴ Specifically, Jackson alleges his counsel failed to discuss collateral consequences of his guilty plea, discuss whether witnesses should be interviewed, and inquire as to the circumstances of his arrest or his experience with law enforcement.

Furthermore, the court noted, "From the assault on a peace officer there was no appeal filed or any effort taken to invalidate his written plea of guilty."

Our supreme court has stated that courts must ensure the defendant understands "the direct consequences of the plea including the possible maximum sentence, as well as any mandatory minimum punishment." *State v. Carney*, 584 N.W.2d 907, 908 (Iowa 1998). Courts are not, however, required to inform defendants of all indirect and collateral consequences of a guilty plea. *Id.* "The distinction between 'direct' and 'collateral' consequences of a plea, while sometimes shaded in the relevant decisions, turns on whether the result represents a definite, immediate and largely automatic effect on the range of defendant's punishment." *Id.*; *State v. Warner*, 229 N.W.2d 776, 782 (Iowa 1975).

In this case, the district court determined Jackson's counsel did not fail to perform an essential duty to Jackson because the revocation of Jackson's probation for his theft conviction was an indirect collateral consequence of Jackson's plea of guilty for his assault on a peace officer charge. The court further noted that Jackson lacked credibility as to whether he would have accepted the plea agreement had he known about a possible revocation of his probation. As the court stated:

The court finds there is no question of material facts as to whether trial counsel's performance was within the range of competency. The record shows Mr. Pals provided the defendant with a copy of the trial information and minutes, filed motions prior to the trial information being filed, was successful in getting the amount of bond lowered, and negotiated a plea agreement which he went over with the defendant and which the defendant accepted. The court finds Mr. Jackson's testimony lacks credibility on whether he would have accepted the plea agreement if he had known a

probation violation could be filed. He lacks credibility for the fact he acknowledged he had pled guilty to two simple misdemeanor offenses on his own which could have formed the basis for any violation of probation. During the probation hearing (Ex. 1), he acknowledged the violations and it is clear the judge had the option of keeping Mr. Jackson on probation or imposing the original sentence. There is no evidence that Mr. Jackson's outcome would have been any different had Mr. Pals known of the probation or that they had discussed what would or could happen. The court concludes the revocation of his probation is an indirect collateral consequence and is not something Mr. Pals had an obligation or duty to discuss and it is not ineffective assistance of counsel.

We agree. The revocation of Jackson's probation on his theft conviction is not a result that flows directly from his guilty plea for assault on a peace officer and is therefore not a direct consequence of his plea. *Carney*, 584 N.W.2d at 908. We therefore affirm the district court's denial of Jackson's postconviction relief application.

AFFIRMED.