

**IN THE COURT OF APPEALS OF IOWA**

No. 9-810 / 09-0390  
Filed November 12, 2009

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**CHRISTOPHER OTTO BROWNLEE,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Lee (South) County, Mary Ann Brown, Judge.

Defendant appeals his sentence following a guilty plea arguing counsel was ineffective. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Thomas Gaul, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Karen Doland, Assistant Attorney General, Allen Best, Legal Intern, and Michael P. Short, County Attorney, for appellee.

Considered by Vaitheswaran, P.J., Eisenhauer, J., and Mahan, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

**EISENHAUER, J.**

Christopher Brownlee appeals his conviction and sentence following his guilty plea to receipt of a precursor substance for unlawful purposes. Brownlee argues his counsel was ineffective because he failed to object to the prosecutor's breach of the plea agreement at the sentencing hearing. Brownlee seeks resentencing before a different judge.

We review Brownlee's ineffective-assistance claim *de novo*. *State v. Reynolds*, 670 N.W.2d 405, 414 (Iowa 2003). In order to prevail, he must show (1) counsel failed to perform an essential duty and (2) prejudice resulted. See *State v. Lane*, 726 N.W.2d 371, 393 (Iowa 2007). While we normally preserve ineffective-assistance claims for postconviction relief proceedings, direct appeal is appropriate when the record is adequate to determine as a matter of law the defendant will be unable to establish one or both of the elements of his claim. *Reynolds*, 670 N.W.2d at 411. Here the record is adequate to resolve the issue.

On January 5, 2009, Brownlee pled guilty pursuant to a plea agreement in which the State agreed to recommend a suspended sentence of incarceration with the *option* of requesting halfway house placement. The Court specifically asked the prosecutor: "And you would recommend the halfway house if that's what court services recommends or what do you think about--." The prosecutor replied: "I would like to look at the presentence investigation [PSI] and consider whether it's actually necessary. It *may be* a recommendation for the halfway house."

Before accepting Brownlee's plea, the court again restated the agreement: "The State is agreeing that if you plead guilty to the charge . . . that at sentencing they will recommend that you receive a suspended sentence and *maybe* placement at the halfway house." Brownlee acknowledged he understood the plea agreement and further acknowledged he understood there was no guarantee he would receive a suspended sentence.

Following the guilty plea hearing, the department of correctional services conducted a presentence investigation. Its report recommended Brownlee be incarcerated. Brownlee was sentenced on February 9, 2009. Before pronouncing sentence, the court asked if the State was recommending a suspended sentence and the prosecutor replied:

A suspended sentence with halfway house placement was the agreed-upon recommendation, your honor. I see that this defendant has an extensive criminal record involving some—some considerable substance abuse issues. He does not have a good work history. He does have a GED. He has not responded favorably to prior drug treatment. The department of corrections is recommending incarceration.

The State's recommendation was premised primarily on the fact that we have got to find a way to—to get this defendant off drugs and to become a useful member of society and the halfway house is one available tool to do that.

Immediately thereafter, defendant's attorney concurred:

Your honor, we would ask the court follow the State's recommendation. . . . I think it's obvious he does have a substance abuse problem that needs to be dealt with and the halfway house is probably the best place to start dealing with that and we would ask that the court follow the recommendation and give him that opportunity.

The court sentenced Brownlee to imprisonment for a term not to exceed ten years. Brownlee argues the prosecutor's comments at sentencing "violated the spirit" of the plea agreement and his counsel was ineffective because he did not object. However, defense counsel "cannot be faulted for failing to object to the prosecutor's statements as being a breach of the plea agreement if, in fact, they were not contrary to the State's agreement." *State v. Horness*, 600 N.W.2d 294, 298 (Iowa 1999).

We conclude Brownlee has not proven his counsel failed to perform an essential duty. The State's plea agreement obligations are not satisfied by simply informing "the court of the promise the State has made to the defendant with respect to sentencing." *Id.* at 299. Rather, the State must commend the recommended sentence or otherwise inform the court of the State's support of the suggested sentencing. *State v. Bearse*, 748 N.W.2d 211, 216 (Iowa 2008).

At the original guilty plea hearing, the State clarified that the plea's terms *conditioned* the State's halfway house recommendation on the findings in the PSI. Preserving this option obligated the State to discuss the PSI at sentencing. The prosecutor did not express any dissatisfaction with the plea agreement, did not offer an alternative recommendation, and did not make an argument calculated to support a sentence other than the one he had agreed to recommend. Rather, the prosecutor commended the suspended sentence/halfway house option to the court by arguing the halfway house placement would be a tool to address Brownlee's undisputed drug use. We conclude trial counsel did not breach an essential duty by failing to object to the

State's sentencing recommendation. Accordingly, Brownlee's ineffective assistance of counsel claim fails.

**AFFIRMED.**