IN THE COURT OF APPEALS OF IOWA

No. 9-837 / 08-1832
Filed November 25, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CHRISTOPHER RYAN AUCH,
Defendant-Appellant.

Appeal from the Iowa District Court for Warren County, Paul R. Huscher, Judge.

Christopher Auch appeals his sentence for the convictions of willful injury causing bodily injury and domestic abuse assault while using a dangerous weapon. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Robert P. Ranschau, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sheryl A. Soich, Assistant Attorney General, Bryan Tingle, County Attorney, and Tracie L. Sehnert and Brent Hinders, Assistant County Attorneys, for appellee.

Considered by Vogel, P.J., and Doyle and Mansfield, JJ.

MANSFIELD, J.

Christopher Auch appeals from the sentence imposed following his convictions for willful injury causing bodily injury and domestic abuse assault while using a dangerous weapon. He argues his trial counsel was ineffective for failing to object to victim impact statements submitted by the victim's mother and stepfather. Auch and the State agree the statements should not have been admitted into evidence. The sole issue on appeal is whether Auch was prejudiced by the admission of the statements. We find that because there is no indication the district court relied on the statements and the statements provided little additional information, Auch cannot show he was prejudiced. Thus, we affirm.

I. Background Facts and Proceedings.

On April 16, 2008, after he had been drinking, Auch attacked his ex-girlfriend with a knife.[1] As a result of the attack, Auch's victim was transported to the emergency room where doctors discovered she had six knife wounds and was hypotensive. Auch's victim was given a blood transfusion, her wounds were closed, and she was hospitalized for several days. Following a jury trial, Auch was convicted of willful injury causing bodily injury in violation of Iowa Code section 708.4(2) (2007) and domestic abuse assault with a dangerous weapon in violation of section 708.2A(2)(c).[2]

---

[1] Auch and his victim are the parents of a four-year-old child.

[2] The State charged Auch with attempt to commit murder, willful injury resulting in serious injury, domestic abuse assault with a dangerous weapon, false imprisonment, and child endangerment. Following the presentation of evidence, the district court granted Auch's motion for a directed verdict on the child endangerment charge. The remaining four counts were submitted to the jury. The jury found Auch not guilty of the attempt to commit murder, but guilty of the lesser-included offense of assault with intent

On October 20, 2008, a sentencing hearing was held. The presentence investigation report had recommended that Auch be sentenced to five years in prison on the willful injury causing bodily injury count and two years in prison on the domestic abuse assault with a dangerous weapon count. During the hearing, the State also recommended imprisonment. Auch, meanwhile, requested a suspended prison sentence.

The district court noted that it had received a letter from Auch's employer, a copy of Auch's high school equivalency diploma, a certificate of completion of a substance abuse program, and victim impact statements from the victim's mother and stepfather, which were all placed with the presentence investigation report. The statements from the victim's mother and stepfather both recommended that Auch be imprisoned for "the maximum time"; one of them also mentioned another incident involving the defendant and another family member. Additionally, Auch presented testimony from two witnesses—his employer and a counselor. Finally, Auch exercised his right of allocution.

At the conclusion of the hearing, the district court sentenced Auch to five years in prison on the willful injury causing bodily injury offense and two years in prison on the domestic assault with a dangerous weapon offense, to be served consecutively. The district court explained the sentence imposed, noting that "[i]t appears to the court that these offenses were particularly violent" and, after summarizing the defendant's explanation for the offense in the presentence

---

to inflict serious injury; not guilty of willful injury causing serious injury, but guilty of the lesser-included offense of willful injury causing bodily injury; guilty of domestic abuse assault while using a dangerous weapon; and not guilty of false imprisonment. At sentencing, the district court merged the offense of assault with intent to inflict serious injury into the offense of willful injury causing bodily injury.

report, that "the defendant has not accepted responsibility for his actions in this matter." The district court did not refer to the victim impact statements from the victim's mother and stepfather.

Auch appeals and asserts his counsel rendered ineffective assistance by failing to object to the victim impact statements submitted by the victim's mother and stepfather.

II. Ineffective-Assistance-of-Counsel Claim.

Our review of an ineffective-assistance-of-counsel claim is de novo. *State v. Parker*, 747 N.W.2d 196, 203 (Iowa 2008). In order to prevail on an ineffective-assistance-of-counsel claim, a defendant must prove (1) trial counsel failed to perform an essential duty and (2) prejudice resulted from that failure. *State v. Tesch*, 704 N.W.2d 440, 450 (Iowa 2005). A defendant's failure to prove either prong defeats his claim. *Id*. When raised on direct appeal, we may either find the record is adequate to decide the claim or may choose to preserve the claim for possible postconviction relief proceedings. *State v. Straw*, 709 N.W.2d 128, 133 (Iowa 2006); *Tesch*, 704 N.W.2d at 450. "Ordinarily, such claims are preserved for a possible postconviction relief action unless it can be determined as a matter of law on appeal that the defendant cannot prove either or both elements of the claim." *Tesch*, 704 N.W.2d at 450. Here we believe the claim can be resolved on direct appeal.

Auch and the State agree that trial counsel failed to perform an essential duty. Iowa Code chapter 915 authorizes the use of victim impact statements during sentencing. *State v. Matheson*, 684 N.W.2d 243, 244 (Iowa 2004). A victim may present a victim impact statement to the court through one or more

specified methods. Iowa Code § 915.21; *see* Iowa Code §§ 915.10(3) (defining victim), 915.10(4) (defining victim impact statement). However, we agree with the parties that under the facts of this case, the victim's mother and stepfather were not "victims" within the Code definitions. Iowa Code § 915.10(3); *see Tesch*, 704 N.W.2d at 451-52 (discussing who may make a victim impact statement); *State v. Sumpter*, 438 N.W.2d 6, 8 (Iowa 1989) (same). This is not to minimize the effects of Auch's actions on the victim's parents. We simply hold, consistent with precedent and the language of the Iowa Code, that they were not authorized by law to submit victim impact statements.

Ordinarily, we would preserve a defendant's ineffective-assistance-of-counsel claim in order for trial counsel to explain why a valid objection was not made. *Tesch*, 704 N.W.2d at 453. However, we need not do so here because we find Auch has failed as a matter of law to prove the prejudice prong of his claim. *See id*. "To prevail on the prejudice prong of an ineffective-assistance claim, the defendant must show there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id*. (citations and quotations omitted). Auch claims he was prejudiced because "[w]hile the victim impact statement does not provide additional factual information about the crime itself, it certainly provides additional information of the significant emotional impact of the offense."

In the present case, the district court acknowledged at the outset of the hearing that the mother's and stepfather's statements were part of the record, along with other materials submitted by Auch. However, no objection was made to the statements, so we do not presume the district court considered them.

Compare Tesch, 704 N.W.2d at 453-54 (discussing that the sentencing judge did not rule on whether the statements were admissible and made no mention of the victim's wife's wishes in pronouncing sentence), *with Matheson*, 684 N.W.2d at 244-45 (discussing that the district court must have determined the statements were admissible when it overruled the defendant's objection to them and presumably considered them). Later, when the district court pronounced sentence, it did not refer to the statements. Instead, the court explained:

> The court has considered the defendant's request that the sentences of imprisonment be suspended. It appears to this court that these offenses were particularly violent. Suspended sentences in this case would unduly minimize the seriousness of the offense.
>
> The court further finds that they would not adequately protect the public and particularly the victim of these offenses.
>
> The court finds that the defendant has not accepted responsibility for his actions in this matter. In his discussions with the presentence report interviewer, Mr. Auch indicated he tried to be intimate with the victim. She told him no. He went to the kitchen and smoked a cigarette. And while in there, he happened to put a knife in his back pocket, because he always puts things in his pocket. And then went back to the couch and these assaults occurred.
>
> The court does not find that a suspended sentence is appropriate in this case.
>
> The court further believes that the sentences should be served consecutively and not concurrently. These are offenses that took place over an extended period of time, involving pursuit. Not only the opportunity for a cooling off, but a renewed intent.

Thus, the court's explanation indicates that it was influenced by the nature of the offenses and by the defendant's failure to accept responsibility, not by anything in the statements. Furthermore, the sentences themselves were consistent with the recommendation in the presentence report, except the district court decided to impose the sentences consecutively, a subject on which the report had no made no recommendation.

Additionally, even if one could conclude that the district court had considered the statements, they provided little information that was not already apparent. The victim's mother's statement included a brief allegation that Auch had also threatened to stab the victim's sister, but both statements generally described a parent's natural reaction to a daughter being deliberately injured. The content of the statements did not prejudice the defendant. *Compare Sumpter*, 438 N.W.2d at 9 (finding no prejudice where the court concluded, although the victim impact statements were hostile and bitter and expressed a strong desire for the ultimate retribution, they told the sentencing judge little, if anything, that was not already apparent), *with Matheson*, 684 N.W.2d at 244-45 (discussing that where the state introduced three victim impact statements from victims of similar but separate crimes committed by the defendant in another state, the "statements told the sentencing judge . . . a good deal more than would otherwise be known").[3]

We conclude Auch cannot demonstrate he was prejudiced by the admission of the victim's mother's and stepfather's statements. There is no indication the district court considered the statements, and the statements contained little information that was not already apparent to the sentencing court. Therefore, we affirm.

AFFIRMED.

[3] Furthermore, *Matheson* was not an ineffective assistance case and thus, the defendant did not have the burden of showing prejudice. *Matheson,* 684 N.W.2d at 244 (holding the error was not harmless).