

IN THE COURT OF APPEALS OF IOWA

No. 6-595 / 95-1521

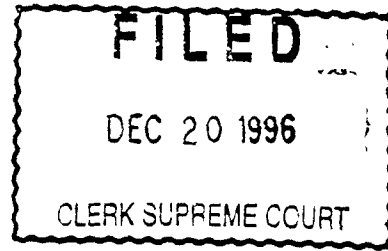
ELIAS WANATEE,

Applicant-Appellant,

vs.

STATE OF IOWA,

Respondent-Appellee.



Appeal from the Iowa District Court for Woodbury County, Gary E. Wenell,
Judge.

Wanatee appeals from the district court's ruling sustaining State's motion for
summary judgment and denying postconviction relief. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, until withdrawal, and then Martha
M. McMinn, Sioux City, for appellant.

Thomas J. Miller, Attorney General, Thomas S. Tauber, Assistant Attorney
General, Thomas S. Mullin, County Attorney, and Clinton L. Spurrier, Assistant
County Attorney, for appellee.

Heard by Sackett, C.J., and Streit and Vogel, JJ.

SACKETT, C.J.

Elias Wanatee was convicted of first-degree murder. The conviction was affirmed on appeal. Wanatee filed this postconviction relief action contending his trial counsel was not effective in a number of ways, including (1) not adequately discussing a plea offer; (2) not attempting to preclude evidence of Wanatee's reaction when he heard of the victim's death; and (3) failing to object to testimony Wanatee had a roll of coins in his pocket at the time of his arrest. The State filed a motion for summary judgment. Wanatee filed a resistance and an affidavit of supporting facts. The district court sustained the motion for summary judgment and denied postconviction relief on all issues. We affirm.

Because this issue was resolved on summary judgment, to affirm we must find on review of the pleadings, depositions, answers to interrogatories, admissions, and affidavits there is no genuine issue of material fact and the State is entitled to judgment as a matter of law. *Barnhill v. Davis*, 300 N.W.2d 104, 105 (Iowa 1981).

We first address Wanatee's claim his trial counsel did not correctly advise him concerning an offer by the State to allow him to plead guilty to a lesser offense if the plea were entered prior to the filing of a trial information in exchange for Wanatee's testimony against co-defendants. Wanatee's trial counsel testified when the plea offer was made he had not conducted a sufficient investigation. He further contends the ten days from when the offer was made until when the trial information was filed did

not allow him to evaluate the case. He admittedly was not able to recommend Wanatee either accept or reject the offer.

Wanatee's affidavit stated:

If [defense counsel] had impressed upon me the legal and factual issues in my case on the charges of murder in the first degree (and any related charges) in connection with the death of [the victim], I would have considered the advantages of engaging in a plea agreement.

The victim was attacked by a group of people, including Wanatee, and died from a stab wound to the heart. Wanatee had been seen beating the victim's head with a tire iron. He was captured at the scene. Wanatee contends these facts, coupled with defense counsel's failure to investigate further than what he learned from the complaint, in the newspapers, and from his investigators, support his petition for postconviction relief on his trial counsel's failure to properly advise him on the plea issue.

A defendant in a criminal case is entitled to competent counsel at the plea bargain stage. *See State v. Kraus*, 397 N.W.2d 671, 673 (Iowa 1986); *Meier v. State*, 337 N.W.2d 204, 208 (Iowa 1983). This is not a case where misadvice, if given, led to a guilty plea; rather, it is a case where misadvice, if given, led to a not guilty plea. There is a great difference between what happens to a defendant who pleads guilty as opposed to what happens when the plea is rejected. *See Johnson v. Duckworth*, 793 F.2d 898, 900 (7th Cir. 1986); *Kraus*, 397 N.W.2d at 674.

A pretrial tactical error does not lead to a reversal of a fair trial. *See id.* Consequently, the only issue we need address is whether Wanatee has shown that he did not have a fair trial.

We have examined the other two issues raised and find Wanatee has failed to show, even if trial counsel's challenged actions were error, that there was a reasonable probability absent the alleged errors a fact finder would have a reasonable doubt concerning his guilt. *See State v. Tracy*, 482 N.W.2d 675, 680 (Iowa 1992).

There is no factual basis to support Wanatee's claim of ineffective assistance of counsel on these issues. The trial court correctly granted the State's motion for summary judgment.

AFFIRMED.