

IN THE COURT OF APPEALS OF IOWA

FILED

MAR 31 1986

CLERK SUPREME COURT

LARRY E. MORRISON,)

Petitioner-Appellant,)

vs.)

STATE OF IOWA,)

Respondent-Appellee.)

Filed March 31, 1986

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Appeal from the Iowa District Court for Polk County (No.PCR313) -
C. Edwin Moore, Judge.

Petitioner appeals from the district court's denial of his application for
postconviction relief. **AFFIRMED.**

Charles Harrington, Chief Appellate Defender, and B. John Burns, Assistant
Appellate Defender, for petitioner-appellant.

Thomas J. Miller, Attorney General; Roxann M. Ryan, Assistant Attorney
General; and Catherine H. Thune, Assistant County Attorney, for respondent-
appellee.

Considered by Donielson, P.J., and Snell and Sackett, JJ.

Petitioner appeals from the district court's denial of his application for postconviction relief. He asserts that his trial counsel was ineffective in advising him to plead guilty to first-degree theft without also advising him of the mandatory minimum time period under Iowa Code section 906.5 before he would be eligible for parole.

Petitioner, Larry E. Morrison, was charged with second-degree robbery and false use of a financial instrument. Petitioner had been convicted of a prior forcible felony, the sentence for which did not expire more than five years prior to the charge. Because of that prior conviction, petitioner must serve one-half of the sentence imposed before he is eligible for parole under § 906.5.

Pursuant to a plea agreement, petitioner pled guilty to one count of false use of a financial instrument and one count of first-degree theft. He was sentenced to concurrent terms of two years on the false use of a financial instrument charge and ten years on the theft charge.

In his amended application for postconviction relief, petitioner claimed that his trial counsel was ineffective in failing to inform him that Iowa Code section 906.5 (1983) imposed a minimum sentence. At the postconviction hearing, petitioner testified that his trial attorney indicated he would have no mandatory minimum sentence and his parole date would not be affected. He further testified that he decided to plead guilty pursuant to the agreement since he understood he would have no mandatory sentence and he would be eligible for parole within a year.

Petitioner's trial attorney testified that he had no specific recollection of his conversations with petitioner. However, the attorney testified that he was aware of the parole eligibility provisions of Iowa Code section 906.5 and that he would have no reason to deceive or misinform petitioner.

The district court denied the application for postconviction relief by finding that trial counsel's services were within the range of normal competency.

Petitioner's position is that had he known his guilty plea would result in a mandatory minimum sentence of five years before he was eligible for parole, then he would not plead guilty. We, like the postconviction court, are not persuaded this is the case.

To succeed on a postconviction relief appeal, petitioner must show: (1) cause for not having raised the ground previously and (2) actual prejudice resulted from these errors. Polly v. State, 355 N.W.2d 849, 855-56 (1984). Sufficient cause can be demonstrated by showing the petitioner received ineffective assistance of counsel.

To prevail on an ineffective assistance of counsel claim, petitioner must establish: (1) that counsel's performance was so deficient that counsel was not functioning as "counsel" guaranteed by the sixth amendment, and (2) that the deficient performance so prejudiced the defense as to deprive the petitioner of a fair trial. State v. Losee, 354 N.W.2d 239, 243 (Iowa 1984) (citing Strickland v. Washington, ___ U.S. ___, ___, 104 S. Ct. 2052, 80 L. Ed. 2d 674, 693 (1984)). It is not necessary that "a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the petitioner makes an insufficient showing on one. Strickland, ___ U. S. at ___, 104 S. Ct. at 2069-70, 80 L. Ed.2d at 699; accord Taylor v. State, 352 N.W.2d 683, 685 (Iowa 1984). A petitioner is not entitled to perfect representation, but only to that which is within the range of normal competency. State v. Halstead, 362 N.W.2d 504, 508 (Iowa 1985); Karasek v. State, 310 N.W.2d 190, 191-92 (Iowa 1981).

Moreover, we find guidance from the following:

Petitioner is not entitled to perfect representation, only that which is within the normal range of competency. Not every error nor every improvident trial tactic is evidence that counsel is ineffective. (Authorities). A lawyer's overall performance should not be judged by a single mistake made during the course of a trial.

Karasek, 310 N.W.2d at 192.

While misinformation regarding a mandatory minimum sentence can result in ineffective assistance of counsel, we agree with the postconviction court that no misinformation occurred in this case. Accord Grant v. State, 302 N.W.2d 619 (Iowa 1982 (Defendant with a prior forcible felony conviction need not be informed of the parole ineligibility period under section 906.5), Boge v. State, 309 N.W.2d 428, 430-31 (Iowa 1981) (A trial court is not required to inform a defendant of the mandatory minimum sentence provisions to satisfy the Iowa Rules of Criminal Procedure regarding acceptance of guilty pleas because defendant's problem is the limitation on the Board's power to grant parole. This defendant, however, did not claim the court misled him, nor was any misrepresentation made.)).

Defendant's attorney in this case certainly knew of the provisions contained in section 906.5 and their applicability. He also could not recall any reason for not informing defendant of this matter. Defendant's attorney, who has extensive experience in handling criminal cases, makes it his practice to tell his clients about section 906.5. We cannot find, based on these facts, that petitioner was misled by his trial counsel regarding the plea bargain. Petitioner, even by pleading guilty and serving mandatory minimum sentence, still received an advantage over standing trial and facing a potentially longer sentence. Thus, we cannot find this plea bargain was so disadvantageous to petitioner's interests to lead us to believe that he would not have pled guilty had he known he would have

to serve a mandatory minimum sentence. For these reasons, we affirm the post-conviction court's determination

AFFIRMED.