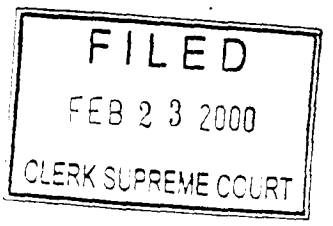
IN THE COURT OF APPEALS OF IOWA

No. 1999-442 (9-699) / 98-1408
Filed February 23, 2000



FRANCIS LEE BEAMAN,
Appellant,

vs.

STATE OF IOWA,
Appellee.

Appeal from the Iowa District Court for Adair County, James W. Brown, Judge.

On appeal from the district court's dismissal of his application for postconviction relief, appellant argues that trial counsel and postconviction counsel were ineffective. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Patricia Reynolds, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Julie H. Brown, Assistant Attorney General, and Clint Hight, County Attorney, for appellee.

Considered by Sackett, C.J., and Vogel and Hecht, JJ.

VOGEL, J.

Francis Beaman appeals the judgment and sentence following his guilty plea to two counts of sexual abuse in the second degree. He claims he received ineffective assistance of trial counsel because his attorney allowed him to submit a plea of guilty that was not voluntarily or intelligently made. Beaman further contends he received ineffective assistance of postconviction counsel.

Background facts. In January, 1995, Beaman pled guilty to two counts of sexual abuse in the second degree. No appeal was taken. Nearly three years later, in January, 1998, he filed a pro se application for postconviction relief. Beaman's postconviction attorney filed a motion to dismiss contending the application for postconviction relief was frivolous. Beaman then filed a resistance to the motion and a motion for appointment of alternate counsel. The motion for alternate counsel and the application for postconviction relief were both dismissed in July, 1998. Beaman appeals the dismissal of his application for postconviction relief, specifically alleging he was not informed by his trial counsel of the possibility of receiving consecutive sentences for the two counts of sexual abuse.

Scope of review. Generally, review of postconviction proceedings is for errors of law. *See Bugley v. State,* 596 N.W.2d 893, 895 (Iowa 1999). When an appellant asserts a violation of a constitutional right, such as ineffective assistance of counsel, we make our own evaluation based on the totality of the circumstances. *Hinkle v. State,* 290 N.W.2d 28, 30 (Iowa 1980). This is the equivalent of a de novo review. *Id.* We will reverse the order dismissing the

postconviction relief application only if we find merit to Beaman's argument that his plea was not knowingly or voluntarily made.

Informing Beaman of sentencing options. Prior to the court accepting a guilty plea, and pursuant to Iowa Rule of Criminal Procedure 8(2)(b), the court must inform a defendant of the mandatory minimum and possible maximum punishment. The purpose of this requirement is to determine whether a plea is made both voluntarily and intelligently. *State v. Kirchoff*, 452 N.W.2d 801, 804 (Iowa 1990). Beaman contends his guilty plea was neither voluntarily nor intelligently made because he was not apprised of the possibility of receiving consecutive sentences.

Beaman correctly contends that an understanding of the possible maximum consequence associated with a guilty plea requires being informed of the possibility of receiving consecutive sentences. *See State v. White*, 587 N.W.2d 240, 242 (Iowa 1998). A defendant facing several charges must be aware of the possibility that the court may order multiple sentences to run consecutively before he can make an intelligent decision regarding the advantages and disadvantages of rendering a guilty plea. *Id.*

White also acknowledged that it may be determined whether a defendant understood the maximum possible penalty by examining the whole record.

> Nor does the result here depend on whether it is the judge's responsibility to advise the defendant that "maximum possible punishment" means consecutive sentences are possible or whether defendant's knowledge and understanding can be gleaned from other indicia in the record.

Id. at 243 (citations omitted). The record in *White* reveals that there was no information in any form given to the defendant explaining the difference between

consecutive and concurrent sentences and that consecutive sentencing was a possibility. *Id.* Beaman cannot make such a claim.

Although Beaman asserts that he did not understand that receiving consecutive sentences was a possibility, the record indicates otherwise with several references to consecutive and concurrent sentencing options. The prosecutor, during the plea proceeding, disclosed the substance of the plea negotiations. These negotiations included the fact that Beaman and the State had agreed to disagree. The State would recommend consecutive sentences while Beaman would request concurrent sentencing. The court also, in discussing the possible penalties with Beaman, stated that *each* count carried a maximum twenty-five year term of incarceration.

Further, at the sentencing hearing, after the state's recommendation of consecutive sentences, Beaman personally requested the sentences be "both together." His attorney then clarified, "You'd like to serve them concurrently, is that the way I understood it?" Beaman responded affirmatively. These facts in the record clearly demonstrate Beaman was informed of the maximum penalty involved, including the possibility the sentences would run consecutively, allowing him to render a voluntary and intelligent guilty plea. Having so concluded, we find there was no breach of duty of Beaman's trial counsel in allowing Beaman to plead guilty, in failing to file a motion in arrest of judgment or pursuing a direct appeal on the voluntariness of the plea.

Ineffective assistance of postconviction counsel. Beaman next contends he received ineffective assistance from his postconviction relief counsel because he failed to investigate Beaman's claim that undiagnosed health

problems caused him to be lethargic and confused at the time of the plea proceeding. This claim was not preserved by raising it on direct appeal. *See Polly v. State*, 355 N.W.2d 849, 855 (Iowa 1984). Beaman raises it here for the first time. He has not provided us with a cause for his failure to raise this on direct appeal and he is now barred from raising the issue. *See Redding v. State*, 274 N.W.2d 315, 317 (Iowa 1979) (allows an exception if facts or legal contentions were not known at time of trial).

Having reviewed all issues properly before us, we affirm the trial court's dismissal of Beaman's postconviction application.

AFFIRMED.