FILED
AUG 30 1983
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

LOWELL BRUCE HICKS,	)	
Petitioner-Appellant,	)	Filed August 30, 1983
vs.	)	3-108 / 2-69048
STATE OF IOWA,	)	
Respondent-Appellee.	)	

Appeal from Polk District Court, C. Edwin Moore, Senior Judge.

Lowell Hicks appeals from the trial court's denial of postconviction relief. AFFIRMED.

Paul R. Huscher, Des Moines, for petitioner-appellant.

Thomas J. Miller, Attorney General, and John P. Messina, Assistant Attorney General, for respondent-appellee.

Considered by Oxberger, C.J., and Donielson, Snell, Schlegel, and Hayden, JJ.

OXBERGER, C.J.

Lowell Hicks appeals from the trial court's denial of postconviction relief. All of his issues concern the application to him of Iowa Code section 906.5, which provides that an incarcerated felon with a prior conviction for a "forcible felony or crime of similar gravity" must serve half the maximum sentence before becoming eligible for parole. Hicks contends that his guilty pleas to two criminal charges were involuntary because the trial court did not advise him that if convicted and incarcerated he would be subject to section 906.5. He also contends he was denied due process, equal protection, and the right to confront witnesses because the State was permitted to apply section 906.5 without pleading and proving a prior conviction. Finally, he contends his trial attorney rendered ineffective assistance by permitting him to enter guilty pleas without advising him that his prior criminal record would trigger the application of section 906.5.

I. Scope of Review

Where a postconviction petitioner asserts violations of constitutional safeguards, we evaluate, on review, the totality of the circumstances, which is equivalent to a de novo review. Hinkle v. State, 290 N.W.2d 28, 30 (Iowa 1980). On all other matters our review is on error of law. Hines v. State, 288 N.W.2d 344, 345 (Iowa 1980).

II. Equal Protection and Due Process

Hicks contends that he was denied due process, equal protection, and right to confront witnesses because the State was not required to plead and prove a prior conviction of a forcible felony or crime of similar gravity to trigger the application of § 906.5 and because he was not provided with notice and hearing on the issue. We disagree.

First of all, the State does not have to plead and prove the prior conviction. The applicability of § 906.5 is a parole board determination, not a judicial determination, and as such it is unnecessary for the State to plead and prove the necessary prior conviction to trigger the parole limitation of § 906.5. State v.

Wilson, 314 N.W.2d 408, 410 (Iowa 1982). In consideration of the constitutionality of § 906.5 as applied to Hicks, we believe Mead v. Board of Parole, 331 N.W.2d 102 (Iowa 1983) is dispositive. In Mead, prison inmates challenged the constitutionality of § 906.5 as applied to them. The court upheld the statute against due process and equal protection attacks. Here, Hicks argues, similarly, that the administrative procedures provided through § 906.5 are not adequate due process safeguards. The court in Mead said they were, id. at 104, and we must find that controlling. Likewise, Hicks contends that he was denied equal protection of the law because he is "similarly situated" with other persons subject to recidivist statutes, but yet has been accorded different treatment. The test for equal protection is well settled. Redmond v. Carter, 247 N.W.2d 268, 271 (Iowa 1977). The inmates in Mead raised similar claims. There, the court agreed with the State that there was "an obvious and clear difference" between persons subjected to § 906.5. and those subjected to other recidivist statutes. Id. at 104. Unlike other recidivist provisions, § 906.5 is a parole board limitation, not a minimum sentence. As such, the court in Mead rejected the inmates equal protection claim and found that the inmates were not "similarly situated." Id. at 105. Thus, neither is Hicks. We, therefore, affirm the constitutionality of § 906.5 as applied to Hicks on equal protection and due process grounds.

III. Ineffective Assistance of Counsel

Hicks contends his trial attorney rendered ineffective assistance by permitting him to enter guilty pleas without advising him that his prior criminal record would trigger the application of § 906.5. In these postconviction proceedings Hicks has the burden of showing by a preponderance of the evidence ineffective assistance of counsel. Snethen v. State, 308 N.W.2d 11, 14 (Iowa 1981). When the claim is premised on the failure of counsel to take some action, Hicks must demonstrate that counsel failed to perform an essential duty and that prejudice resulted. Henderson v. Scurr, 313 N.W.2d 522, 524 (Iowa 1981). The issue is whether the attorney's performance was within the range of normal

competency. Kellogg v. State, 288 N.W.2d 561, 563 (Iowa 1980).

We have reviewed the record and evaluated the totality of circumstances and find that Hicks failed to meet his burden of proof. Hicks contends he would not have pleaded guilty if he would have known about the application of § 906.5. However, the record indicates that Hicks did not want to go to trial. Even though trial preparation had been done and Hicks had several opportunities to proceed to trial, he indicated no desire to do so. Apparently, Hicks believed that the evidence was such that the question was not if he would go to prison, but when and how long. Accordingly, he entered a guilty plea. We, therefore, fail to see how Hicks was prejudiced.

Furthermore, advisement of the parole limitations of §§ 906.5 is not a constitutional nor statutory prerequisite to a knowing, voluntary, and intelligent guilty plea. Grout v. State, 320 N.W.2d 619, 621 (Iowa 1982). Therefore, we do not believe that such lack of advisement by Hicks' counsel can constitute ineffective assistance.

AFFIRMED.