

IN THE COURT OF APPEALS OF IOWA

No. 1999-549 (9-810) / 98-2276

Filed April 28, 2000

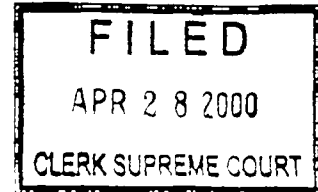
STEVEN CRAIG FONTENROY,

Applicant- Appellant,

v.

STATE OF IOWA,

Respondent-Appellee.



Appeal from the Iowa District Court for Scott County, James E. Kelley and Bobbi M. Alpers, Judges.

Applicant-Appellant, Steven Fontenoy, appeals the denial of his application for postconviction relief. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and James G. Tomka, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Roxann Ryan, Assistant Attorney General, William E. Davis, Scott County Attorney, and Julie Walton Assistant County Attorney, for appellee.

Considered by Huitink and Mahan, J.J., and Honsell, S.J.*

Senior judge assigned by order pursuant of Iowa Code Section 602.9206 (1999)

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HONSELL, S.J.

While on probation, Mr. Fontenoy was charged with two counts of third degree sexual abuse and one count of forgery. After his counsel negotiated a plea agreement on his behalf, he pled guilty to one count of sexual abuse and the forgery charge. The Rule 9 plea agreement was that Mr. Fontenoy would be sentenced to serve the sentence for sexual abuse consecutively to that sentence for which he was already incarcerated and the forgery sentence would be served concurrently with the other sentences. The sentences were imposed according to the plea agreement.

Subsequently Mr. Fontenoy filed a postconviction relief proceeding in the district court. He asserted that trial counsel was ineffective because of failure to communicate with him adequately and additionally counsel did not appropriately investigate the condition of his mental health. Trial was had and decision rendered concluding that Mr. Fontenoy failed to meet his burden of proof.

On appeal Mr. Fontenoy claims both his trial counsel and his postconviction counsel were ineffective in failing to investigate his mental competence to plead guilty or to stand trial. However, he only discusses the alleged errors of his postconviction counsel in his argument. He argues if postconviction counsel had investigated his mental competence it would be clear he "could not have entered a voluntary and knowingly guilty plea to the third-degree sexual abuse charge." He also asserts postconviction counsel "did not pursue the mental health issues at the PCR hearing."

I. Ordinarily, we review a postconviction proceeding for errors at law. *Jones v. State*, 545 N.W.2d 313, 314 (Iowa 1996). However, we review ineffective-assistance-of-counsel claims under a de novo standard. *State v.*

Breuer, 577 N.W.2d 41, 44 (Iowa 1998). We review a claim that postconviction counsel was ineffective under the same standard. *Osborn v. State*, 573 N.W.2d 917, 920 (Iowa 1998). To prevail on his claim of ineffective assistance of counsel, Mr. Fontenoy has the burden to prove counsel failed in an essential duty, and prejudice resulted from counsel's error. *State v. Arne*, 579 N.W.2d 326, 328-29 (Iowa 1998). We can affirm if either element is absent. See *State v. Brooks*, 555 N.W.2d 446, 448 (Iowa 1996).

II. Iowa Code section 812.3 (1995) sets forth elements to consider in determining whether or not a criminal defendant is competent to proceed in court:

If at any stage of a criminal proceeding it reasonably appears that the defendant is suffering from a mental disorder which prevents the defendant from appreciating the charge, understanding the proceedings, or assisting effectively in the defense, further proceedings must be suspended and a hearing had upon that question.

Id. A strong presumption exists that a defendant is competent. *Jones v. State*, 479 N.W.2d 265, 270 (Iowa 1991). The burden to prove incompetence by a preponderance of the evidence rests with the defendant. *State v. Martens*, 521 N.W.2d 768, 770 (Iowa App.1994). Generally, a competency hearing is required if the "record contains information from which a reasonable person would believe a substantial question of the defendant's competency exists." *Jones v. State*, 479 N.W.2d at 270 (quoting *State v. Kempf*, 282 N.W.2d 704, 706 (Iowa 1979); see also *Drope v. Missouri*, 420 U.S. 162, 171, 95 S. Ct. 896, 903, 43 L.Ed.2d 103, 112-13 (1975) (one who lacks capacity to understand proceedings against him or to aid in his defense may not be subjected to a trial)). Our task on de novo review is to examine the totality of the circumstances to determine if, at the relevant time, a substantial question of the applicant's competency reasonably

appeared. *Kempf*, 282 N.W.2d at 707. Relevant factors to consider include: any irrational behavior; any demeanor at the hearing, which suggests a competency problem; and any prior medical opinion, of which the court is aware, on competence to stand trial. *State v. Myers*, 460 N.W.2d 458, 460 (Iowa 1990).

Although Mr. Fontenoy is of limited intellectual capacity, he understood what he did. He was able to work with his attorney, and demonstrated from his statements on the record in the guilty plea and sentencing proceedings that he knew and understood not only the nature of his acts, but also that his acts were unlawful. He was able to provide assistance to his attorney, and he understood the nature and quality of his actions. He did not act irrationally. His apparent demeanor was not different from what one might expect from a criminal defendant. He was polite and responsive to the court. At the sentencing hearing, Mr. Fontenoy told the court, "[W]hat I did was wrong, Your Honor. All I ask is that I be sent as quickly as possible to do my time and to do what I have to do to straighten my life around and get it back on track."

Mr. Fontenoy testified that he suffers from depression, anxiety and explosive disorder. However these conditions do not by themselves require a finding of incompetence or insanity. There is nothing in this record to suggest such findings were warranted. The statements made by Mr. Fontenoy to trial counsel and at the guilty plea proceeding demonstrate that he understood the nature and quality of his acts. A mental health examination is not necessary whenever a presentence report alludes to mental health problems. Counsel must exercise his or her judgment in this regard premised on the facts of the individual case.

The decision of the postconviction court is **AFFIRMED**.