

IN THE COURT OF APPEALS OF IOWA

No. 1999-530 (9-791) / 98-1679
Filed January 26, 2000

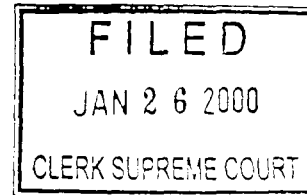
STATE OF IOWA,

Appellee,

vs.

DEAN YOUNGWIRTH,

Appellant.



Appeal from the Iowa District Court for Polk County, Larry J. Eisenhauer,
Judge.

Dean Youngwirth appeals his conviction for operating while intoxicated, third
offense, and his sentencing as an habitual offender. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Stephan J. Japuntich,
Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Kristin Mueller, Assistant Attorney
General, **John P.** Sarcone, County Attorney, and Michelle Chenoweth, Assistant
County **Attorney**, for appellee.

Heard by Mahan, P.J., and Zimmer, and Vaitheswaran, JJ.

ZIMMER, J.

Dean Youngwirth appeals the district court judgment and sentence following his conviction of operating while intoxicated, third offense, and sentencing as an habitual offender. We affirm.

On April 13, 1998, defendant Dean Youngwirth was charged with OWI, third offense. On July 8, 1998, Youngwirth rejected a plea agreement with the understanding that the State intended to move to amend the trial information to include Youngwirth's habitual offender status under Iowa Code section 902.8 (1997), if its plea offer was rejected. At defendant's request, the court reserved ruling on the State's motion to amend. That same day, the case proceeded to trial and a jury found Youngwirth guilty.

Immediately following trial, Youngwirth's counsel indicated the defendant would not contest prior convictions on charges of OWI, felony OWI (third offense), and felon in possession of a firearm. The district court then granted the State's motion to amend the trial information with no objection by the defendant. Youngwirth's counsel then advised the court that the defendant wished to be sentenced immediately. Following inquiry by the court, Youngwirth waived his right to a ~~fifteen-day~~ delay prior to sentencing and to the use of a presentence investigation. Defendant also stipulated to his prior convictions. However, after a discussion revealed the defendant's misunderstanding of the three-year mandatory minimum sentence for habitual offenders, the court continued sentencing to allow Youngwirth further opportunity to consult with counsel.

On August 31, 1998, Youngwirth was sentenced to an indeterminate term of five years. The district court then enhanced the sentence to fifteen years due to Youngwirth's status as an habitual offender under Iowa Code section 902.8. Youngwirth appeals. He contends his trial counsel was ineffective for permitting him to stipulate to prior convictions without the district court conducting a full guilty plea colloquy under Iowa Rule of Criminal Procedure 8(2)(b). Youngwirth also argues counsel should have challenged his competency to stipulate when the record revealed he suffered from schizophrenia. Youngwirth seeks to preserve additional claims for postconviction relief.

I. Scope of Review. We review ineffective assistance of counsel claims *de novo*. *State v. Smothers*, 590 N.W.2d 721, 722 (Iowa 1999).

II. Rule 8 Colloquy. Youngwirth argues the district court did not ascertain whether his "plea" on the habitual offender "charge" was made voluntarily and intelligently, as Iowa Rule of Criminal Procedure 8(2)(b) requires.¹ He contends his counsel was ineffective for failing to challenge this defect.

¹ Iowa Rule of Criminal Procedure 8(2)(b) provides:

The court . . . shall not accept a plea of guilty without first determining that the plea is made voluntarily and intelligently and has a factual basis. Before accepting a plea of guilty, the court must address the defendant personally in open court and inform the defendant of, and determine that the defendant understands, the following:

- (1) The nature of the charge to which the plea is offered.
- (2) The mandatory minimum punishment, if any, and the maximum possible punishment provided by the statute defining the offense to which the plea is offered.
- (3) That the defendant has the right to be tried by a jury, and at trial has the right to assistance of counsel, the right to confront and cross-examine witnesses against the defendant, the right not to be compelled to incriminate oneself, and the right to present witnesses in the defendant's own behalf and to have compulsory process in securing their attendance.
- (4) That if the defendant pleads guilty there will there not be a further trial of any kind, so that by pleading guilty the defendant waives the right to a trial. . . .

A. Habitual Offender Status. A person classified as an habitual offender must ~~serve a~~ minimum sentence of three years before becoming eligible for parole. ~~Iowa Code~~ §902.8 (1997). "An habitual offender is any person convicted of a class "C" or a class "D" felony, who has twice before been convicted of any felony. . . ." *Id.* Iowa Rule of Criminal Procedure 18(9) provides the current offender the opportunity to admit or deny identity with the person previously convicted. If the offender denies identity, he or she is entitled to a jury trial on the identity issue. See Iowa R. Crim. P. 18(9). If the individual acknowledges that he or she was the prior offender, then sentencing proceeds. *Id.*

Youngwirth mischaracterizes events that took place at the first sentencing. He was not "pleading guilty" to an habitual offender "charge." Habitual offender statutes do not charge a separate offense, they only provide for enhanced punishment of the current offense. *State v. Brady*, 442 N.W.2d 57, 58 (Iowa 1989) (citations omitted). Admission of prior convictions for purposes of determining habitual offender status is not a plea of guilty to an habitual offender "charge." *Id.* Rule 8(2)(b) governs guilty pleas and does not expressly apply to a case in which a defendant is asked to admit or deny prior convictions under rule of criminal procedure 18(9). *Id.* Here, Youngwirth was simply admitting he was in fact the person convicted of the prior offenses. Therefore, we address the question of whether Youngwirth's counsel was ineffective in not challenging the district court's failure to conduct a full guilty plea colloquy before permitting Youngwirth to stipulate to his prior convictions.

B. The Merits. To prevail on a claim of ineffective assistance of counsel, a

~~defendant must prove~~ counsel failed to perform an essential duty and the failure ~~prejudiced the~~ defendant. *State v. Dinkins*, 553 N.W.2d 339, 341 (Iowa App. 1996). Ineffectiveness claims may be decided on direct appeal if the defendant fails to show one of the two prongs. *State v. Pierson*, 554 N.W.2d 555, 562 (Iowa App. 1996).

We conclude the trial attorney breached no essential duty in permitting Youngwirth to stipulate to his prior convictions because no authority requires a rule 8 colloquy to be conducted in the context of rule 18(9). Youngwirth's counsel personally reviewed the files of the convictions being used as a basis for the State's contention Youngwirth was an habitual offender. Counsel determined Youngwirth wanted to admit and had received representation in the prior convictions. Both the court and trial counsel adequately explained the ramifications of sentencing pursuant to the habitual offender statute. The court even continued sentencing when it appeared Youngwirth did not understand the mandatory minimum he would serve as an habitual offender.

Youngwirth's ineffectiveness claim also fails because no prejudice can be shown from the absence of a guilty plea colloquy in this context. See *State v. Vesey*, 482 N.W.2d 165, 168-169 (Iowa App. 1991) (citations omitted). Youngwirth claims ~~prejudice~~ resulted because he was not informed of the trial rights he was waiving ~~or the right to file a motion in arrest of judgment~~. Defendant's argument is a house of cards, built on the premise that he was involved in a 'guilty plea' and thus foregoing trial rights. Here, Youngwirth had completed his trial and the court was conducting the required identity inquiry under rule 18(9) to determine Youngwirth's

habitual offender status. The right to a jury trial on the identity issue arises only upon the individual's denial that he or she was the person previously convicted. See Iowa R. Crim. P. 18(9). Since Youngwirth had admitted his prior convictions, he had no right to such a jury trial. Neither a full colloquy nor a jury trial would have changed the outcome because Youngwirth did in fact commit the prior offenses. Trial counsel was not ineffective because no colloquy was required and no prejudice resulted.

III. Youngwirth's Competency. Youngwirth argues counsel was ineffective for failing to ensure competency was addressed during the stipulation to prior convictions. He asserts this assessment was particularly important because information in the court file indicated that Youngwirth suffers from schizophrenia, which may have affected his ability to make a voluntary and intelligent "plea."

Iowa Code section 812.3 requires that a hearing on a defendant's competency be held 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," We review the record de novo where no competency hearing is held below. See *State v. Rieflin*, 558 N.W.2d 149, 152 (Iowa 1996) (citations omitted). The standard of review is "whether a reasonable judge, situated as was the trial court judge whose failure to conduct an evidentiary hearing is being reviewed, should have experienced doubt with respect to competency" *State v. Mann*, 512 N.W.2d 528, 531 (Iowa 1994) (quoting *Griffin v. Lockhart*, 935 F.2d 926, 930 (8th Cir.1991)). The relevant factors in determining

whether a competency hearing should be held include: (1) defendant's irrational behavior, (2) demeanor suggesting a competency problem, and (3) prior medical opinion on the defendant's competency to stand trial. *Rieflin*, 558 N.W.2d at 152 (citations omitted).

Youngwirth's ineffectiveness claim fails on both prongs because he was competent. There is no evidence Youngwirth behaved irrationally or failed to understand the nature of the proceedings in which he was involved. While he did not appear to fully comprehend whether he could apply time already served toward his mandatory minimum, this misunderstanding did not seem to stem from his mental illness and the court recessed to give him several weeks to consult with counsel. No psychiatric opinions appear in the record suggesting Youngwirth was incompetent. While Youngwirth mentioned his schizophrenia diagnosis and prior involuntary commitments, a history of mental illness by itself does not equate with incompetency. See *Rieflin*, 558 N.W.2d at 153; see also *Mann*, 512 N.W.2d at 531 (ignoring defendant's assertion that he should have received a competency hearing due to his "history of mental, emotional, and psychiatric problems."). Without a request for a competency evaluation or indicia of incompetency to prompt the court to investigate further on its own, we cannot say that "a reasonable person [would] believe a substantial question of the defendant's competency existed." *Mann*, 512 N.W.2d at 531 (citations omitted).

IV. Additional Claims. We preserve the following claims for possible postconviction relief: (1) trial counsel's alleged failure to contact six witnesses to testify favorably on Youngwirth's behalf; and (2) counsel's alleged failure to provide

an expert witness on the reliability of the 4011A intoxilyzer and the effects of paint and related products on the accuracy of the breath test. The record is inadequate to address these claims on direct appeal.

AFFIRMED.