IN THE COURT OF APPEALS OF IOWA

No. 0-084 / 99-0164
Filed May 10, 2000

FILED
MAY 10 2000
CLERK SUPREME COURT

STATE OF IOWA,
Plaintiff-Appellee,

vs.

RICHARD DEE SMITH,
Defendant-Appellant.

Appeal from the Iowa District Court for Guthrie County, David Christensen and Paul R. Huscher, Judges.

Richard Dee Smith appeals from the judgment and sentence entered after his plea of guilty to the criminal charge of manufacturing more than five grams of methamphetamine. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and John P. Messina, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Denise Timmins, Assistant Attorney General, and Mary L. Benton, County Attorney, for appellee.

Considered by Streit, P.J., and Zimmer and Hecht, JJ.

[redacted] Dee Smith ("Smith") appeals from the judgment and sentence entered after his plea of guilty to the criminal charge of manufacturing more than five grams of methamphetamine. He claims he was denied effective assistance of counsel in various respects surrounding his guilty plea and sentencing. We affirm.

I. Factual Background and Proceedings. On October 1, 1998, the State filed a trial information charging Smith with manufacturing more than five grams of methamphetamine and with possession of more than five grams of methamphetamine with intent to deliver in violation of Iowa Code section 124.401(1)(b)(7) (1997). The district court appointed counsel ("plea counsel") to represent Smith. Smith was arraigned on November 2, 1998. On that same date, Smith pled guilty to the manufacturing charge and the State dismissed the possession charge.

The day after his plea, Smith informed plea counsel he wanted to withdraw his guilty plea. The prosecutor indicated she would file additional charges if Smith withdrew his plea. Plea counsel advised Smith of the possibility of additional charges and Smith chose not to withdraw his plea. On November 23, 1998, Smith wrote to plea counsel and "discharged" her. The district court granted plea counsel leave to withdraw and appointed new counsel ("sentencing counsel") to Smith.

Sentencing occurred on December 28, 1998. The district court sentenced Smith to a mandatory twenty-five year indeterminate term of incarceration with a

[redacted] minimum. The district court also fined Smith $5000 and revoked [redacted]'s license for 180 days.

II. Standard of Review. We review claims of ineffective assistance of counsel de novo. *State v. Brooks,* 555 N.W.2d 446, 448 (Iowa 1996); *State v. Query,* 594 N.W.2d 438, 444 (Iowa App. 1999).

III. Ineffective Assistance of Counsel. Smith alleges four ineffective assistance of counsel claims: (1) plea counsel permitted him to hastily enter into a guilty plea at arraignment; (2) plea counsel misinformed him about the penal consequences of his guilty plea; (3) plea counsel improperly discouraged him from withdrawing his guilty plea; and (4) sentencing counsel failed to take appropriate steps to challenge his plea based on misadvice by plea counsel as to the penal consequences of his plea and based on ineffective assistance of plea counsel.

In order to prevail upon a claim of ineffective assistance, Smith must prove by a preponderance of the evidence that (1) counsel failed to perform an essential duty and (2) prejudice resulted. *See Strickland v. Washington,* 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984); *State v. Bugely,* 562 N.W.2d 173, 178 (Iowa 1997). An ineffective assistance of counsel claim may be disposed of if the defendant fails to prove either prong. *State v. Cook,* 565 N.W.2d 611, 614 (Iowa 1997).

A. Guilty Plea at Arraignment. Smith first contends his plea counsel was ineffective by allowing him to plead guilty at his arraignment and by taking "no action to delay [his] ill-conceived rush to plead." He argues further that plea

[redacted] sought a "cooling off period" for Smith to reconsider his guilty p[redacted] also argues plea counsel had a duty to inform the trial court of the rush to plead guilty against her advice and had a duty to delay the proceedings until the court could assure the guilty plea was knowing and voluntary.

A guilty plea will be upheld when a defendant, with full knowledge of the charge against him and of his rights and the consequences of a plea of guilty, enters such a plea understandably and without fear or persuasion. *See State v. Blum*, 560 N.W.2d 7, 9 (Iowa 1997). Smith is forty-eight years old, has a GED, reads, writes, and understands the English language. Plea counsel's notes indicate she explained his rights to him and advised him not to plead guilty. Her notes also indicate Smith was "adamant" in pleading guilty and could not be talked out of pleading guilty at the arraignment.

During the plea colloquy, the district court inquired as to whether Smith was under the care of a physician or under the influence of drugs or alcohol. Smith answered he was not. After explaining the consequences of pleading guilty, the district court asked Smith if he had any questions; Smith answered he did not. The district court then asked whether he wanted to discuss the terms of the plea agreement with his attorney. Smith answered, "No. It's perfectly clear." It is apparent from the record Smith entered his guilty plea knowingly and voluntarily. After informing her client of his rights and advising him he should not plead guilty, plea counsel had no duty to exert additional efforts to induce Smith to follow her advice. Although she might have chosen to request a delay in sentencing to permit Smith to "cool off," she had no duty to subvert her client's

decision to plead guilty by informing the district court Smith was about to plead guilty against her advice. Smith cites no authority for the proposition plea counsel violated a duty under these circumstances. Under the circumstances of this case, we cannot say Smith's counsel was ineffective for allowing Smith to enter a guilty plea at his arraignment.

B. Remaining Claims. Ineffective assistance of counsel claims often are not resolved on direct appeal but are preserved for postconviction proceedings to allow the preparation of an adequate record and to allow the attorneys charged with ineffective assistance an opportunity to respond to the claim. *State v. Kinkead,* 570 N.W.2d 97, 103 (Iowa 1997). The record in this case is insufficient to resolve Smith's remaining claims on direct appeal. Accordingly, we preserve Smith's remaining allegations of ineffectiveness for possible postconviction relief.

AFFIRMED.