IN THE COURT OF APPEALS OF IOWA

No. 7-161 / 96-994

000211

TERESA LYNN HATLEN,

Appellant,

vs.

STATE OF IOWA,

Appellee.

FILED
JUN 26 1997
CLERK SUPREME COURT

Appeal from the Iowa District Court for Black Hawk County, Thomas N. Bower, Judge.

Teresa Lynn Hatlen appeals from the district court's denial of her application for postconviction relief. **AFFIRMED.**

Stephanie C. Hassler of Roeder & Hassler, Manchester, for appellant.

Thomas J. Miller, Attorney General, Robert P. Ewald, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Shawn Wehde, Assistant County Attorney, for appellee.

Considered by Sackett, P.J., and Huitink and Streit, JJ.

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SACKETT, P.J.

Teresa Hatlen filed an application for postconviction relief claiming she received ineffective assistance of counsel during her guilty plea and sentencing proceedings. She claimed her counsel was ineffective due to (1) counsel's failure to request that the sentencing judge be the same judge who took her guilty plea; (2) counsel's failure to object when the trial court failed to ascertain whether there was an adequate factual basis for her guilty plea; and (3) counsel's failure to object when the trial court did not advise her of the elements of the offenses. We affirm.

Hatlen was convicted in federal court of conspiracy to distribute cocaine. On probation she was charged in Iowa with two counts of delivery of a controlled substance (methamphetamine) and one count of failure to affix a drug tax stamp. Because of the previous federal conviction, Hatlen was subject to an enhanced penalty under Iowa Code section 204.411(1) (1991).[1]

Hatlen entered a plea agreement with the State. She was to plead guilty to one count of delivery and failure to affix a drug tax stamp. The State was to dismiss the other count of delivery. Hatlen appeared before Judge Robert Mahan and entered a plea of guilty.

Hatlen was sentenced by Judge George Stigler to a term of imprisonment not to exceed ten years on the delivery charge. Under the enhancement provision, this

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[1] This section is now found at Iowa Code section 124.411(1) (1997).

was trebled to thirty years. She was sentenced to a concurrent term not to exceed five years on the charge of failure to affix a drug tax stamp. We affirmed the judgment and sentence on appeal. *State v. Hatlen*, 515 N.W.2d 572 (Iowa App. 1993).

Hatlen filed this application for postconviction relief claiming she received ineffective assistance of counsel at her guilty plea and during sentencing. The district court held defendant failed to show by a preponderance of the evidence her trial counsel's actions rose to the level of ineffective assistance of counsel.

To establish a claim of ineffective assistance of counsel, Hatlen must show (1) her attorney failed to perform an essential duty, and (2) prejudice resulted. *Caldwell v. State*, 494 N.W.2d 213, 214 (Iowa 1992). Representation by counsel is presumed competent, and Hatlen has the burden to prove by a preponderance of the evidence that counsel was ineffective. *Jones v. State*, 479 N.W.2d 265, 272 (Iowa 1991).

Hatlen first contends her trial counsel should have requested she be sentenced by the same judge who took her guilty plea. In the alternative, she argues her attorney should have inquired whether the sentencing judge had reviewed the court file. She advances the sentencing judge was not familiar with her individual circumstances and sentenced her based only on the nature of the offense.

Iowa Rule of Criminal Procedure 18(7)(b)(2) provides:

> (2) After Verdict or Finding of Guilt. If by reason of absence, death, sickness or other disability the judge before whom the defendant has been tried is unable to perform the duties to be performed by the

> court after a verdict or finding of guilty, any other judge regularly sitting in or assigned to the court may perform those duties; but if such other judge is satisfied that he or she cannot perform those duties because he or she did not preside at the trial or for any other reason, he or she may in his or her discretion grant a new trial.

When there is a substitution of judges, the second judge is required to become familiar with the case. *State v. Wrage,* 279 N.W.2d 4, 6 (Iowa 1979).

Judge Stigler said he had examined the court record. Facts of the case were called to the judge's attention at the sentencing hearing. Hatlen has not shown there were facts not called to Judge Stigler's attention that would have affected his sentencing decision.

Hatlen testified. Her mother and her pastor also testified supporting her contention she had turned her life around. The court was made aware of the mitigating factors Hatlen argues supported a reduced sentence. Hatlen has failed to show she was prejudiced by her counsel's failure to object when Judge Stigler rather than Judge Mahan sentenced her.

Hatlen next contends her attorney should have objected because there was not an adequate basis for the plea. Hatlen claims the district court did not determine her guilty plea had a factual basis. She asserts her trial counsel should have objected or filed a motion in arrest of judgment.

Iowa Rule of Criminal Procedure 8(2)(b) requires a court to determine if a guilty plea has a factual basis. *State v. Boone,* 298 N.W.2d 335, 337 (Iowa 1980). This requirement is necessary to assure the accuracy of the plea in order to preclude

convictions for crimes of which the accused is not in fact guilty based on the evidence adduced at the plea proceeding. *State v. Sanders*, 309 N.W.2d 144, 145 (Iowa App. 1981).

A factual basis for a plea can be established by (1) inquiry of the defendant; (2) inquiry of the prosecutor; (3) examination of the presentence report; or (4) reference to the minutes of testimony. *State v. Victor*, 310 N.W.2d 201, 205 (Iowa 1981); *State v. Johnson*, 234 N.W.2d 878, 880 (Iowa 1975).

The sentencing court inquired whether it could rely on the minutes of testimony. Hatlen's attorney answered in the affirmative. The minutes contain transcripts of taped surveillance showing Hatlen participated in the sale of methamphetamine to an undercover agent.

At the plea proceedings, Hatlen said:

> Steve Miller had repeatedly called us wanting to purchase some methamphetamine, and on that date he came over. I had answered the phone, and he had arranged to come over. And he came over with Sean McCullough and purchased like -- it was like three grams or so of methamphetamine.

Hatlen admitted she made the arrangements for the sale of methamphetamine. There was a sufficient factual basis for Hatlen's guilty plea. Hatlen failed to show her trial counsel was ineffective in not objecting to the lack of a factual basis for the plea.

Hatlen next claims she received ineffective assistance because her trial counsel did not object to the trial court's failure to advise her of the elements of the offense.

It is not mandatory that the trial court explain each element of the offense to the defendant. *State v. Yarborough*, 536 N.W.2d 493, 496 (Iowa App. 1995). The necessity for an explanation varies according to the circumstances of each case. *Victor*, 310 N.W.2d at 204. The question is whether the defendant, when viewing the record as a whole, understood the elements of the crime and the nature of the charges against her. *See State v. Oberbreckling*, 235 N.W.2d 121, 122 (Iowa 1975).

At the plea proceeding, defense counsel told the district court he had explained the elements of the offense to Hatlen. At the postconviction hearing, defense counsel testified it was his general practice to discuss the elements of the offense with his clients. Hatlen failed to allege which elements of the offenses she did not understand or how she was prejudiced by the court's failure to explain each element of the charges. She has failed to show she received ineffective assistance of counsel on this issue.

We affirm the decision of the district court denying Hatlen's application for postconviction relief. Costs of this appeal are assessed to Hatlen.

AFFIRMED.