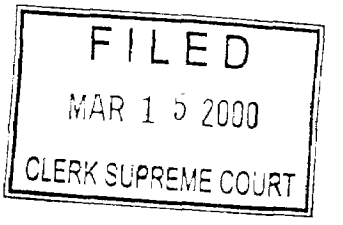
**IN THE COURT OF APPEALS OF IOWA**

No. 0-020 / 99-0125
Filed March 15, 2000




**JAY PAUL LOFTUS,**
Applicant-Appellant,

**vs.**

**STATE OF IOWA,**
Respondent-Appellee.

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Appeal from the Iowa District Court for Story County, Carl E. Peterson, Judge.

Jay Paul Loftus appeals the district court's denial of his application for postconviction relief. **AFFIRMED.**

John G. Martens of Terrill & Martens Law Offices, Ames, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney General, and Mary E. Richards, County Attorney, for appellee.

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

**MAHAN, P.J.**

Jay Paul Loftus appeals the district court's denial of his application for postconviction relief. He contends his guilty plea was not knowing and voluntary because the district court failed to determine if he was competent to plead guilty given his mental health history. He also asserts he received ineffective assistance of counsel. We affirm.

The State charged Loftus with first degree kidnapping (Count I), child endangerment (Count II), and interference with official acts (Count III).[1] The district court appointed two attorneys from the public defendant's office to represent him. Loftus had a history of mental health problems. Therefore, separate applications for psychiatric examinations were filed by defense counsel and the prosecution. An order for psychiatric evaluation was entered by the district court on June 1, 1995.

Loftus was examined by three separate psychiatrists. Although it was determined he suffered from serious psychiatric problems, all three psychiatrists concluded he was competent to stand trial. At the competency hearing held on August 21, 1995, no contrary evidence was presented. Loftus was therefore adjudged competent by the district court in an order filed August 24, 1995.

The district court entered an order on November 22, 1995, allowing the public defenders to withdraw and appointing attorney Don Juhl to represent

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[1] Loftus was alleged to have sexually abused his estranged wife at knifepoint during an eighteen hour period. During this time, he locked the apartment door and refused to allow the victim or her children to leave. When police arrived at the scene, he allegedly held a knife at the victim's throat. He was eventually taken into custody. Examination of the apartment indicated the phone line had been cut and damage had been done to the victim's possessions.

Loftus. Juhl negotiated a plea agreement with the State whereby the State would accept a guilty plea to second-degree sexual abuse, a Class B felony with a mandatory twenty-five year sentence and would drop the other charges, including the Class A felony with a mandatory sentence of life in prison. It is clear from the record Loftus was aware of and agreed to this plea agreement.

The trial information was amended pursuant to the plea agreement, and Loftus entered a plea of guilty on March 4, 1996, which was accepted by the district court. Sentencing was scheduled for April 1, 1996.

On March 26, 1996, Loftus filed a motion in arrest of judgment alleging his counsel had engaged in misconduct and was incompetent. Attorney Juhl responded with a motion to withdraw which was filed on March 28, 1996. Loftus then withdrew his motion and Juhl agreed to remain as his counsel. Loftus was then sentenced to a mandatory twenty-five-year prison term.

Loftus filed a direct appeal which he later dismissed. He then filed a postconviction relief action which he also dismissed. He subsequently filed the present postconviction relief on March 24, 1998. Loftus was denied relief by a district court order dated December 31, 1998. He now appeals.

**I. Competency to Enter Plea.** Loftus claims his guilty plea was defective because the district court failed to determine his competency. Review is for correction of errors at law. Iowa R. of App. P. 4; *State v. White,* 587 N.W.2d 240, 242 (Iowa 1998). To the extent the claim is constitutionally based, review is de novo. *Fenske v. State,* 592 N.W.2d 333, 338 (Iowa 1999).

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Specifically, Loftus contends his guilty plea was not entered in a knowing and voluntary manner because the district court failed to make an independent determination of his competency when accepting the plea. We disagree.

Loftus is correct in asserting the district court has an obligation to determine his competency to enter a guilty plea. *State v. Walton,* 228 N.W.2d 21, 23-24 (Iowa 1975). However, the district court need not conduct an independent inquiry over and above the plea colloquy unless there exists, at the time of the plea, an unresolved reasonable doubt concerning competency. *Id.*; *State v. Boge,* 252 N.W.2d 411, 414 (Iowa 1977). Our supreme court stated in Boge:

> We find no evidence in the record to suggest a question of defendant's mental competence to the trial judge. Petitioner admits that nothing relative to his mental condition was brought out at the plea hearing. We decline to accept petitioner's suggestion that a mental competency inquiry be added to the plea hearing procedure where no question of competency is apparent, or the question of competency is not directly raised.

In the instant case, the mere fact Loftus has suffered from mental illness does not equate to an unresolved reasonable doubt concerning competency. *Jones v. State,* 479 N.W.2d 265, 270 (Iowa 1991). Instead, our role as an appellate court is to review all of the factors known to the district court at the time the plea was entered. *Boge,* 252 N.W.2d at 414; *Walton,* 228 N.W.2d at 23. We have reviewed those factors and conclude there is no evidence in the record to suggest an independent competency inquiry was necessary in this case. No question of competency was apparent and a question of competency was not directly raised at the plea proceeding. Indeed, a full competency examination

was completed several months before the plea proceeding. Three psychiatrists concluded at that time Loftus was competent. Once the competency finding was made by the district court, the presumption Loftus was competent continued until contrary evidence was presented. *State v. Rieflin,* 589 N.W.2d 749, 752 (Iowa App. 1998). No such evidence was ever presented. In addition, Loftus did not display any irrational behavior at the plea proceeding and answered questions appropriately. The district court could presume Loftus to be competent to enter a guilty plea. *State v. Pedersen,* 309 N.W.2d 490, 496 (Iowa 1981). We affirm on this issue.

**II. Ineffective Assistance of Counsel.** Loftus has raised several claims of ineffective assistance of counsel.

When reviewing claims of ineffective assistance of counsel, we make an evaluation based on the totality of the circumstances. This is equivalent to a de novo review. *State v. Wissing*, 528 N.W.2d 561, 563 (Iowa 1995). When reviewing claims a guilty plea was involuntary, our review is the same. *State v. Blum*, 560 N.W.2d 7, 9 (Iowa 1997).

Loftus bears the burden of demonstrating ineffective assistance of counsel. *State v. Morgan*, 559 N.W.2d 603, 612 (Iowa 1997); *Dunbar v. State*, 515 N.W.2d 12, 15 (Iowa 1994); *State v. Kone*, 557 N.W.2d 97, 102 (Iowa App. 1996). "A defendant receives ineffective assistance of counsel when (1) the defense attorney fails in an essential duty and (2) prejudice results." *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). Therefore, we may affirm Loftus' conviction based on his failure to prove prejudice without deciding whether his counsel failed to perform an essential duty. *See State v. Hoeck*, 547 N.W.2d 852, 863 (Iowa App. 1996).

Loftus establishes prejudice by showing "there is a reasonable probability that, but for the counsel's unprofessional errors, the result of the proceeding would have been different." *State v. Hopkins*, 576 N.W.2d 374, 378 (Iowa 1998) (quoting *Strickland*, 466 U.S. at 694, 104 S. Ct. at 2068, 80 L. Ed. 2d at 698). A "reasonable probability is a probability sufficient to undermine confidence in the outcome" of the proceedings. *Bugely*, 562 N.W.2d at 178 (quoting *State v. Kraus*, 397 N.W.2d 671, 673 (Iowa 1986)). This same test applies when the proceedings end in a guilty plea. *Hill v. Lockhart*, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370, 88 L. Ed. 2d 203, 210 (1985).

Loftus' main claim is his attorney should have alerted the district court of the competency issue. We discussed this issue fully in the previous section. For the same reasons stated previously, we conclude counsel did not fail to perform an essential duty in this regard. In addition, we conclude Loftus is unable to show prejudice. *Rieflin,* 589 N.W.2d at 752.

We have also reviewed Loftus' other claims and conclude they are without merit. We therefore affirm on this issue.

**AFFIRMED.**

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