

IN THE COURT OF APPEALS OF IOWA

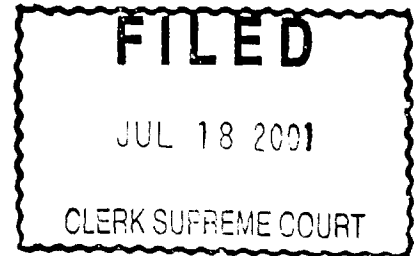
No. 1-325 / 99-1959

Filed July 18, 2001

STATE OF IOWA,
Appellee,

vs.

SCOTT RICHARD HUTCHINS,
Appellant.



Appeal from the Iowa District Court for Linn County, William L. Thomas,
Judge.

Scott Hutchins appeals his convictions and sentences for first-degree
burglary and failure to appear. **AFFIRMED.**

Dennis A. Bjorklund, Coralville, for appellant.

Thomas J. Miller, Attorney General, Linda J. Hines, Assistant Attorney
General, and Denver D. Dillard, County Attorney, for appellee.

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

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VOGEL, P.J.

Following a guilty plea, Scott R. Hutchins appeals his convictions and sentences for the charge of burglary in the first degree with intent to commit a theft, in violation of Iowa Code sections 713.1 and 713.3 (1999), and failure to appear, in violation of Iowa Code section 811.2(8) (1999). Hutchins contends that his trial counsel was ineffective for failing to appropriately consider and assess his competency and that the district court abused its discretion by failing to consider certain necessary factors in sentencing. Because we find Hutchins failed to meet his burden in both regards, we affirm the decision of the district court.

Background Facts and Proceedings. Hutchins was charged with burglary in the first degree, arising out of an incident at the Longbranch Hotel on or about July 14, 1998. The minutes of testimony allege the following chain of events: Hutchins walked into room 435, which was being cleaned by a hotel maid, Tonya Tomkins. Telling Tomkins that he needed to talk to her, he shut and locked the door, at which time Tomkins began to scream. Hutchins then pulled a large knife, held it to Tomkins' throat while pushing her into a corner, and told Tomkins that he would hurt her if she didn't stop screaming. He then told Tomkins that he wanted her to come over to the bed with him, so that they could talk. As they began moving towards the bed, Tomkins was able to free herself, lock herself in the bathroom, and began screaming once more. Hutchins told her he was leaving, then did so.

In a voluntary statement to police, Hutchins indicated he was a guest at the hotel, and was upset over the fact he was being evicted from his apartment. He said he entered room 435 because he thought he saw a suitcase that might have "something inside," and he needed money for a deposit on a new apartment. He said he had no intention of attacking the maid, and that he only took out his knife and held it, but did not point it at Tomkins. He said that when she started screaming, all he wanted to do was to calm her down and explain he would not hurt her. He stated that after Tomkins locked herself in the bathroom he left the room and the hotel, returning to his apartment and hiding the knife in a hole in the apartment wall.

Hutchins had a rather extensive history of psychological problems. Even before the trial information was filed, Hutchins' attorney filed both a Notice of Defense of Insanity and Notice of Defense of Diminished Responsibility. Defense counsel then arranged to have an evaluation completed by a clinical psychologist, who opined that Hutchins suffered from paranoid schizophrenia, alcohol abuse, depressive symptomology and childhood history consistent with ADHD. Hutchins continued to have mental health issues while confined and awaiting trial.¹

Plea proceedings were set for July 2, 1999, but Hutchins did not appear. This resulted in a warrant for Hutchins' arrest and gave rise to a felony charge of

¹ A September 1998 evaluation at MHI, Independence, diagnosed Hutchins with adjustment disorder and alcohol abuse, as well as the history of Tourette's syndrome. A November 1998 in-patient evaluation at the University of Iowa resulted in a discharge diagnosis of psychosis and depression, as well as the previously-identified alcohol abuse and Tourette's syndrome.

failure to appear. After the warrant was returned and the matter reset, the State filed a notice of additional evidence, which stated Hutchins' primary treating psychiatrist was prepared to testify Hutchins "is and was on the date of the charge in the Trial Information capable of forming specific intent and was not insane."

Before trial the parties reached an agreement as to both charges. The initial trial information charged Hutchins with entering the hotel room, while armed with a dangerous weapon, with the intent to commit a felony, theft or assault. The State agreed to amend the information to eliminate both the felony and assault allegations, to ask the court to make no finding in regard to the use of a dangerous weapon, and to make a binding recommendation that the two sentences run concurrently. In exchange Bradley entered an *Alford* plea² to the charge of burglary in the first degree, based on entry into the hotel room with the intent of committing a theft, and a guilty plea to the failure to appear charge. Both pleas were conditioned on the imposition of concurrent sentences. See Iowa R. Crim. P. 9(3).

At the plea proceedings Hutchins stated he suffered from paranoid schizophrenia and Tourette's syndrome, and was on medications for those conditions. He also affirmed his own competency to enter a plea at that time. When defense counsel was asked if he knew any reason why Hutchins should not enter his plea, counsel noted only that Hutchins had stated he was not on the

² See *State v. Klawonn*, 609 N.W.2d 515, 520 (Iowa 2000) (discussing an *Alford* plea, which allows a defendant to enter a guilty plea, and thus avoid the potential consequences of a trial, without admitting to the underlying facts).

full strength of three prescribed medications – Zyprexa, Haldol, and Zoloft – at the time he signed a written *Alford* plea for the burglary charge.³ Defense counsel went on to state that he had “no independent reason to believe [Hutchins is] not competent to give a plea today.”

At sentencing the State and defense counsel once again indicated that the pleas were being submitted subject to the district court’s willingness to be bound by the concurrent sentencing agreement, and put forth the other plea terms. The court fully complied with the agreement, imposing the mandatory twenty-five year indeterminate sentence for the burglary charge, a five year indeterminate sentence for failure to appear, made no finding regarding the use of the dangerous weapon, and ordered the two sentences to run concurrently.

Scope of Review. Our review of an allegation of ineffective assistance of counsel is de novo. *State v. Howes*, 525 N.W.2d 874, 876 (Iowa Ct. App. 1994). In contrast, we review sentence impositions for correction of errors at law. Iowa R. App. P. 4. A district court’s sentencing decision is granted a strong presumption in its favor, and a sentence imposed within statutory limits will be set aside only for an abuse of discretion. *State v. Thomas*, 547 N.W.2d 223, 225 (Iowa 1996).

³ This statement was made in regard to paragraph six of the written plea, which read as follows:

My mind is clear and I am not under the influence of any medication, drug or alcoholic beverage at the time of signing and initialing this document. The following is a complete list of all treatment I am presently receiving for any physical or mental condition (answer if appropriate). Zyprexa [sic], Haldol, and Zoloft.

Ineffective Assistance of Counsel. To establish ineffective assistance of trial counsel, Hutchins must overcome a strong presumption of his counsel's competence. *State v. Nucaro*, 614 N.W.2d 856, 858 (Iowa Ct. App. 2000). He must demonstrate, by a preponderance of the evidence, that his attorney failed to perform an essential duty and that he was prejudiced as a result of this failure. *Id.* Prejudice requires proof of a reasonable probability that, but for counsel's failure, the outcome of the proceedings would have been different. See *id.* A reasonable probability is one that undercuts confidence in the outcome of the proceedings. *Id.* Here, the alleged failure is: 1) ignoring psychiatric evidence of Hutchins' mental state, which purportedly manifested itself in counsel's failure to consider the merits of a mental health defense, 2) failure to determine Hutchins' competence to enter a plea, and 3) failure to adequately explain the consequences of a guilty plea to a charge of burglary in the first degree.

A. Mental health defense. Clearly, defense counsel was aware of the potential of a mental health defense, as an evaluation was obtained and notices of insanity and diminished responsibility defenses were filed. Hutchins claims that counsel failed to properly weigh the strength of these defenses, however, when negotiating the plea agreement. He contends that counsel could have instead proceeded to trial where, given his psychiatric and non-violent histories (excepting a history of self-destruction),⁴ there is a reasonable probability that a jury would not have found him guilty of first-degree burglary. He points to his assertion that, if taken to trial, the facts would have shown he entered the room

⁴ This is a mischaracterization of the record, which contained numerous references to Hutchins' violent temper, verbal threats to others and property destruction.

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with the intent to commit suicide, thus negating the State's proof that he entered the room with an intent to commit a theft. We cannot agree with this contention.

The very fact the insanity and diminished responsibility notices were filed, and an evaluation conducted at defense counsel's request, demonstrates that Hutchins' attorney did consider his psychological history when formulating a defense to the burglary charge. The claim that he failed to adequately use these defenses as a bargaining chip when negotiating a plea is little more than base speculation. Despite Hutchins' assertion that he did not intend to commit a theft, there was a factual basis in the record to support the burglary conviction: There is no dispute Hutchins entered the hotel room, and that he gave the police a statement admitting he had entered the room to commit a theft.

Moreover, as the State did make some concessions regarding sentencing and charging elements, there was an advantage to be gained by entering a plea. A review of the plea proceeding transcript also indicates defense counsel's awareness that the agreement did not overly benefit Hutchins, but that Hutchins wished to enter a plea despite the limited advantage to be gained:

I would like to make a record, first of all, that Mr. Hutchins and I have talked extensively about this plea and entering this plea.

...

He does still, however, wish to take advantage of the Alford plea because he is still receiving the benefit by entering a plea of guilty.

...

He wishes to take advantage of the plea agreement which would be to let us plead under the . . . intent to commit a theft, as opposed to the intent to commit assault or sexual abuse. That way . . . – if found guilty at trial, he would not – he does not now have to worry about signing the Sexual Offender Registry.

And he also wishes to take advantage of it because the county attorney has agreed not to proceed with a finding of a

dangerous weapon as far as mandatory five-year prison sentence enhancement would be concerned.

And further, that in the . . . Failure to Appear [charge], the State has agreed to allow that five-year sentence to run concurrent to and not consecutive to the Burglary First Charge.

And I have discussed with Mr. Hutchins that there is not a great deal worse that could happen to him if he went to trial and lost, but those things could have happened to him if he went to trial and lost.

I have discussed with him the statistics from the parole board as far as First Degree Burglary is concerned. He is aware that it can be six, seven, eight years. But he does not want to go to trial and lose for fear of the mandatory minimum five-year sentence because of a dangerous weapon.

Nor can Hutchins demonstrate a reasonable probability that, if he had gone to trial, he would have been acquitted of the first-degree burglary charge. The State was prepared to offer direct, victim eyewitness testimony to the events in the room, and Hutchins' confession that he entered the room with the intent to take something of value. It was also ready to offer testimony from a psychiatrist who had treated Hutchins for a number of years, and who was prepared to testify that Hutchins could, in fact, form specific intent at the time he entered the hotel room. Even if we assume Hutchins would take the stand and testify that his only intent in entering the room was to commit suicide, this is not enough to undermine our confidence in the outcome of the proceedings.

B. Competency to enter a plea. The two remaining allegations of ineffective assistance are really one in the same – that defense counsel failed to adequately determine whether Hutchins was competent to enter a guilty plea. While Hutchins does argue his attorney failed to adequately advise him of plea consequences, the alleged inadequacy purportedly arose because Hutchins “was

not of sound mind to make the rational decision about the consequences of his plea." In other words, Hutchins claims his extensive psychiatric history, along with his failure to concede his guilt and his corresponding confusion regarding entry of an *Alford* plea, should have placed counsel on notice that he may not have been competent to stand trial or enter a guilty plea. Again, Hutchins does not claim that counsel was unaware of his mental history, only that more should have been done to ascertain his ability to enter a competent plea.

The State concedes that the record is inadequate to determine the extent of defense counsel's investigation into Hutchins' competence. As a general matter, where a record on appeal is inadequate to assess the performance of trial counsel, we preserve the ineffective assistance claim for postconviction review. *State v. Oetken*, 613 N.W.2d 679, 683 (Iowa 2000). The State asserts such action is not necessary in this case, however, as the record demonstrates Hutchins was in fact competent at the time of the plea proceeding.

Iowa Code section 812.3 requires that a competency hearing be held if the record demonstrates that "a reasonable person would believe a substantial question of defendant's competency exists." *State v. Rieflin*, 558 N.W.2d 149, 152 (Iowa 1996). Several factors are relevant to the issue of whether a substantial question exists, including any irrational behavior by the defendant, any demeanor of the defendant during court proceedings that suggests a competency problem, and any prior medical determination regarding competency. See *id.* Here, there is insufficient evidence that Hutchins was incompetent while entering his plea.

Although both defense counsel and the court were aware of Hutchins' mental problems, the mere fact a defendant has a history of mental illness does not mean that person is incompetent. See *id.* When the question of Hutchins' mental illness arose, the district court took steps to assure itself that competency was not an issue, making inquiries of both the defendant and defense counsel. While there does appear to have been an escalation in Hutchins' mental illnesses between the incident at the hotel and the plea proceedings, he was taking medication to control his symptoms. Nor is there any indication of a medical opinion questioning Hutchins' competence during or prior to the plea proceedings. The only competency opinion referred to in the record on appeal is that of Hutchins' treating physician, who was prepared to testify to Hutchins' ability to form specific intent at the time of the hotel incident.⁵

A review of the plea proceeding and sentencing transcripts fails to demonstrate any irrational behavior by Hutchins or any other indicators of incompetence. He did express a concern about his *Alford* plea at sentencing: "Just I guess I don't understand why I'm being charged. I didn't hurt anybody or steal anything. That's the only part I haven't understood about this whole thing." While this statement does indicate some confusion about the proceedings, Hutchins did acknowledge an opportunity to discuss the matter with his attorney, and the court conducted a further inquiry to be sure Hutchins' understood the nature of his *Alford* plea.

⁵ The evaluation conducted by Hutchins' expert, and filed with the district court under seal on December 10, 1998, was not made a part of the record on appeal.

The relevant factors do not tend to demonstrate Hutchins was incompetent while entering his plea, nor did he ever make a request for a competency hearing. A similar issue was raised in *State v. Mann*, 512 N.W.2d 528 (Iowa 1994):

In the present case, a competency examination was not requested by the defendant. There is no evidence that the defendant behaved irrationally or failed to understand the nature of the proceedings in which he was involved, nor did the psychiatric examination he requested suggest that he was not competent to stand trial.

Without a request for a competency evaluation or apparent indicia of incompetency to prompt a 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"

Id. at 531. Even if we were to assume trial counsel failed in an essential duty to conduct an inquiry into Hutchins' competency, Hutchins has not shown a reasonable probability that he would have been deemed incompetent if such an inquiry had been made. Without proof of prejudice, he cannot demonstrate ineffective assistance of his trial counsel. See *Nucaro*, 614 N.W.2d at 858.

Basis for Sentence. Hutchins contends the district court abused its discretion when it failed to consider certain necessary minimal factors when imposing the sentence. He claims this failure to properly exercise discretion is demonstrated by the court's failure to give any reasons for the sentences selected. See Iowa R. Crim. P. 22(3)(d) (requiring a court to state on the record reasons for imposing a particular sentence). Here, however, the parties entered into a binding plea agreement, and the district court followed the agreement in every detail. As such, "the sentence was not the product of the exercise of the trial court's discretion but of the process of giving effect to the parties'

agreement." *State v. Snyder*, 336 N.W.2d 728, 729 (Iowa 1983). Requiring a court to state reasons under such circumstances fails to serve any useful purpose, and thus the district court's failure to put forth its reasons in this case was not an abuse of discretion. See *State v. Cason*, 532 N.W.2d 755, 756-57 (Iowa 1995).

AFFIRMED.