IN THE COURT OF APPEALS OF IOWA

No. 6-403 / 95-1444

STATE OF IOWA,

Appellee,

vs.

FRANCISCO FUENTES a/k/a JOSE GUZMALL,

Appellant.

FILED
JUL 26 1996
CLERK SUPREME COURT

Appeal from the Iowa District Court for Plymouth County, James D. Scott, Judge.

Fuentes appeals his conviction and sentence, following a guilty plea, of possession of methamphetamine with the intent to deliver. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and James G. Tomka, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Richard J. Bennett, Assistant Attorney General, and John C. Beekman, County Attorney, for appellee.

Considered by Cady, P.J., and Streit and Vogel, JJ.

STREIT, J.

This is an appeal by a defendant claiming his conviction and sentence, following a guilty plea, of possession of methamphetamine with intent to deliver in violation of Iowa Code section 124.401(1) (1993) should be overturned because he received ineffective assistance of counsel. We affirm.

On June 26, 1995, Fuentes was charged with possession with intent to deliver methamphetamine in violation of Iowa Code section 124.401(1) (1993) and unlawful carrying of weapons in violation of Iowa Code section 724.4 (1993). On July 24, 1995, Fuentes entered his plea of guilty to possession with intent to deliver methamphetamine.

The plea agreement provided that in return for Fuentes pleading guilty to the drug charge, the weapons charge would be dismissed. The agreement further recommended that probation would be an appropriate sentence. This recommendation was based on the assurances of Tony Cooley, an agent at the Department of Immigration and Naturalization, that deportation proceedings would immediately begin, and should Fuentes return to the United States after deportation, he would receive serious punishment under federal law. Consistent with the plea agreement, the court imposed a suspended sentence and placed Fuentes on probation, with a condition of probation that he be held in the county jail pursuant to the immigration detainer. Fuentes was later indicted for the federal crime of unlawful re-entry to the

United States by an alien who has previously been deported because of a prior conviction in the United States for an aggravated felony.[1]

Fuentes claims he received ineffective assistance of counsel because his attorney gave him erroneous legal advice on the collateral consequence of his plea. Fuentes relies on *Meier v. State*, 337 N.W.2d 204, 207 (Iowa 1983), which held that although there is no constitutional requirement a defendant be informed of the collateral consequences of his plea, defense counsel is not free to misinform the defendant regarding the collateral consequences. The first prong of the test contained in *Meier* is that counsel failed to perform an essential duty. *Id.* at 208. In this case, counsel's belief that Fuentes would be deported was founded on an assurance from an agent of the federal agency charged with enforcing federal immigration law. Such reliance was within the range of reasonable competence. "Counsel can hardly conceive of all possible collateral consequences of a guilty plea and need not be a crystal gazer." *Saadig v. State*, 387 N.W.2d 315, 326 (Iowa 1986).

We find Fuentes has failed to show he received ineffective assistance of counsel. We affirm defendant's conviction and sentence, following a guilty plea, of possession with intent to deliver of methamphetamine.

AFFIRMED.

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[1] This was based on a prior California felony conviction.