FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 4-387 / 93-1915

MATTHEW GUY CLARKE,

Appellant,

vs.

STATE OF IOWA,

Appellee,

Appeal from the Iowa District Court for Warren County, Dale B. Hagen, Judge.

Matthew Clarke appeals the district court's denial of his application for postconviction relief. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, Andi S. Lipman, Assistant State Appellate Defender, and Matthew Guy Clarke, pro se, for appellant.

Bonnie J. Campbell, Attorney General, Martha E. Boesen, Assistant Attorney General, and Kevin A. Parker, County Attorney, for appellee.

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

HUITINK, J.

Matthew Clarke appeals the district court's denial of his petition for postconviction relief. We affirm.

On September 14, 1992, the State charged Clarke with attempted murder for allegedly firing a shot at his father. Pursuant to a plea agreement, Clarke pleaded guilty to assault with a dangerous weapon by use of a firearm under Iowa Code sections 708.1(3) and 708.2(3) (1991). In exchange, the State dropped the attempted murder charge and agreed to recommend a fine at sentencing.

At the plea hearing, Clarke waived his right to file a motion in arrest of judgment and requested immediate sentencing. Following the sentencing hearing, the court imposed a fine plus surcharge.

Clarke did not file a notice of appeal within the time allowed in Iowa Rule of Appellate Procedure 5(a). He subsequently filed a pro se motion for delayed appeal, which was denied by the supreme court.

In May 1993 Clarke filed an application for postconviction relief. Following a hearing, the district court denied the application.

The district court denied Clarke's application for postconviction relief because Clarke failed to raise his claims on direct appeal. On appeal, Clarke contends his trial counsel was inneffective for (1) failing to inform him an aggravated misdemeanor conviction made him a felon for purposes of Iowa Code section 724.25, thus precluding him from possessing a firearm and (2) failing to file a

notice of direct appeal. Clarke also contends the court erred in failing to overturn his conviction due to improper actions by the county attorney.

Ordinarily, our review of postconviction relief proceedings is for errors of law. Hinkle v. State, 290 N.W.2d 28, 30 (Iowa 1980). However, when a postconviction petitioner asserts violation of constitutional safeguards--such as ineffective assistance of counsel--we make our own evaluation based on the totality of the circumstances. This is the equivalent of de novo review. Id.

A claim of ineffective assistance may be presented for the first time at postconviction only if a defendant shows by a preponderance of the evidence (1) sufficient reason or cause for failing to raise the issue on direct appeal, and (2) actual prejudice resulted. Collins v. State, 477 N.W.2d 374, 376 (Iowa 1991). To establish sufficient reason or cause, the defendant must further prove by a preponderance of the evidence that (1) counsel failed to perform an essential duty and (2) prejudice resulted. See State v. Risdal, 404 N.W.2d 130, 131 (Iowa 1987); Edman v. State, 444 N.W.2d 99, 101 (Iowa App. 1989). To establish actual prejudice, defendant must prove that but for counsel's ineffectiveness, the result would have been different. State v. Hildebrandt, 405 N.W.2d 839, 841 (Iowa 1987).

In evaluating counsel's performance, we presume counsel acted competently. See Risdal, 404 N.W.2d at 131.

Defendant is not entitled to perfect representation, only that which is in the normal range of competency. State v. Halstead, 362 N.W.2d 504, 508 (Iowa 1985).

At the postconviction hearing Clarke's attorney, Mark Pennington, testified he advised Clarke to accept the plea agreement since there was a factual basis for finding Clarke guilty of attempted murder. He stated Clarke made the decision to accept the plea agreement. Pennington admitted he did not specifically inform Clarke how the plea would affect his ability to carry a firearm. However, he testified he would not have changed his advice, regardless of the effect on Clarke's ability to carry a firearm, since he felt it was in Clarke's best interests to accept the plea agreement.

Counsel has a duty to inform a defendant of the direct consequences of a guilty plea but is not ordinarily required to advise of a plea's indirect or collateral consequences since such a requirement would call for conduct beyond the range of normal competency. Saadiq v. State, 387 N.W.2d 315, 326 (Iowa 1986). The ability to possess a firearm was a collateral matter since it did not affect Clarke's punishment. See id. at 325-26. Therefore, Pennington did not breach an essential duty when he did not inform Clarke of this collateral consequence of his guilty plea. Clarke cannot show his plea was involuntarily entered on this basis.

The plea transcript reveals the district court advised Clarke of his rights and explained to him his right to

trial and what he waived by pleading guilty. The court established a factual basis for the charge. When the court asked if he understood the plea bargain, Clarke responded affirmatively. The court found Clarke acted voluntarily in pleading guilty and he fully understood his rights and the consequences of his guilty plea.

The court also informed Clarke that he was entitled to fifteen days before the court proceeded with judgment and sentencing. Clarke waived this right. At that time the court informed Clarke:

> By going ahead this morning you give up your right to file a motion in arrest of judgment, which simply means that you give up your right to ask that you be allowed to change your mind about pleading guilty and you also give up your right to challenge the guilty plea for any defects, procedurally or otherwise.

Again, Clarke stated he understood the ramifications of his decision, and the court proceeded with judgment and sentencing.

Based upon our de novo review, we conclude Clarke has failed to show there was sufficient reason for failing to raise these issues on direct appeal. Pennington's representation of Clarke was well within the normal range of comeptency, and Clarke's guilty plea was voluntarily and intelligently made. Even if Clarke had shown Pennington failed in an essential duty, he fails to show prejudice resulted.

We have also considered each of Clarke's claims, and we find them to be without merit. We therefore affirm

the judgment of the district court in its entirety. Costs of this appeal are assessed to Clarke.

AFFIRMED.