

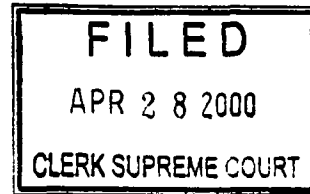
IN THE COURT OF APPEALS OF IOWA

No. 0-148 / 99-141
Filed April 28, 2000

STATE OF IOWA,
Plaintiff-Appellee,

vs.

LAVERNE WILLIAM BOWMAN,
Defendant-Appellant.



Appeal from the Iowa District Court for Des Moines County, William L. Dowell, Judge.

Defendant appeals from the judgment and sentence entered upon his guilty plea to possession of cocaine with intent to deliver and failure to affix drug tax stamps. **AFFIRMED.**

Dennis A. Bjorklund, Coralville, for appellant.

Thomas J. Miller, Attorney General, Thomas S. Tauber, Assistant Attorney General, Patrick C. Jackson, County Attorney, and Michael Bennett and Andrew B. Prosser, Assistant County Attorneys, for appellee.

Considered by Sackett, C.J., and Huitink and Vaitheswaran, JJ. Miller, J. takes no part.

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VAITHESWARAN, J.

The State charged Laverne William Bowman with possession of cocaine with intent to deliver, in violation of Iowa Code section 124.401(1)(d) (1997) and failure to affix a drug tax stamp, in violation of Iowa Code section 453B.12. Bowman pled guilty to both charges and was sentenced to indeterminate ten and five year prison terms respectively, with both sentences to run concurrently. On appeal, Bowman challenges his sentences on the grounds: (1) his presentence investigation (PSI) report was inadequate; (2) the court failed to sufficiently explain its reasons for sentencing him; and (3) his attorney denied him effective assistance by failing to tell him what was in the presentence investigation report. We affirm.

1. Adequacy of Presentence Investigation Report

Bowman contends the presentence investigator prepared her PSI report on the basis of outdated information contained in a 1983 PSI report and failed to consider his more recent employment history, family information, and sufficient medical history. He also maintains the poor organization of the report made it difficult to read. We review these challenges for errors of law. *State v. Phillips*, 561 N.W.2d 355, 357 (Iowa 1997).

Iowa Code section 901.3 requires a presentence investigator to inquire into:

1. The defendant's characteristics, family and financial circumstances, needs, and potentialities, including the presence of any previously diagnosed mental disorder.
2. The defendant's criminal record and social history.
3. The circumstances of the offense.
4. The time the defendant has been in detention.
5. The harm to the victim, the victim's immediate family, and community. . .

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~~6. The defendant's potential as a candidate for the community
 service sentence program established pursuant to section 907.13.
 7. Mitigating circumstances~~

~~We reject~~ Bowman's challenges to the report. At an interview on December 9, 1998, Bowman provided the presentence investigator with information about his family, medical, employment, and educational background. The PSI report contains that information, organized by subject matter. Additionally, the presentence investigator gave Bowman the opportunity to submit a written statement to her. He did not do so. However, on the date of sentencing, his attorney filed a document titled "Corrections and Addendum to the Presentence Investigation," which supplemented the employment history contained in the report. The court stated on the record that it had reviewed this information. Therefore, the district court had before it in the original report or addendum all the information that Bowman now claims was missing. We conclude the presentence investigator addressed the factors set forth in Iowa Code section 901.3 and the district court did not err in relying on the report.

II. Sufficiency of Sentencing Explanation

Bowman contends the district court: (1) did not have sufficient information to consider all attendant circumstances; (2) did not consider all the necessary factors in imposing the sentence; and (3) failed to articulate specific reasons to support the sentence. We review these types of challenges to a sentencing decision for abuse of discretion. *Oliver*, 588 N.W.2d 412, 414 (Iowa 1998). Iowa Rule of Criminal Procedure 22(3)(d) requires that a trial court state on the record its reasons for imposing a sentence. The explanation need not be detailed, but must be sufficient to permit appellate review. *Id.* A district court should weigh all

pertinent matters, including "the nature of the offense, the attending circumstances, defendant's age, character and propensities and chances [for] reform." *State v. Cooley*, 587 N.W.2d 752, 754-55 (Iowa 1998) (quoting *State v. Hildebrand*, 280 N.W.2d 393, 396 (Iowa 1979)).

With respect to Bowman's first contention that the court lacked sufficient information to allow it to make an informed sentencing decision, we conclude the PSI report and addendum, both of which the court stated it reviewed, contained adequate information to permit the court to render an appropriate sentence.

We also reject Bowman's second contention that the court failed to consider all relevant circumstances. The PSI report contained detailed information about Bowman's family as well as his health problems. The addendum summarized his employment history and also made reference to a rape suffered by his step-daughter, which precipitated a move. As noted, the court stated on the record that it considered both documents.

Finally, we find the court's articulated reasons in support of the sentence sufficiently specific to withstand reversal. The court stated:

In your case, in fashioning your sentence, Mr. Bowman, I have given serious consideration to your request that you be granted probation and be given a suspended sentence on each of these matters.

In reviewing the Presentence Investigation Report, I note you're [sic] age in that you're [sic] not a youthful offender. I note your prior record of convictions. I note the nature of this offense in that continued conduct such as this poses a substantial risk to the community. I note that you have previously been afforded the benefits of probation. . . . [court summarized prior suspended sentences]. The reason I make these comments is that it appears you do have substantial difficulties in complying with a structured environment that's required in a probationary setting.

The court continued,

[Mr. Bowman] you are under the thumb of the law that you do know what responsibilities you have in society and you are able to follow those responsibilities. However, when you're not under the thumb of the law or in a precarious situation, you seem to disregard the laws that everyone else in this community and in this state are asked to abide and are held accountable for.

The court concluded,

I've also noted the recommendations of the Des Moines County Attorney's Office and the Eighth Judicial District Department of Correctional Services. Based upon my statements, as well as a review of the entire record of this proceeding, Mr. Bowman, I cannot in good faith honor your request that the sentence of imprisonment be suspended and you be placed on probation.

We conclude the court did not abuse its discretion in setting forth its reasons supporting the sentence.

III. Ineffective Assistance of Counsel Claim

Finally, Bowman contends his attorney was ineffective in failing to (1) explain the information contained in the PSI report and (2) inform the court of the omissions. A defendant who wishes to prevail on an ineffective assistance of counsel claim must show: (1) the attorney failed to perform an essential duty; and (2) the failure resulted in prejudice. *State v. Greene*, 592 N.W.2d 24, 29 (Iowa 1999). When ineffective assistance of counsel claims are raised on direct appeal, we generally preserve them for postconviction proceedings "to allow full development of the facts surrounding counsel's conduct." *State v. Query*, 594 N.W.2d 438, 444 (Iowa App. 1999). However, such claims may be resolved on direct appeal, if the defendant fails to show one of the two elements. *State v. Pierson*, 554 N.W.2d 555, 562 (Iowa App. 1996). Failure to meet this burden will result in denial of the claim. *Id.* To conclude an attorney breached an essential

duty, that attorney's conduct must fall outside the normal range of competency. *Greene*, 592 N.W.2d at 29.

We conclude Bowman's attorney breached no essential duty. First, the record belies Bowman's claim that his attorney failed to tell him what was in the PSI report. The court asked Bowman if he had received a copy of the report. Bowman answered, "[y]es sir." The court also asked, "[a]nd have you had the opportunity to review the report with Ms. Ell?" Bowman responded, "[y]es, I have." Second, the record also resolves Bowman's claim that his attorney failed to inform the court of omissions in the report. The court expressly noted that, on the day of sentencing, the attorney hand-delivered to the court the addendum referenced previously. The court noted it had reviewed the document and made it a part of the file. In light of this statement, Bowman's attorney was under no obligation to verbally recount the contents of the document she filed. *Cf. Greene*, 592 N.W.2d at 29 (noting counsel under no duty to raise meritless issue). For these reasons, we deny Bowman's ineffective assistance of counsel claims.

AFFIRMED.