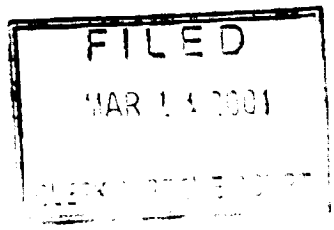
IN THE COURT OF APPEALS OF IOWA

No. 1-123 / 00-0902
Filed March 14, 2001



STATE OF IOWA,
Plaintiff-Appellee,

vs.

ROBERT MARTIN SCHOON,
Defendant-Appellant.

Appeal from the Iowa District Court for Pocahontas County, Kurt L. Wilke and Ronald H. Schechtman, Judges.

Robert Martin Schoon appeals from his conviction for operating a motor vehicle while intoxicated, third offense. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Shellie L. Knipfer, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Kristin Mueller, Assistant Attorney General, Ann Beneke, County Attorney, and Charles Gunderson, Assistant County Attorney, for appellee.

Considered by Hayden, R. Peterson, and C. Peterson, Senior Judges.*

*Senior Judges assigned by order pursuant to Iowa Code § 602.9206 (2001).

R. PETERSON, S.J.

Robert Martin Schoon pled guilty to the crime of operating a motor vehicle while intoxicated, third offense, contrary to Iowa Code section 321J.2(1) and being a habitual offender contrary to Iowa Code section 902.8. He contends his trial counsel provided ineffective assistance by allowing him to plead guilty under an illegal plea bargain. We affirm.

Background and Proceedings.

On November 29, 1999, Schoon was charged by trial information with count I, operating while intoxicated, third offense, contrary to section 321J.2(1) and count II, driving while revoked, contrary to section 321J.21. On January 31, 2000, an amended information was filed. This added count III which charged Schoon with being a habitual offender contrary to Iowa Code section 902.8.

On February 22, 2000, the State and Schoon entered into a plea bargain. The pertinent portion of that plea bargain was Schoon would plead guilty to count I and count III of the amended and supplemented trial information. If that was done, the State would move to dismiss count II at the close of sentencing. The State would in turn recommend a suspended sentence and that the suspended sentence would be consecutive to all sentences of incarceration. The recommendation would not be binding on the court. It also provided Schoon would receive credit for time spent in custody pending the disposition of the charges.

On May 15, 2000, Schoon appeared for sentencing. The court, after reviewing the pertinent information, found Schoon guilty of the charge of

operating while intoxicated, third offense, as charged in count I, and guilty of being an habitual offender as charged in count III. He was then committed to the custody of the director of the department of corrections for a period not to exceed fifteen years on counts I and III.

Standard of Review.

A claim of ineffective assistance of counsel is reviewed de novo. *State v. Yaw*, 398 N.W.2d 803, 805 (Iowa 1987). To establish ineffective assistance of counsel, the defendant must prove by a preponderance of the evidence, both that his trial counsel failed to perform an essential duty and prejudice resulted from the failure. *State v. Terry*, 554 N.W.2d 499, 453 (Iowa 1996). To sustain this burden of proof for the first prong, the defendant must overcome the strong presumption his counsel's actions were reasonable under the circumstances and fell within the normal range of professional competency. *State v. Hildebrant*, 405 N.W.2d 839, 841 (Iowa 1987).

Discussion.

It is Schoon's contention the plea bargain he acted upon contained a commitment on the part of the State to recommend a suspended sentence. He contends the sentence could not be suspended and, consequently, his counsel failed to perform an essential duty by allowing him to plead guilty based on the plea bargain. At the time Schoon was sentenced, it had not been determined whether the sentence for operating a motor vehicle while intoxicated, third offense, could be suspended. We believe Schoon's counsel could reasonably have interpreted the pertinent sections to permit a suspended sentence in

Schoon's situation. Subsequent to the sentencing in this matter, the Iowa Supreme Court considered this question in *State v. Iowa District Ct*, 620 N.W.2d 271 (Iowa 2000). They held in that case that the district court had the ability to suspend a sentence for the crime of operating a motor vehicle while intoxicated, third offense, and it was not required a defendant sentenced for that offense would have to serve thirty days in the county jail. *Id.* at 274-75. Accordingly, we conclude Schoon's counsel did not breach an essential duty and, consequently, was not ineffective in his representation. We affirm.

AFFIRMED.