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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 4-341 / 93-1254

WILLIE BRADFORD,

Appellant,

vs.

STATE OF IOWA,

Appellee.

Appeal from the Iowa District Court for Black Hawk County, L. D. Lybbert, Judge.

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

Linda Del Gallo, State Appellate Defender, and Patricia Reynolds Lapointe, Assistant State Appellate Defender, for appellant.

Bonnie J. Campbell, Attorney General, Martha E. Boesen, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Thomas Bower, Assistant County Attorney, for appellee.

Considered by Donielson, C.J., and Hayden and Huitink, JJ.

HUITINK, J.

Willie Bradford appeals the district court's denial of his application for postconviction relief. We affirm.

In 1987 Bradford was charged with lascivious acts with a child in violation of Iowa Code section 709.8 (1987). In 1990 the State filed an additional charge against Bradford for second-degree sexual abuse in violation of section 709.3. Pursuant to a plea agreement, Bradford pleaded guilty to second-degree sexual abuse and indecent contact with a child. The State agreed to dismiss a third charge and recommend Bradford for the Mount Pleasant mental health treatment center, after which the State would recommend that Bradford be a candidate for parole. During the plea proceeding Bradford was represented by David Mason.

In May 1991 Mason filed a motion in arrest of judgment on Bradford's behalf. Due to its vague wording, the district court ordered Mason to recast the motion. Mason withdrew as Bradford's counsel, and David Zellhoefer was appointed as substitute counsel. Zellhoefer recast the motion, but it was denied by the district court. Bradford was sentenced to a twenty-five-year term of imprisonment on the sexual abuse charge and two years on the indecent contact charge, the sentences to be served consecutively.

Bradford filed an application for postconviction relief in March 1993. Following a hearing, the district court denied the application.

Bradford contends his motion in arrest of judgment counsel (Zellhoefer) was ineffective in advising him that he could appeal the denial of the motion either by direct appeal or a postconviction relief action. Bradford also contends his plea counsel (Mason) was ineffective in allowing him to plead guilty because (1) Bradford did not understand the proceedings; (2) counsel did not adequately interview witnesses; and (3) the plea bargain was not entirely favorable.

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. Hildebrant, 405 N.W.2d 839, 841 (Iowa 1987).

In evaluating counsel's performance, we presume that 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).

The postconviction record indicates Bradford was advised of his right to appeal the denial of his motion in arrest of judgment by the judge and his attorney. Bradford acknowledges this fact. Zellhoefer testified he sent Bradford a letter dated August 29, 1991, in which he advised Bradford he could either appeal the denial of his motion in arrest of judgment on direct appeal or file a petition for postconviction relief claiming Mason's representation was ineffective. Bradford testified he did not receive this letter. Zellhoefer also testified that Bradford never indicated he wanted to appeal or directed Zellhoefer to file notice of appeal.

Based upon our de novo review, we conclude Bradford has failed to show there was sufficient reason for failing to raise the issue on direct appeal. Zellhoefer's representation of Bradford was well within the normal range of competency.

Even if Bradford could show Zellhoefer failed to advise him of his right to appeal, he fails to show prejudice resulted. Bradford cannot show he would have succeeded on direct appeal of the denial of his motion in arrest of judgment.

The motion was based on Bradford's claim that he did not understand the plea proceedings. However, our review of the guilty plea transcript reveals nothing to indicate Bradford did not understand the proceedings. The court explained to him his rights and his right to trial and what he waived by pleading guilty. When the court asked if he understood the plea bargain, Bradford responded the bargain was acceptable and that he wanted to plead guilty to the charges.

Our review of the record leads us to agree with the postconviction court as well as the court which denied his motion in arrest of judgment. Only one conclusion may be reached: Bradford understood the nature of the proceedings. We find his claim to the contrary, as well as his claim that Mason was ineffective, devoid of substance and completely unbelievable. The evidence indicates Mason's representation of Bradford was well within the normal range of competency.

We have considered each of Bradford's claims, and we find them to be without merit. We affirm the judgment of the district court in its entirety. Costs of this appeal are assessed to Bradford.

AFFIRMED.