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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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STATE OF IOWA,	)	
Plaintiff-Appellee,	)	Filed May 22, 1984
vs.	)	
REECE HENDERSON JONES, JR.,	)	4-135 83-526
Defendant-Appellant.	)	

Appeal from the Iowa District Court for Scott County - James R. Havercamp, Judge.

Defendant appeals the denial of his application for postconviction relief from his prior guilty-plea conviction of and sentence for escape in violation of Iowa Code section 719.4(1). AFFIRMED.

Patrick J. Kelly, Davenport, for defendant-appellant.

Thomas J. Miller, Attorney General, and Teresa Baustian, Assistant Attorney General, for plaintiff-appellee.

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

Defendant appeals the denial of his application for postconviction relief from his prior guilty-plea conviction of and sentence for escape in violation of Iowa Code section 719.4(1). Defendant asserts that: (1) the trial court, in correcting sentence, erred by concluding that Iowa Code sections 719.4(1) and 901.8 mandate that a sentence for escape run consecutively to an existing sentence from another state; (2) the court misinformed him at the plea proceeding regarding the possibility of a concurrent sentence for escape, rendering the guilty plea invalid; and (3) he received ineffective assistance of trial counsel due to counsel's failure to inform defendant that his escape sentence mandatorily would run consecutively to the sentence he was presently serving in another state. We affirm.

While defendant Jones was serving a four to twenty-year sentence in Kansas for grand theft and burglary, he waived extradition to Iowa on a charge of false use of a financial instrument. While awaiting trial on that charge, he escaped from the Scott County jail. He was subsequently apprehended and charged with escape in violation of Iowa Code section 719.4(1). Pursuant to a plea bargain, Jones pleaded guilty to the escape charge in exchange for dismissal of the false use charge. Trial court subsequently imposed an indeterminate five-year term of imprisonment. Although there was considerable discussion at the plea proceeding regarding whether Jones' sentence would run concurrently or consecutively to his existing Kansas sentence, the trial court declined to rule either way. Mittimus was issued and Jones was returned to Kansas. Upon completion of his Kansas sentence, Jones was returned to Iowa where he began serving his escape sentence at the reformatory on November 5, 1981.

On February 10, 1982, Jones filed a pro se "motion to run sentences concurrently." Following a hearing on the motion, Judge Darbyshire ruled it was mandatory that Jones' escape sentence run consecutively to his Kansas sentence,

pursuant to Iowa Code section 901.8. That statute provides in part that "[i]f a person is sentenced for escape under section 719.4 . . . , the sentencing judge shall order the sentence to begin at the expiration of any existing sentence." The court also ruled, however, that Jones' escape sentence was incorrect and invalid because the sentencing court did not specify that it was to be consecutive to the Kansas sentence. Accordingly, the court set the matter for resentencing pursuant to Iowa R. Crim. P. 22(5). On May 20, 1982, Jones was resentenced to an indeterminate five-year term of imprisonment to run consecutively to his Kansas sentence. Jones did not take a direct appeal from this sentence.

Jones subsequently filed and thereafter amended an application for postconviction relief raising the sentencing, involuntary guilty plea and ineffective assistance issues raised herein. Following a hearing, Judge Havercamp dismissed Jones' application on February 28, 1983. The court concluded that the issue regarding whether section 901.8 mandated a consecutive escape sentence had been finally adjudicated adversely to Jones in Judge Darbyshire's prior ruling on correction of sentence and therefore was not subject to postconviction relief. The court noted that although Jones was not informed at the plea proceeding or initial sentencing proceeding that his escape sentence definitely would be consecutive to his Kansas sentence, the record of the initial sentencing proceeding made clear that he was informed about and aware of the possibility that the escape sentence would be consecutive and he was given the opportunity to withdraw his guilty plea at that time, which he declined to do. Therefore, the postconviction court concluded, in essence, that Jones was aware of the penal consequences of his guilty plea when he reaffirmed his plea prior to sentencing, that trial court had not misinformed him in that regard, and that there was no ineffective assistance of counsel. Jones brought this appeal.

I.

Jones first contends that the trial court was not required to order that his

escape sentence run consecutively to his Kansas sentence and in fact had discretion in order that it run concurrently. We agree with the court that this issue had already been determined adversely to Jones in the ruling on his earlier motion to have his escape sentences run concurrently. According to Iowa Code section 663A.8, "[a]ny ground finally adjudicated . . . in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application." Therefore, this issue may not be considered in Jones' subsequent application for postconviction relief.

Even if this issue was properly before us, we would have to reject Jones' argument. Iowa Code section 901.8 plainly requires a sentence for escape to be imposed consecutive to and "at the expiration of any existing sentence" (emphasis added); this statute by its own wording is not limited to existing sentences imposed only by Iowa courts. The trial court properly ruled that it had no choice but to impose Jones' sentence for escape consecutive to his Kansas sentence.

II.

Jones next contends his guilty plea by which he was convicted and sentenced for escape was invalid because the trial court misled him about the possibility of receiving concurrent instead of consecutive sentences. We find no reversible error. The fact that the court did not specifically tell Jones that a concurrent sentence was not possible in this case does not necessarily render his guilty plea invalid. In accepting a guilty plea, the court is not required to address every possible issue of concern (e.g. parole eligibility) to the one pleading guilty. Boge v. State, 309 N.W.2d 428, 431 (Iowa 1981). In any event, Jones could not have been misled as to the possibility of receiving a concurrent sentence. The sentencing court told Jones in no uncertain terms that a consecutive sentence was required by statute. The court then noted Jones' consternation regarding the possibility of receiving a consecutive sentence and gave him the opportunity to withdraw his

guilty plea. Jones declined the opportunity and reaffirmed his plea of guilty. We agree with the postconviction court's conclusion that Jones' plea was intelligently and voluntarily made.

III.

Finally, Jones claims that he received ineffective assistance of counsel because his attorney provided him with misleading information about the possibility of receiving a concurrent sentence. Assuming without deciding that Jones' prior counsel misinformed him about the sentencing possibilities, Jones must also show that counsel's action "resulted in actual and substantial disadvantage to the course of his defense." State v. Miles, 344 N.W.2d 231, 234 (Iowa 1984) (citation omitted). Jones failed to show the requisite prejudice. We have already determined that the sentencing court was correct in holding that his escape sentence was required to be consecutive rather than concurrent. In addition, Jones declined an earlier opportunity to withdraw his guilty plea. Under these circumstances, we cannot conclude that any errors of omission or commission on the part of Jones' attorney worked any actual or substantial disadvantage to Jones.

The judgment of the lower court is affirmed.

AFFIRMED.