**IN THE COURT OF APPEALS OF IOWA**

No. 7-753 / 97-0131 000495

**STATE OF IOWA,**

Plaintiff-Appellee,

**vs.**

**WILLIAM ANTHONY PIPPINS,**

Defendant-Appellant.

FILED
FEB 25 1998
CLERK SUPREME COURT

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Appeal from the Iowa District Court for Scott County, David Sohr and Bobbi Alpers, Judges.

William Pippins appeals from his convictions, following guilty pleas, for first-degree burglary, conspiracy to commit a felony, and felon in possession of a firearm in violation of Iowa Code sections 713.1, 713.3, 706.3 and 724.26 (1995), respectively. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and John P. Messina, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Martha Boesen, Assistant Attorney General, William E. Davis, County Attorney, and Realff Ottesen, Assistant County Attorney, for appellee.

Heard by Huitink, P.J., and Streit and Mahan, JJ.

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**MAHAN, J.**

William Pippins appeals his conviction, following guilty pleas, on charges of first-degree burglary, conspiracy to commit a felony, and felon in possession of a firearm. He alleges: (1) the district court erred when it rejected his request for new counsel to present his arguments regarding withdrawal of his plea; and (2) his counsel was ineffective in failing to make a factual record about the plea negotiations and failing to properly argue for withdrawal of the plea. We affirm.

The State charged Pippins with several crimes. On November 25, 1996, Pippins appeared with counsel, Russell Dircks, and pleaded guilty pursuant to a plea bargain. In return, the State agreed to dismiss the remaining charges against Pippins. On December 10, Pippins filed motions in arrest of judgment.

At the plea hearing, Pippins told the court he understood the nature of the charges against him as well as the consequences of entering the pleas. He also informed the court his pleas were being made voluntarily and intelligently. He specifically told the court he had not been threatened or coerced into making his pleas. He then provided the court with a factual basis to support the pleas.

The trial court carefully explained the elements of each charge to Pippins and asked him several times if he had sufficient time to speak with his attorney on all aspects relevant to entering the pleas. The court also asked Pippins if he was satisfied with the services of his attorney to which he responded in the affirmative. The court

also inquired as follows:

> THE COURT: Also, if you change your mind and you don't wish to continue with these pleas of guilty, but would rather go to trial today . . . just let me know. We'll stop and nothing that's occurred up to that point can be used against you in the trial. Do you understand that?
>
> DEFENDANT: Yes.

Before the court accepted the pleas, it read the complete signed plea agreement into the record and again asked Pippins if anybody made any threats or promises to get him to plead guilty. Pippins responded, "No."

Two days later Pippins filed a letter asking the court to withdraw his pleas and appoint new counsel to represent him regarding these withdrawals. Pippins alleged his attorney did not represent his best interests and "convinced" Pippins to plead guilty, and Pippins did not want to go to trial with counsel who assumed he was guilty.

Before the trial court, Dircks stated, "It may be appropriate that somebody else handle that particular -- his interest and his desires in that regard." He further stated:

> [M]y client basically feels that he was pressured into saying what he said at . . . the plea proceedings, and that -- he doesn't believe it was right, and he doesn't feel that the basis is there . . . . I think his stance is [that] what he said in the plea proceedings is not true.

The trial court denied Pippins' motion.

At the sentencing hearing, Pippins told the court he did not know what to say when he went before the court at the plea hearing.

> I had to say stuff that wasn't really true, you know. And I don't feel that it was in my best interests to make that plea. But I didn't know what else to do at that time, you know, with my lawyer -- *he didn't force me*, but -- you know, *he gave me his thoughts*.

(Emphasis added.) The sentencing court reaffirmed the denial of the motion in arrest and sentenced Pippins.

**I. APPOINTMENT OF NEW COUNSEL.** Pippins contends his counsel had a conflict of interest regarding the withdrawal of Pippins' plea. Pippins believes his allegations that counsel "convinced" him to plead guilty made counsel unable to be an effective advocate to undo the plea work he procured. We review a district court's refusal to appoint substitute counsel for an abuse of discretion. *State v. Brooks*, 540 N.W.2d 270, 272 (Iowa 1995). An abuse of discretion is found only when the district court exercises its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable. *State v. Thomas*, 547 N.W.2d 223, 225 (Iowa 1996).

A defendant must demonstrate sufficient cause to warrant the appointment of substitute counsel. *Brooks*, 540 N.W.2d at 272. Sufficient reasons include a conflict of interest, an irreconcilable conflict with the client, or a complete breakdown of communication between the attorney and the client. *Id.* A defendant must ordinarily show prejudice, unless he has been denied counsel or counsel has a conflict of interest. *Id.*

We find the trial court did not abuse its discretion when it refused to appoint substitute counsel. The court gave Pippins several opportunities to withdraw his plea and to state the plea was not of his own free will, but Pippins did not do so. At the sentencing hearing Pippins told the trial court his counsel did not force him to plead guilty, counsel just gave him his thoughts on the matter. We think this shows Pippins' plea was not the result of overbearing counsel. Pippins did not provide the court with reason to appoint new counsel, nor did he give a valid reason to withdraw his plea.

**II. INEFFECTIVE ASSISTANCE OF COUNSEL.** Pippins argues his counsel was ineffective in failing to make a factual record about the plea negotiations and agreement and in failing to properly represent him in his attempts to have his plea of guilty withdrawn. Our review of constitutional rights is de novo. *State v. Haviland*, 532 N.W.2d 767, 768 (Iowa 1995). We must look at the totality of the circumstances as shown by the entire record. *State v. Cook*, 530 N.W.2d 728, 731 (Iowa 1995).

The defendant bears the burden of demonstrating ineffective assistance of counsel. *State v. Morgan*, 559 N.W.2d 603, 612 (Iowa 1997); *Dunbar v. State*, 515 N.W.2d 12, 15 (Iowa 1994); *State v. Kone*, 557 N.W.2d 97, 102 (Iowa App. 1996). "A defendant receives ineffective assistance of counsel when (1) the defense attorney fails in an essential duty and (2) prejudice results." *Strickland v. Washington*, 466

U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984); *State v. Bugely*, 562 N.W.2d 173, 178 (Iowa 1997).

To prove counsel failed in an essential duty, the defendant must prove the attorney's performance was outside the range of normal competency. *Kone*, 557 N.W.2d at 102. The test for prejudice is whether counsel's failure worked to Pippins' actual and substantial disadvantage so that a reasonable possibility exists that but for the trial attorney's unprofessional errors, the resulting conviction would have been different. *State v. Johnson*, 534 N.W.2d 118, 128 (Iowa App. 1995).

"The benchmark for judging any claim for ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process the trial cannot be relied on as having produced a just result." *Kone*, 557 N.W.2d at 102. It is not enough to simply claim counsel should have done a better job. *Dunbar*, 515 N.W.2d at 15. The applicant must state the specific ways in which counsel's performance was inadequate and identify how competent representation would have changed the outcome. *Id.* We find the claim of ineffective assistance of counsel to be without merit.

We have carefully considered each of Pippins' claims and find them to be without merit. For these reasons, we affirm the convictions.

**AFFIRMED.**