

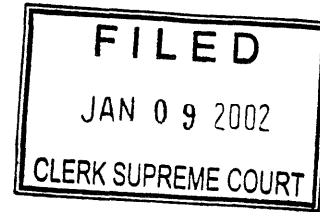
IN THE COURT OF APPEALS OF IOWA

No. 1-869 / 01-0819
Filed January 9, 2002

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MARCUS ANTONIO HALL,
Defendant-Appellant.



Appeal from the Iowa District Court for Polk County, Robert D. Wilson,
Judge.

Defendant Marcus Hall appeals from his conviction of and sentence for
conspiracy to deliver a controlled substance, in violation of Iowa Code section
124.401(1)(b)(3) (1999). **AFFIRMED.**

Matthew Donley, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Cristen Odell, Assistant Attorney
General, for appellee.

Considered by Sackett, C.J., and Mahan and Hecht, JJ.

000446

PER CURIAM

Defendant-appellant Marcus Hall appeals from his conviction of and sentence for conspiracy to deliver a controlled substance, in violation of Iowa Code section 124.401(1)(b)(3) (1999). Defendant claims on appeal that (1) he was rendered ineffective assistance of counsel; (2) he did not knowingly and voluntarily enter into his plea bargain; (3) the trial court erred in relying on his additional pending charge of perjury when sentencing defendant. We affirm.

Defendant was arrested and charged, along with six co-defendants, for various controlled substance offenses, including conspiracy to deliver a controlled substance, in violation of Iowa Code section 124.401(1)(b)(3) (Count I); possession of a controlled substance with intent to deliver, in violation of section 124.401(1)(b)(3) (Count II); and failure to possess a tax stamp, in violation of sections 453B.3 and 453B.12 (Count III). Defendant's case went to trial, but the court declared a mistrial because the jury could not agree. Following the trial, the State filed a separate criminal charge of perjury against defendant due to his testimony in the first case. Defendant's counsel, Mr. Piazza, moved to withdraw as defendant's counsel because he was listed as a State's witness in the perjury case. Mr. Piazza's motion was denied. On March 9, 2001 defendant pled guilty to the conspiracy charge (Count I) pursuant to a plea bargain in which the State agreed to dismiss the possession and tax stamp charges (Counts II and III), as well as the perjury charge.

Defendant first claims on appeal that he was rendered ineffective assistance of counsel because the trial court denied his attorney's motion to withdraw when his attorney was listed as a State's witness in the perjury case

filed against defendant. To prevail on a claim of ineffective assistance of counsel, the applicant must demonstrate both ineffective assistance of counsel and prejudice. *Ledezma v. State*, 626 N.W.2d 134, 142 (Iowa 2001) (citations omitted). Given that defendant's attorney moved to withdraw when the conflict-of-interest issue arose, and given that the defendant's plea-bargain included a dismissal of the perjury charge which created the alleged conflict of interest, we find that defendant has failed to show prejudice.

Defendant next claims his plea bargain was not knowing and voluntary. Pursuant to Iowa Rule of Criminal Procedure 23(3)(a), a defendant may not challenge a guilty plea on appeal unless the defendant has first filed a motion in arrest of judgment. *State v. Hook*, 623 N.W.2d 865, 867 (Iowa 2001). The district court explained this rule to defendant. Defendant did not file a motion in arrest of judgment. He has therefore waived his right to challenge his plea on appeal. *Id.*

Defendant's third claim on appeal is that the trial court impermissibly relied on the charge of perjury when sentencing defendant. We review sentencing decisions for abuse of discretion or a defect in sentencing procedure. *State v. Witham*, 583 N.W.2d 677, 678 (Iowa 1998). We see no indication from the record that the trial court relied upon the perjury charge in sentencing defendant. In fact the record supports the contrary conclusion. We affirm the trial court's sentence.

AFFIRMED.

006448

006447