IN THE COURT OF APPEALS OF IOWA

No. 1-362 / 00-1353
Filed June 13, 2001

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CLERK SUPREME COURT

STATE OF IOWA,
Plaintiff-Appellee,

vs.

SHAWN ALLEN JAMES,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, D.J. Stovall, Judge.

On appeal from his convictions for attempt to commit murder and terrorism with intent, the defendant argues his trial counsel was ineffective. **AFFIRMED.**

Jeffrey T. Mains of Benzoni & Mains, P.L.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Richard J. Bennett, Assistant Attorney General, John P. Sarcone, County Attorney, and Daniel Voogt, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Zimmer and Hecht, JJ.

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ZIMMER, J.

Defendant Shawn Allen James appeals from his convictions for attempt to commit murder, in violation of Iowa Code section 707.11 (1999), and terrorism with intent, in violation of Iowa Code section 708.6. He argues his trial counsel was ineffective in several respects. We affirm.

I. Background Facts and Proceedings. Following an investigation of a drive-by shooting, Shawn James was charged with attempt to commit murder and terrorism with intent.

At trial, the State presented overwhelming evidence that James was a passenger in a white Ford Taurus that stopped in front of a house at 2112 Washington Street in Des Moines on August 6, 1999. Eyewitnesses observed James exit the passenger side of the vehicle and repeatedly fire a handgun at Keon Phillips who was standing in front of the house. Phillips ran toward the house as five or six shots were fired at him. Phillips was not injured. Bullets struck the house at 2112 Washington and the house next door.

Police were called and they were given a description of the vehicle involved. It was located a short time later and stopped. James was in the passenger seat. A .38 caliber revolver was found in the glove compartment. All six chambers had been fired. Ballistics evidence established the gun found in the car was used in the shooting. At trial the defendant admitted he had shot the gun, but claimed he had not intended to kill anyone and had only wanted "to send a message."

A jury found James guilty on both counts. On appeal he argues his trial counsel was ineffective in: 1) failing to file a motion to suppress; 2) failing to

investigate a potential alibi witness; 3) failing to discuss trial strategy with the defendant; 4) failing to share documents with the defendant; 5) failing to be prepared for trial; 6) compelling the defendant to testify by admitting the defendant's involvement in the crime during the opening statement; 7) eliciting irrelevant evidence about a prior shooting which provided motive for the crime; 8) failing to file a reverse waiver motion to transfer jurisdiction to the juvenile court; and 9) failing to investigate whether the license plate number of the vehicle matched that given during an officer's testimony. The defendant requests that the court reverse the judgment of conviction.

II. Ineffective Assistance of Counsel. We review claims of ineffective assistance of counsel de novo. *State v. Allison,* 576 N.W.2d 371, 373 (Iowa 1998). To succeed with a claim of ineffective assistance of counsel, a claimant must prove two elements. *State v. Brooks,* 555 N.W.2d 446, 448 (Iowa 1996). First, he must show that counsel failed to perform an essential duty. *Id.* Second, he must prove he was prejudiced by counsel's error. *Id.* We can affirm on appeal if either element is lacking. *Id.*

In his brief, defendant raises nine claims of ineffective assistance of counsel. Each claim is made in one sentence. Defendant appears to make these claims only to comply with his obligation to raise the claims on direct appeal so that they may be preserved for postconviction relief. *See State v. White,* 337 N.W.2d 517, 519 (Iowa 1983). However, the defendant must provide the court with enough information to make an initial assessment of his contentions. *Id.* Whether a claim of ineffective assistance can be disposed of on direct appeal or must be preserved for postconviction proceedings is a

determination that should be made by the appellate court, not by defense counsel. *Id.*

In order to preserve a claim of ineffective assistance of counsel for postconviction review, a defendant must make a minimal showing by which this court can assess the viability of the claim. *State v. Wagner,* 410 N.W.2d 207, 215 (Iowa 1987). A defendant must indicate why the challenged action is alleged to be ineffective and what prejudice is likely to have resulted from it. *Id.* "The bald assertion that certain acts constitute ineffective assistance of counsel will be insufficient to preserve the question for postconviction proceedings." *Id.*

James has not elaborated on his claims to show why his trial counsel was ineffective or how his actions caused him prejudice. Because he has not complied with these minimal requirements, we conclude he has raised no viable claim of ineffective assistance and find no basis for preserving these issues for postconviction review. *See id.*

AFFIRMED.