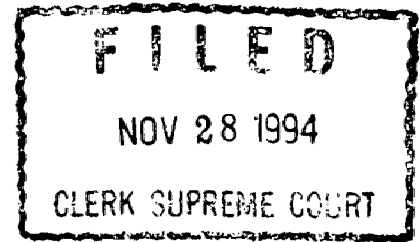


IN THE COURT OF APPEALS OF IOWA

No. 4-378 / 93-1457



STATE OF IOWA,

Appellee,

vs.

CHARLES E. CARTEE,

Appellant.

Appeal from the Iowa District Court for Clinton County,
David E. Schoenthaler, Judge.

The defendant challenges his conviction, following a jury trial, of assault causing bodily injury. **AFFIRMED.**

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

Bonnie J. Campbell, Attorney General, Mary Tabor, Assistant Attorney General, Lawrence H. Schultz, County Attorney, and Mike Wallace, Assistant County Attorney, for appellee.

Considered by Hayden, P.J., and Sackett and Huitink,

JJ.

HUITINK, J.

Charles Cartee appeals his conviction of assault causing bodily injury. We affirm.

On December 30, 1991, Cartee and Marty Michl were involved in an altercation at the Silver Dollar Saloon in Clinton, Iowa. Cartee struck Michl in the face with a bar stool resulting in the loss of one of Michl's eyes. Cartee was charged with willful injury and the lesser-included offenses of assault with intent to inflict serious injury, assault causing bodily injury, and assault. Cartee pleaded not guilty, claiming he acted in self-defense.

At the conclusion of the evidence, Cartee moved for a judgment of acquittal as to the charges of willful injury and assault with intent to cause serious injury. His motion did not include the remaining lesser-included offenses of assault causing bodily injury and assault. The district court denied Cartee's motion and instructed the jury on willful injury, assault with intent to commit serious injury, assault causing bodily injury, and assault. The jury found Cartee guilty of assault causing bodily injury.

Cartee's posttrial motions were overruled. The district court sentenced Cartee to one year in the county jail with all but ninety days of the sentence suspended. Cartee was also placed on probation on the condition that he abstain from alcohol and stay out of bars.

On appeal, Cartee contends his trial counsel was ineffective. He also contends the conditions of probation

imposed were an abuse of the district court's sentencing discretion. Since Cartee's claim of ineffective assistance of counsel implicates his Sixth-Amendment right to counsel, our review on this issue is de novo. Kane v. State, 436 N.W.2d 624, 626 (Iowa 1989). We review Cartee's claim that he was illegally sentenced for an abuse of discretion. State v. Ogle, 430 N.W.2d 382, 383 (Iowa 1988).

In order to prevail on his ineffective assistance of counsel claim, Cartee must show 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 1984); Edman v. State, 444 N.W.2d 99, 101 (Iowa App. 1989). In evaluating counsel's performance we presume counsel acted competently. See Risdal, 404 N.W.2d at 131. Where the record on direct appeal is not adequate to permit us to resolve this issue, we preserve a defendant's claim for postconviction proceedings. State v. Koenighain, 356 N.W.2d 237, 238 (Iowa App. 1984). We conclude the record is sufficient in this case to resolve Cartee's claim on direct appeal.

Cartee claims there is a reasonable probability the district court would have granted his motion for judgment of acquittal on all of the offenses submitted if his trial counsel had included all of the offenses in his motion for judgment of acquittal. The gist of this argument is that the State's evidence was insufficient to sustain a conviction of willful injury or any of the lesser-included offenses.

Iowa Rule of Criminal Procedure 18(8)(a) provides the court shall enter a judgment of acquittal if the evidence is insufficient to sustain a conviction. A jury verdict should withstand a challenge based on sufficiency of the evidence if the record contains substantial evidence tending to support the charge. State v. Blair, 347 N.W.2d 416, 418-19 (Iowa 1984); State v. Lampman, 342 N.W.2d 77, 81 (Iowa App. 1983). Substantial evidence is such evidence as would convince a rational trier of fact the defendant is guilty beyond a reasonable doubt. State v. LeGear, 346 N.W.2d 21, 23 (Iowa 1984). In evaluating the sufficiency of the evidence, the court views the evidence in a light most favorable to the State. State v. Aldape, 307 N.W.2d 32, 39 (Iowa 1981). All evidence must be considered, including all legitimate inferences that may be drawn therefrom. Id.

Viewing the evidence in the light most favorable to the State, we conclude there is substantial evidence supporting Cartee's conviction. There is evidence contradicting Cartee's claims his actions were justified. The jury was free to accept or reject any or all of this evidence in finding Cartee guilty of assault causing bodily injury.

Cartee's ineffective assistance of counsel claim must fail in view of our conclusion that his conviction is supported by substantial evidence. Trial counsel had no duty to raise an issue so clearly lacking in merit. Even if counsel had a duty to raise this issue, Cartee has not

shown there was any probability of a different result. We believe Cartee was competently represented and that he has failed to meet his burden to prove otherwise.

Iowa's district court judges have broad but not unlimited discretion in imposing conditions of probation. State v. Darrin, 325 N.W.2d 110, 112 (Iowa 1982). This discretion is subject only to the provision that the conditions imposed shall promote the rehabilitation of the defendant and the protection of the community. Id.

The sentencing record includes substantial evidence indicating Cartee has a history of alcohol abuse and assaultive behavior. Although the county attorney's characterization of Cartee as a "fighting drunk" may have been indelicate, it is certainly not unfair or inaccurate. The conditions of Cartee's probation requiring him to abstain from alcohol and to stay out of bars were specifically designed to address Cartee's irresponsible use of alcohol and his assaultive behavior. As such, each condition is consistent with the court's stated sentencing objectives of rehabilitating Cartee and protecting the community. The district court acted well within its discretion when it imposed these conditions.

The district court's judgment is accordingly affirmed in its entirety.

AFFIRMED.