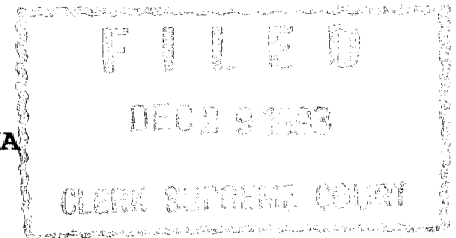


IN THE COURT OF APPEALS OF IOWA

No. 3-521 / 92-1780



STATE OF IOWA,

Appellee,

vs.

JERRY ALLEN WOOLERY, JR.

Appellant.

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Appeal from the Iowa District Court for Wayne County,  
Thomas S. Bown, Judge.

The defendant appeals a judgment of the district court,  
following a jury trial, finding him guilty of possession of  
burglar's tools in violation of Iowa Code section 713.7  
(1991). **AFFIRMED IN PART AND AFFIRMED BY OPERATION OF LAW  
IN PART AND REMANDED WITH DIRECTIONS.**

Monty W. Franklin, Humeston, for appellant.

Bonnie J. Campbell, Attorney General; Robert P. Ewald,  
Assistant Attorney General; and Alan M. Wilson, for  
appellee.

Considered en banc.

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PER CURIAM.

A.

The court being equally divided, the conviction of the defendant (Motion for Judgment of Acquittal) is affirmed by operation of law. Iowa Code section 602.5106(1)(1993).

AFFIRMED.

For affirmance: Donielson, Hayden and Habhab, J.

For reversal: Oxberger, C.J., Schlegel and Sackett, J.

B.

The court is unanimous in affirming the trial court on all other remaining claims made by the defendant on appeal, including the trial court's rulings on defendant's motion to suppress and defendant's objection to the jury instruction on aiding and abetting, except in the following respects:

1. Although we affirm the conviction, we remand for resentencing. Woolery claims the trial court erred by failing to state the reasons for the sentence imposed. The State agrees this claim is correct.

Iowa Rule of Criminal Procedure 22(3)(d) requires a sentencing court to state on the record the reason for selecting the particular sentence. The purpose of this requirement is to allow a reviewing court to determine if there has been an abuse of discretion. State v. Mickens, 462 N.W.2d 296, 299 (Iowa App. 1990) (citations omitted).

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The trial court in this case failed to state on the record the reasons for the sentence imposed upon Woolery. We affirm the conviction and remand for resentencing.

2. As it relates to defendant's claim of Ineffective Assistance of Counsel, we preserve this for postconviction relief. Generally, ineffective assistance of counsel claims are preserved for postconviction relief proceedings to allow trial counsel an opportunity to defend the charge. State v. Mulder, 313 N.W.2d 885, 890 (Iowa 1981), cert. denied, 459 U.S. 841 (1982); State v. Nebinger, 412 N.W.2d 180, 191-92 (Iowa App. 1992). Where the record is inadequate to permit us to resolve the claim, we preserve the claim in order to provide the allegedly ineffective attorney the opportunity to explain his or her conduct. State v. Coil, 264 N.W.2d 293, 296 (Iowa 1978). The record is not sufficient for us to resolve this issue. Defendant's ineffective assistance claim is preserved for possible postconviction proceedings.