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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)
Plaintiff-Appellee,) Filed September 29, 1981
vs.)
CARL DUANE FUDGE,) 1-178 / 64831
Defendant-Appellant.)

Appeal from Dubuque District Court - Peter Van Metre, Judge.

Defendant appeals from his conviction for robbery with aggravation in violation of section 711.2, The Code 1977, asserting that he was denied effective assistance of counsel by numerous specified acts and omissions of his trial counsel. AFFIRMED.

Lawrence F. Scalise and Ann Fitzgibbons of Scalise, Scism, Gentry, Brick & Brick, Des Moines, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Shirley Ann Steffe, Assistant Attorney General, for plaintiff-appellee.

Considered by Oxberger, C.J., and Donielson, Snell, Carter, and Johnson, JJ.

PER CURIAM

Defendant appeals from his conviction for robbery with aggravation in violation of section 711.2, The Code 1977, asserting that he was denied effective assistance of counsel by numerous specified acts and omissions of his trial counsel. We affirm.

I.

Because defendant alleges violation of a basic constitutional safeguard, see Gideon v. Wainwright, 372 U.S. 335, 342-43, 83 S. Ct. 792, 795-96, 9 L. Ed. 2d 799, 804 (1963), we will evaluate the totality of relevant circumstances shown by the entire record. Webster County Board of Supervisors v. Flattery, 268 N.W.2d 869, 872 (Iowa 1978); Snyder v. State, 262 N.W.2d 574, 576 (Iowa 1978); Long v. Brewer, 253 N.W.2d 549, 552 (Iowa 1977). Iowa has adopted the "range of normal competency" standard in reviewing allegations of this nature. Hinkle v. State, 290 N.W.2d 28, 30 (1980); State v. Hicks, 277 N.W.2d 889, 896 (Iowa 1979); State v. Killpack, 276 N.W.2d 368, 372 (Iowa 1979); State v. Veverka, 271 N.W.2d 744, 750 (Iowa 1978) (quoting State v. Rand, 268 N.W.2d 642, 648 (Iowa 1978)). We must be shown that there is an affirmative factual basis demonstrating counsel's inadequacy, Cleesen v. State, 258 N.W.2d 330, 332 (Iowa 1977) and that the defendant was prejudiced by the alleged inadequacy. State v. Rand, 268 N.W.2d 642, 649 (Iowa 1978); Long, 253 N.W.2d at 558. The burden of proof is on the party alleging ineffective assistance of counsel. Hinkle, 290 N.W.2d at 30; Veverka, 271 N.W.2d at 750. Not every mistake in strategy or trial tactics qualifies as ineffective assistance of counsel, Long, 253 N.W.2d at 588, and we bear in mind in reviewing professional performance that trial preparation frequently involves extensive time pressures. Kellogg v. State, 288 N.W.2d 561, 566 (Iowa 1980). Applying these criteria to the instant case, we conclude that the defendant has failed to sustain his burden to show ineffective assistance.

The defendant's allegations of ineffective assistance of counsel include the following: (1) failure to move to suppress the out-of-court and in-court identification of the defendant by three eye witnesses to the robbery; (2) failure to investigate a claim by defendant's brother, Mike Strader, that he overheard a man, bearing a physical resemblance to defendant, boasting about robbing an Oky-Doky store in December of 1977 and failure to call Mike Strader as a witness to testify regarding overhearing this conversation; (3) failure to object to certain testimony; (4) failure to properly cross-examine the State's witnesses; (5) failure to properly prepare the alibi witnesses for

cross-examination; (6) failure to timely notify the State regarding an additional alibi witness which resulted in the trial court excluding this testimony; (7) failure to object and failure to move for a mistrial when the State during cross-examination of defendant elicited the fact that defendant had been charged with possession of marijuana; (8) failure to make a proper motion for directed verdict at the close of the State's evidence and failure to renew the motion at the close of all the evidence; (9) failure to object or except to the jury instructions; (10) and failure to file a motion for new trial on various grounds.

We find that allegations 1 and 10 are unfounded and the remaining allegations are questions of trial tactics for which the trial transcripts are not sufficiently detailed to hold that defendant had ineffective counsel. This holding is without prejudice to a post-conviction relief action where a full evidentiary hearing may be had on all of defendant's allegations against his trial counsel. See State v. Coil, 264 N.W.2d 293, 296 (Iowa 1978); see also State v. O'Connell, 275 N.W.2d 197, 206 (Iowa 1979).

AFFIRMED.