

IN THE COURT OF APPEALS OF IOWA

F I L E D

AUG 29 1985

CLERK SUPREME COURT

STATE OF IOWA

)

Plaintiff-Appellee,

)

vs.

)

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ERNEST JAMES NORTH,

)

Filed August 29, 1985

Defendant-Appellant.

)

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ERNEST JAMES NORTH,

)

Petitioner-Appellant,

)

vs.

)

STATE OF IOWA,

)

Respondent-Appellee.

)

Appeal from the Iowa District Court for Black Hawk County - Dennis
D. Damsgaard and Carroll E. Engelkes, Judges.

This is a consolidated appeal from a criminal conviction and from a denial
of postconviction relief. AFFIRMED.

Stephen J. Rapp, Waterloo, for appellant North.

Thomas J. Miller, Attorney General, and Mickey W. Greene, Assistant
Attorney General, for the appellee State.

Heard by Oxberger, C.J., and Schlegel, and Sackett, JJ.

I.

Appellant Ernest North appeals claiming he was denied effective assistance of trial counsel and that he was prejudiced.

North was charged and entered a plea of guilty to the Class D Felony of theft in the second degree. He was sentenced to imprisonment for up to five years.

North's attorney, after investigating the charges, recommended North accept a plea bargain wherein North was to plead guilty and cooperate with the Auto Theft Bureau of the Waterloo Police Department. The county attorney would then recommend a suspended sentence and probation. At sentencing the county attorney advised the court that North had not cooperated.

North does not contend the plea bargain obtained by his trial attorney was contrary to his interest. North only contends counsel was ineffective for failing to enforce the plea bargain.

At the postconviction hearing the trial court determined, inter alia, that the defendant did not keep his part of the plea bargain by cooperating with the auto theft bureau.

In order to establish his claim, a defendant claiming ineffective assistance of counsel must show:

- (1) that counsel's performance was so deficient that counsel was not functioning as the "counsel" guaranteed by the sixth amendment, and
- (2) that the deficient performance so prejudiced the defense as to deprive the defendant of a fair trial.

State v. Losee, 354 N.W.2d 239, 243 (Iowa 1984)(citing Strickland v. Washington, ___ U.S. ___, ___, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 693 (1984)). Under the entire record and totality of the circumstances, counsel's performance

must fall within the range of normal competency. Losee at 243; Meier v. State, 337 N.W.2d 204, 206 (Iowa 1983). The record reflects the defendant was clearly advised by the court that the plea agreement was only a recommendation, not a guarantee, of probation. The record further supports the trial court's determination that defendant did not keep his part of the plea bargain by cooperating with the auto theft bureau.

We find counsel's performance to be competent and agree with the trial court that defendant has failed to establish that his counsel was ineffective.

II.

North further claims he did not personally waive his right to challenge his guilty plea. North was informed by the court of his right to file a motion in arrest of judgment and the consequences of his failing to file. Defendant cites no error in the plea proceedings which might form the basis for a motion in arrest of judgment and we find none. We affirm the trial court.

AFFIRMED.