FILED
JUN 28 1983
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	Filed June 28, 1983
vs.	)	3-34 67662
ROBERT RAY MILLS,	)	
Defendant-Appellant.	)	

Appeal from Polk District Court, Joel D. Novak, Judge

Defendant appeals from his conviction and sentence for two counts of false use of a financial instrument and one count of theft in the fifth degree, alleging that his trial attorney rendered ineffective assistance and that the trial court abused its sentencing discretion by imposing a sentence of imprisonment, rather than probation or placement in a mental health facility. REMANDED FOR POSTCONVICTION PROCEEDINGS.

Scott D. Rosenberg and Fern S. Shupeck, Assistant appellate Defenders, for the defendant-appellant.

Thomas J. Miller, Attorney General, and Marcia Mason, Assistant Attorney General, for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, and Schlegel, JJ. Hayden, J., takes no part.

PER CURIAM

Defendant appeals from his conviction and sentence for two counts of false use of a financial instrument (FUFI) and one count of theft in the fifth degree. He contends on appeal that his trial attorney rendered ineffective assistance in numerous ways. Defendant complains that counsel improperly stipulated that the minutes of testimony contained truthful information; he contends that this stipulation violated his right to cross-examine the person quoted in the minutes of testimony, and he contends that much of the material in the minutes was inadmissible hearsay. Defendant also complains because counsel permitted him to testify and failed to object when the court questioned him; he contends, in this connection, that the evidence was insufficient to establish all the elements of the crime charged until he himself testified and responded to the court's questions. Finally, defendant complains that counsel intimidated him into waiving a jury trial, he asserts that his waiver was involuntary and contrary to his wishes. In addition to his complaints of ineffective assistance of counsel, defendant urges on appeal that the trial court abused its sentencing discretion by imposing a sentence of imprisonment, rather than probation or placement in a mental health facility. The sentence imposed was imprisonment not to exceed ten years on each count of FUFI, and 30 days on the theft count, all terms to be served concurrently.

As a rule, this court has been hesitant to review claims of ineffective assistance of counsel which are raised on direct appeal, because ordinarily the record is insufficient to permit a fair adjudication of such claims.

> [Our] reluctance has been due to the lack of full development of the facts surrounding the representation complained of. There has been increasing concern that the State and the attorneys whose effectiveness is being attacked should have an opportunity to rebut allegations of ineffectiveness.

State v. Williams, 285 N.W.2d 248, 271 (Iowa 1979).

Defendant alleges that counsel was ineffective because he stipulated to the minutes of testimony and then permitted defendant to testify. From the present record we can only speculate on why trial counsel employed these tactics. Claims should be litigated in postconviction proceedings when "the attorney's actions or omissions may be explainable as a matter of trial tactics or strategy... We have stated on numerous occasions that improvident trial strategy, miscalculated tactics or mistakes in judgment do not necessarily amount to ineffective assistance of counsel." State v. Schoelerman, 315 N.W.2d 67, 71 (Iowa 1982).

Defendant also alleges that counsel intimidated him into waiving a jury trial by making harassing and threatening statements to him. The present record is inadequate to determine whether or not, or under what circumstances these statements were made. An evidentiary hearing is required. We therefore remand for postconviction proceedings to adjudicate all of defendant's allegations of ineffective assistance of counsel.

We turn briefly to defendant's second ground on appeal. The trial court has broad discretion in making sentencing decisions. As long as the sentence is within the statutory maximum, the reviewing court will not reverse it absent an abuse of discretion. State v. Williams, 315 N.W.2d 45, 59 (Iowa 1982). An abuse of discretion in sentencing appears only when there is such an absence of support for the sentence in the evidence that the result is palpably and grossly violative of fact and logic. State v. Noonan, 246 N.W.2d 236, 237 (Iowa 1976). In the present case, the presentence report contained recommendations that defendant not be granted probation. Defendant has been in trouble with the law on at least five other occasions. Defendant has previously been housed at the FortDes Moines Residential Correctional Facility, and did very poorly there. Under the circumstances, we cannot say that the trial court abused its discretion by sentencing defendant to a term of incarceration at Anamosa.

REMANDED FOR POSTCONVICTION PROCEEDINGS.