

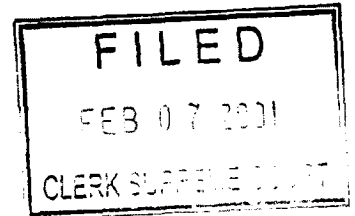
IN THE COURT OF APPEALS OF IOWA

No. 0-811 / 00-333
Filed February 7, 2001

STATE OF IOWA,
Plaintiff-Appellee,

vs.

TROY ANTHONY BRUCE,
Defendant-Appellant.



Appeal from the Iowa District Court for Polk County, D. J. Stovall, Judge.

Troy Bruce appeals from the judgment and sentence entered following his conviction of assault causing injury and second-degree criminal mischief.

AFFIRMED.

Linda Del Gallo, State Appellate Defender, and Tricia A. Johnston, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Kristin Mueller, Assistant Attorney General, John P. Sarcone, County Attorney, and Teresa Vens and John Heinicke, Assistant County Attorneys, for appellee.

Considered by Huitink, P.J., and Vogel and Mahan, JJ.

000456

HUITINK, P.J.***I. Background Facts and Proceedings.***

Troy Bruce was charged with second-degree criminal mischief, assault with a dangerous weapon, and assault causing injury. A court-ordered psychological examination indicated Bruce was competent to stand trial.

Bruce stipulated to a bench trial on the minutes of evidence attached to the trial information. He filed a written waiver of his right to a jury trial. In addition, the court personally addressed Bruce before accepting Bruce's waiver of his right to a jury trial.

The court found Bruce guilty of second-degree criminal mischief, assault causing injury, and possession of a controlled substance. The district court sentenced Bruce to consecutive indeterminate terms of five, one, and one years to be served consecutively. The court's sentencing order did not calculate credit for time Bruce served before trial.

On appeal Bruce contends the district court erred in failing to include an accounting of credit for time served in its sentencing order. He also claims his trial counsel was ineffective for failing to ensure that Bruce's waiver of a jury trial was knowing and voluntary and for failing to adequately investigate or otherwise pursue an alibi defense.

II. Credit for Time Served.

We find it sufficient to note this issue was effectively resolved against Bruce by the recent Iowa Supreme Court decision of *State v. Hawk*, 616 N.W.2d 527, 530 (Iowa 2000) (rejecting the defendant's "contention that the trial court

must, at sentencing or as part of a written judgment entry, announce the credit to which the defendant is entitled for time served"). We accordingly affirm on this issue.

III. Ineffective Assistance of Counsel.

We review claims of ineffective assistance of counsel de novo. *State v. Allison*, 576 N.W.2d 371, 373 (Iowa 1998). Ordinarily, we preserve claims of ineffective assistance of counsel raised on direct appeal for postconviction proceedings to allow full development of the facts surrounding counsel's conduct. *State v. Atley*, 564 N.W.2d 817, 833 (Iowa 1997). However, we will resolve ineffective assistance of counsel claims on direct appeal when the record is adequate to decide the issue. *State v. Arne*, 579 N.W.2d 326, 329 (Iowa 1998).

The defendant bears the burden of demonstrating ineffective assistance of counsel. *State v. Morgan*, 559 N.W.2d 603, 612 (Iowa 1997). A defendant receives ineffective assistance of counsel when (1) the defense attorney fails in an essential duty and (2) prejudice results. *State v. Bugely*, 562 N.W.2d 173, 178 (Iowa 1997). In order to meet the first test, one must overcome the strong presumption his attorney's actions were reasonable under the circumstances and fell within the normal range of competency. *State v. Shumpert*, 554 N.W.2d 250, 254 (Iowa 1996). To succeed on the second test, it must be shown that, but for counsel's error, the result of the proceedings would have been different. *State v. Buck*, 510 N.W.2d 850, 853 (Iowa 1994). The applicant must state the specific ways in which counsel's performance was inadequate and identify how

competent representation would have changed the outcome. *State v. Martin*, 587 N.W.2d 606, 609 (Iowa Ct. App. 1998).

Bruce claims his counsel was ineffective for failing to ensure that his waiver of jury trial was knowing and voluntary. Specifically, Bruce contends his waiver of jury trial "was not knowing and voluntary as he had significant psychological problems at the time, and in light of the fact that he claimed that he was not involved in the incident at all.

When a defendant stipulates to a bench trial on the minutes,

a trial court must: (1) verify that the defendant has waived his right to a jury trial in accordance with Iowa Rule of Criminal Procedure 16(1); (2) confirm the extent of the factual record to which the parties are stipulating; and (3) 'find the facts specially and on the record,' separately state its conclusion of law, and render an appropriate verdict as required by Iowa Rule of Criminal Procedure 16(2).

State v. Sayre, 566 N.W.2d 193, 196 (Iowa 1997). This is done to ensure that a defendant's waiver of a jury trial is a voluntary, knowing, and intelligent act, done with awareness of the relevant circumstances and likely consequences. See *State v. Buck*, 510 N.W.2d at 853.

The record does not support Bruce's claim. A careful review of Bruce's written stipulation and colloquy with the court concerning waiver of the right to a jury trial fails to disclose any constitutional infirmity or failure to comply with the test specified in *Sayre*. Moreover, the results of Bruce's psychological examination belie any credible claim he was not competent to waive his right to a jury trial or that he was otherwise unable to voluntarily, knowingly and intelligently waive this right. See, e.g. *State v. Walton*, 228 N.W.2d 21, 23-24 (Iowa 1975) (in

context of guilty plea, court need not make further inquiry if there is no unresolved doubt concerning defendant's competency). We accordingly find counsel did not breach any essential duty under these circumstances.

Bruce also claims counsel was ineffective in failing to investigate and pursue his alibi defense. He has failed, however, to specify the witnesses or other circumstances counsel's investigation would have discovered in support of an alibi defense. Bruce's speculative and generalized claims concerning counsel's omissions are insufficient to sustain his burden to prove counsel breached an essential duty. See *State v. Kendall*, 167 N.W.2d 909, 911 (Iowa 1969).

The judgment of the district court is therefore affirmed in its entirety.

AFFIRMED.