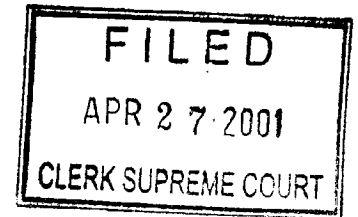


IN THE COURT OF APPEALS OF IOWA

No. 1-196 / 00-1058
Filed April 27, 2001



STATE OF IOWA,
Plaintiff-Appellee,

vs.

CHRISTOPHER ALFONZO HARRIS, SR.,
Defendant-Appellant.

Appeal from the Iowa District Court for Clinton County, Patrick J. Madden
(plea) and Nancy S. Tabor (plea and sentencing), Judges.

Christopher Harris, Sr. appeals from the judgment and sentence entered
upon his guilty plea to first-degree theft. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Robert P. Ranschau,
Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Richard J. Bennett, Assistant Attorney
General, Michael E. Wolf, County Attorney, and Gary Strausser, Assistant
County Attorney, for appellee.

Considered by Sackett, C.J., and Huitink and Streit, JJ.

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HUITINK, J.

I. Background Facts and Proceedings.

Christopher Harris appeals from the judgment and sentence entered upon his guilty plea to theft in the first degree, in violation of Iowa Code sections 714.1(1) and 714.2(1) (1999). Harris contends he was denied effective assistance of counsel. We affirm.

Harris was charged with third-degree burglary and first-degree theft. Pursuant to a plea agreement, Harris pled guilty to the theft charge in exchange for the State's agreement to dismiss the third-degree burglary charge and not to resist a deferred judgment. At the subsequent plea hearing, the district court refused to accept the guilty plea, finding there was not a sufficient factual basis to support the charge of first-degree theft. The case was rescheduled for trial.

Harris entered into a second plea agreement whereby he again agreed to plead guilty to first-degree theft in exchange for the State's agreement to dismiss the third-degree burglary charge. This agreement also provided: "The State will seek a suspended sentence. The defendant shall request a deferred judgment. . . . The recommendation shall be binding upon the Court." It did not include a requirement that the State refrain from resisting a deferred judgment. This time the district court accepted the guilty plea. It sentenced Harris to an indeterminate term not to exceed five years, but suspended this sentence and placed Harris on probation for three years.

On appeal Harris complains defense counsel was ineffective in failing to ensure that the State abide by the plea agreement during sentencing.

Specifically, he contends that because the plea agreement required the State not to resist a deferred judgment, defense counsel breached an essential duty by failing to object to the State's resistance.

II. 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).

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).

Because the plea agreement that was operative during Harris's guilty plea did not require the State to forbear from resisting a deferred judgment, defense counsel did not have a duty to object to such resistance. Harris's argument is accordingly found to be without merit. See *State v. Hoskins*, 586 N.W.2d 707,

709 (Iowa 1998) (Counsel is not incompetent for failing to pursue a meritless issue.). The district court decision is affirmed.

AFFIRMED.