

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,

Plaintiff-Appellee,

vs.

ROBERT ALLEN COOKS,

Defendant-Appellant.

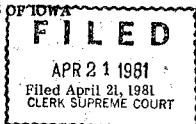
)

)

)

)

)



1-55

64904

Appeal from Pottawattamie District Court - E. F. Hanson, Judge.

Defendant appeals his conviction and sentence for sexual abuse in the third degree in violation of section 709.4(1), The Code, alleging that he received ineffective assistance of counsel, that the trial court erred in overruling his motion for new trial, and that the court should have placed him on probation instead of imposing a prison sentence. AFFIRMED.

Marvin L. Vannier of Council Bluffs, Iowa, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa; Shirley Ann Steffe, Assistant Attorney General; and Michael Winter, Pottawattamie County Attorney; for plaintiff-appellee.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Defendant appeals his conviction and sentence for sexual abuse in the third degree in violation of section 709.4(1), The Code. He alleges that he received ineffective assistance of counsel, that the trial court erred in overruling his motion for new trial, and that the court should have placed him on probation instead of imposing a prison sentence. We affirm.

I. Defendant first argues that he received ineffective assistance of counsel at trial because of various acts and omissions of his attorney who was a Nebraska resident, not licensed to practice in Iowa, and allegedly unfamiliar with Iowa criminal procedure. We do not think that the record presented on this direct appeal is sufficient to determine the effectiveness of defendant's trial counsel. That issue was not presented and argued by either side at trial. See State v. Kellogg, 263 N.W.2d 539, 544 (Iowa 1978). We therefore decline to determine this issue at this time. Defendant may, if he chooses, pursue this claim in postconviction proceedings under chapter 663A, The Code.

II. Next, defendant claims that the trial court erred in failing to grant his motion for a new trial. The trial court is vested with broad discretion in granting or denying a motion for a new trial, and we will not interfere with that court's decision absent abuse of that discretion. State v. Sheffey, 234 N.W.2d 92, 98 (Iowa 1975). We find no abuse of that discretion in this case.

Defendant lists four reasons why his motion should have been granted. He states that "[t]he trial was replete with racial overtones," he "was forced to appear at the trial in a prison uniform, inferring guilt," and "[t]he jury was allowed to receive prejudicial testimony of lab tests, which should have been suppressed but for the ineffective assistance of counsel as previously stated." Defendant, however, does not explain how these factors prejudiced him or influenced the judge and jury, nor does he provide any authority for the proposition that these occurrences require a new trial. Under these circumstances, we will not consider these bare allegations and we deem those issues waived. Iowa R. App. P. 14(a)(3).

Defendant also argues that his motion for new trial should have been granted because the evidence was insufficient to prove the occurrence of sexual abuse beyond a reasonable doubt. He bases this argument on the fact that the testimony from the complaining witness and himself was in conflict. The credibility of the witnesses presented an issue for the jury which was not required to accept the veracity of defendant's testimony in whole or in part. State v. Hall, 214 N.W.2d 205, 210 (Iowa 1974).

We have examined the entire record and find that there is substantial evidence to cause a rational trier of fact to arrive at the verdict reached by the jury in the present case. State v. Robinson, 288 N.W.2d 337, 340 (Iowa 1980). The trial court properly overruled defendant's motion for directed verdict.

III. Finally, defendant claims that the trial court should have imposed a sentence of probation instead of imprisonment. This argument ignores the plain language of our statutes. Sexual abuse in the third degree is a forcible felony under section 702.11, The Code; one convicted of this offense, therefore, is ineligible for deferred judgment, deferred or suspended sentence, or probation under section 907.3, The Code. The trial court had no choice except to sentence defendant to imprisonment for a term not to exceed ten years under section 902.9(3), The Code. The court did so; we find no error. Because of the mandatory sentence involved in the present case, we need not consider defendant's request that we apply the American Bar Association Standards of Appellate Review of Sentences.

AFFIRMED.