

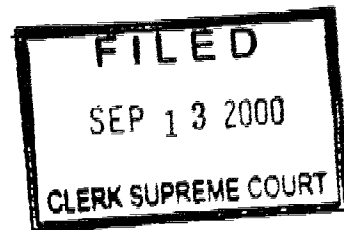
IN THE COURT OF APPEALS OF IOWA

No. 0-423 / 99-1571
Filed September 13, 2000

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MAURICE MOREHEAD,
Defendant-Appellant.



Appeal from the Iowa District Court for Linn County, August F. Honsell & Patrick R. Grady, Judges.

Michael Morehead appeals from the judgment and sentence entered following his conviction for operating while intoxicated, third offense, in violation of Iowa Code section 321J.2 (1997). He contends he was denied effective assistance of counsel by trial counsel's failure to make an adequate record for waiver of jury trial pursuant to Iowa Rule of Criminal Procedure 16(1). He also claims that the trial court erred in denying his motion to suppress because the police lacked reasonable cause to stop the vehicle. **AFFIRMED.**

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

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney General, and Denver D. Dillard, County Attorney, for appellee.

Considered by Vogel, P.J., and Miller and Hecht, JJ.

MILLER, J.

Defendant Maurice Morehead appeals the judgment and sentence entered after the court found him guilty of operating while intoxicated, third offense. He contends the trial court erred in denying his motion to suppress and he received ineffective assistance of counsel. We affirm.

In January 1999, Morehead was charged by trial information with operating while intoxicated, third offense, in violation of Iowa Code section 321J.2 (1999). Morehead filed a motion to suppress, contending the stop of his vehicle was not supported by reasonable suspicion. The district court denied the motion. Morehead then waived jury trial and was found guilty after a stipulated trial on the minutes of testimony.

Morehead appeals, contending the stop of his vehicle was not supported by reasonable suspicion. The arresting officer testified he made contact with Morehead in the parking lot of a convenience store after he observed Morehead make what he believed to be an illegal left-hand turn from a westbound lane into the convenience store. The road Morehead turned from to enter the convenience store's parking lot is a four lane road. The two east-bound and two west-bound lanes are divided for some distance by a concrete median. Just before the point Morehead made his turn the median is replaced by a center lane for left-hand turns. The officer testified he observed Morehead make his left-hand turn from the left, westbound lane instead of from the turning lane. The district court found that while Morehead may not have actually made an illegal turn, the officer had reasonable suspicion to believe Morehead had made an illegal turn, and denied the motion.

Both the Fourth Amendment to the United States Constitution and article I, section 8 of the Iowa Constitution protect against unreasonable searches and seizures by government officials. *State v. Jones*, 586 N.W.2d 379, 382 (Iowa 1998). A traffic violation, however minor, gives an officer probable cause to stop a motorist. *State v. Aderholdt*, 545 N.W.2d 559, 563 (Iowa 1996). "To justify such a stop, an officer need only have reasonable, not probable, cause to believe the traffic violation has occurred." *Id.* In this case, the officer had reasonable cause to believe a traffic violation had occurred. Although Morehead's turn may not in fact have been illegal, a fact the district court noted, the officer did have reasonable cause to believe Morehead had made an illegal left-hand turn from a through lane, across a turning lane. The ensuing stop was therefore legal. The district court did not err in overruling the motion to suppress.

Morehead also contends he received ineffective assistance of counsel because the proper procedures for waiving a jury trial were not followed. Specifically, Morehead contends counsel was ineffective by allowing him to waive jury trial without filing a written waiver of jury trial as required by Iowa Rule of Criminal Procedure 16(1). While we often preserve ineffective assistance of counsel claims for postconviction proceedings, we consider such claims on direct appeal if the record is sufficient. *State v. Casady*, 597 N.W.2d 801, 807 (Iowa 1999). The record is sufficient to address the claim on direct appeal. Our review is de novo. *Id.*

To establish an ineffective assistance of counsel claim, the defendant must show that "(1) counsel failed to perform an essential duty, and (2) prejudice resulted therefrom." *State v. Miles*, 344 N.W.2d 231, 233-34 (Iowa 1984). The

test of ineffective assistance of counsel focuses on whether the performance by counsel was reasonably effective. *Strickland v. Washington*, 466 U.S. 668, 688, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1994). We may dispose of an ineffective assistance of counsel claim if the applicant fails to prove either the breach of duty or the prejudice prong of such a claim. *State v. Cook*, 565 N.W.2d 611, 614 (Iowa 1997).

Morehead has failed to prove any prejudice resulted from the lack of a written waiver of jury trial. To demonstrate prejudice, Morehead must prove there is a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694, 104 S. Ct. at 2068, 80 L. Ed. 2d at 698. In fact, Morehead's brief makes no claim or argument that there is a reasonable probability the outcome of the proceedings would have been any different had a written waiver of jury trial been filed. Nor does Morehead claim he would not have signed a written waiver of jury trial, consistent with his oral waiver, if requested to do so. On our de novo review we conclude there is no reasonable probability the outcome would have been different if Morehead's trial counsel had requested that Morehead sign a written waiver of jury trial.

To the extent Morehead's argument can be seen as an argument counsel was ineffective for failing to ensure his client waived his right to jury trial in a knowing, voluntary and intelligent manner, the record does not support such a claim. To warrant a finding of ineffective assistance of counsel, the circumstances must include an affirmative factual basis demonstrating counsel's

inadequacy of representation. *State v. Aldape*, 307 N.W.2d 32, 42 (Iowa 1981).

At a hearing in open court, defense counsel stated on the record

Mr. Morehead is willing at this time to waive his right to a jury trial. We've talked about that extensively. He is well aware that he has the legal right to proceed to a jury trial in this matter, but rather he would waive that right to have a jury trial and proceed to a stipulated trial. . .

The court then addressed Morehead, twice asking him if he wished to waive his right to jury trial after fully advising him of his rights under the Fifth and Sixth Amendments to the United States Constitution. To each inquiry Morehead indicated he did understand his rights, including the right to a jury trial, and that he wished to waive those rights. The record affirmatively and convincingly refutes any claim that Morehead's express waiver of a jury trial was unknowing, involuntary or unintelligent.

AFFIRMED.