FILED
JUN 25 1985
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)

Plaintiff-Appellee,) Filed June 25, 1985

vs.)

WILLIAM BENNIE BAGG,) 5-295
84-1375

Defendant-Appellant.)

Appeal from the Iowa District Court for Black Hawk County - Roger E. Peterson, Judge.

Defendant appeals his conviction of second-degree burglary in violation of Iowa Code sections 713.1 and 713.5. AFFIRMED.

Charles Harrington, Chief Appellate Defender, and Raymond E. Rogers, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General, and Lona Hansen, Assistant Attorney General, for plaintiff-appellee.

Heard by Donielson, P.J., Snell, and Hayden, JJ.

HAYDEN, J.

Defendant appeals his conviction of second-degree burglary in violation of Iowa Code sections 713.1 and 713.5. He contends he received ineffective assistance of counsel in his counsel's failure to request a jury instruction stating that an accomplice's testimony must be corroborated. We affirm.

Defendant and Tomkins were apprehended inside the fence of a utility company's storage yard. Police also found a roll of copper wire which had been moved. At trial, Tomkins testified that the two had entered the yard with the intent to steal copper wire. Defendant, testifying on his own behalf, denied any such intent. He testified that he and Tomkins had been fishing nearby, Tomkins entered utility property to defendant's surprise, and he had followed Tomkins to warn him that the yard contained alarms. Defendant further testified that when he saw security guards he climbed the fence and entered the utility yard in search of a hiding place because he had been drinking and had thereby violated his parole. The jury found defendant guilty of second-degree burglary, and he brought this appeal.

Defendant's sole argument in this appeal is that his trial attorney rendered ineffective assistance by his failure to request an instruction to the jury that an accomplice's testimony must be corroborated. Because of this failure defendant contends he is entitled to a new trial. The problem in analyzing such a contention is that, on this direct appeal, we are presented with no record by which to evaluate his attorney's performance. The general rule is that an appellate court will not decide claims of ineffective assistance of counsel absent such a record. State v. Kellogg, 263 N.W.2d 539, 544 (Iowa 1978).

We see no reason to deviate from that rule in this case. Although defendant was entitled to the requested instruction, his attorney may have had a tactical reason not to make the request. In any event, the attorney should be given an opportunity to explain his actions (or lack thereof) on defendant's behalf before a

determination on defendant's claim is made. We therefore decline to adjudicate this issue at this time. Defendant's conviction and sentence are affirmed without prejudice, however, to his ability to pursue an application for postconviction relief under Iowa Code chapter 663A to litigate his claim of ineffective legal assistance.

AFFIRMED.