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CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	Filed November 22, 1978
Appellee,	)	
v.	)	681 / 61210
RIVERS L. CALHOUN,	)	
Appellant.	)	

Appeal from the Johnson District Court - Robert E. Ford, Judge.

Defendant appeals from judgment and sentence imposed for receiving and concealing stolen property claiming ineffective assistance of counsel. Affirmed.

Alfredo Parrish of Des Moines, for appellant.

Richard C. Turner, Attorney General, Raymond W. Sullins, Assistant Attorney General, and Jack W. Dooley, Johnson County Attorney, for appellee.

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

PER CURIAM

Defendant appeals his conviction and sentence for receiving and concealing stolen property in violation of § 612.1, The Code, 1977. The only issue asserted on appeal is defendant's claim that he was denied effective assistance of counsel. We affirm the judgment and sentence of the trial court.

The right to counsel means effective assistance of an attorney. Cleesen v. State, 258 N.W.2d 330, 332 (Iowa 1978). Effective assistance of counsel has been defined as including a "conscientious, meaningful representation wherein the accused is advised of his rights and honest, learned and able counsel is given a reasonable opportunity to perform the task assigned to him." Zacek v. Brewer, 241 N.W.2d 41, 51 (Iowa 1976). But effective assistance of counsel does not mean every mistake in judgment or error in trial strategy by an attorney serves to deprive an accused of a constitutional right. Long v. Brewer, 253 N.W.2d 549, 558 (Iowa 1977). The benchmark is whether under all the circumstances counsel's performance was within the range of normal competency. Cleesen v. State, supra at 332. And it is settled that in order to warrant finding a deprivation of due process, a defendant must present an affirmative factual basis demonstrating counsel's inadequacy of representation. State v. Massey, 207 N.W.2d 777, 780 (Iowa 1973).

We consider defendant's claim in light of the foregoing principles. Defendant asserts that his trial counsel did not object to several questions alleged to be leading, failed to move for a directed verdict, failed to file any pretrial or post-trial motions, and carried on an extremely limited cross-examination of witnesses. As to the first contention, the question alleged to be leading in no way related to the ultimate issues in the case. They dealt with preliminary and background matters clearly within the witness's knowledge. Objections to the form of these questions would not have served ultimately to keep this evidence from the jury. Whether or not to object under these circumstances was certainly a matter within counsel's judgmental discretion.

With respect to the trial counsel's failure to move at the appropriate time for a directed verdict, defendant observes that such motion is a prerequisite for challenging the sufficiency of the evidence on appeal. We agree that such is the case, however, defendant in no way asserts that he was entitled to a directed verdict and the evidence

strongly suggests otherwise. Failure to assert every possible motion or objection does not establish ineffective assistance of counsel. Long v. Brewer, supra, at 558.

Although defendant now objects to the failure of his trial counsel to file pretrial or post-trial motions, he does not suggest what should have been done in this regard or how he was prejudiced thereby. We are in no position to grant relief upon the basis of such nonspecific and general assertions. Similarly, although by inference, it is suggested that defendant's trial counsel should have cross-examined more thoroughly, it is nowhere indicated in defendant's argument wherein and to what extent this should have been done. Nor are we able to discern this from our review of the record.

To mount a successful challenge based upon lack of "reasonable competency" of counsel there must be some showing of prejudice as a result of the attorney's representation. United States ex rel Johnson v. Johnson, 531 F.2d 169, 178 (3d Cir. 1976), cert. den. 425 U.S. 997 (1976). Defendant has failed to establish sufficient affirmative factual basis for his claim of ineffective assistance of counsel. Our decision is without prejudice to defendant's right to assert the issue of effective assistance of counsel by means of an application for postconviction relief. See State v. Coil, 264 N.W.2d 293, 296 (Iowa 1978).

AFFIRMED.