

IN THE COURT OF APPEALS OF IOWA

No. 2-149 / 91-39

FILED

JUN 25 1992

CLERK SUPREME COURT

STATE OF IOWA,

Appellee,

vs.

DEREK DELBERT LaGRANGE,

Appellant.

1222

Appeal from the Iowa District Court for Linn County,
Kristin Hibbs, Judge.

Derek LaGrange appeals his conviction of burglary in
the first degree, claiming ineffective assistance of
counsel. **AFFIRMED.**

Alfredo Parrish and Robert P. Montgomery of Parrish &
Kruidenier, Des Moines, for appellant.

Bonnie J. Campbell, Attorney General, Richard J.
Bennett, Assistant Attorney General, and Denver D. Dillard,
County Attorney, for appellee.

Heard by Oxberger, C.J., and Schlegel and Habhab, JJ.

SCHLEGEL, J.

Derek LaGrange and Casandra Parks began dating in December 1989. The relationship became very intense, and the two saw each other nearly every day. On February 12, 1990, LaGrange entered Parks' home through an unlocked screen door while Parks and a friend were watching television. LaGrange had a gun in his hand, and an argument ensued between Parks and LaGrange. Parks had recently ended the relationship with LaGrange. After communications with police, LaGrange set down the gun on the front porch, went back into the residence, and subsequently came back outside where he was placed under arrest. LaGrange had apparently entered the home contemplating suicide in front of Parks.

On February 14, 1990, LaGrange's eighteenth birthday, LaGrange was charged by complaint with burglary in the first degree. The trial information formally charged that LaGrange did enter the house with intent to commit an assault on Parks with a shotgun. LaGrange's first trial began on September 28, 1990. At the close of opening statements the State made a motion for mistrial because defense counsel indicated a witness would be testifying of whom the State had no notice prior to the start of trial. The court granted the mistrial. A new trial commenced on October 22, 1990. On October 25, 1990, the jury returned a verdict of guilty of burglary in the first degree. On December 5, 1990, LaGrange was sentenced to a term of

imprisonment not to exceed twenty-five years. LaGrange appeals.

LaGrange argues he was denied effective assistance of counsel in several respects. He claims his defense counsel (1) neglected to inform him of his right to request juvenile court jurisdiction and neglected to file a motion to transfer the case to juvenile court; (2) gave an improper closing argument; and (3) failed to properly prepare and present the defense of diminished capacity and insanity.

Our ultimate concern in claims of ineffective assistance is with the "fundamental fairness of the proceeding whose result is being challenged." State v. Risdal, 404 N.W.2d 130, 131 (Iowa 1987) (quoting Strickland v. Washington, 466 U.S. 668, 696, 104 S. Ct. 2052, 2069, 80 L. Ed. 2d 674, 699 (1984)). We review de novo the totality of the circumstances relating to counsel's conduct, keeping in mind the presumption that counsel performed competently. Risdal, 404 N.W.2d at 131. The record must show two conditions before a claim of ineffective assistance is satisfied: "It must be shown that 1) counsel failed to perform an essential duty, and 2) prejudice resulted therefrom." State v. Hrbek, 336 N.W.2d 431, 436 (Iowa 1983) (quoting Snethen v. State, 308 N.W.2d 11, 14 (Iowa 1981)).

Ineffective assistance of counsel claims are usually not adjudicated on direct appeal because the attorney

charged with incompetency has not had an opportunity to respond to the allegations. State v. Nebinger, 412 N.W.2d 180, 191-92 (Iowa App. 1987) (citation omitted). We decline to consider LaGrange's claims and preserve them for possible postconviction proceedings because the record here is very inadequate. Counsel has not had the opportunity to respond to the allegations.

LaGrange claims because he was never even informed of his right to request a transfer to juvenile court and because his counsel allegedly was unfamiliar with the applicable statutory provisions in this case, there is no necessity to give his counsel a "day in court." We disagree. The State submits several possible reasons for defense counsel's conduct. We believe it fair to give trial counsel the opportunity to explain his actions.

We affirm the conviction but preserve LaGrange's claims of ineffective assistance of counsel for postconviction proceedings. LaGrange requests a "very limited remand." We find a postconviction hearing would be helpful in this case and would not cause unnecessary delay.

AFFIRMED.