FILED
AUG 29 1985
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

CHARLES DEAN CRABTREE,	)	
Petitioner-Appellant,	)	Filed August 29, 1985
vs.	)	
STATE OF IOWA,	)	5-282 84-1137
Respondent-Appellee.	)	

Appeal from the Iowa District Court for Pottawattamie County - J. C. Irvin, Judge.

Petitioner appeals from a denial of postconviction relief, asserting that he was denied effective assistance of counsel due to counsel's failure to raise sufficiency of the evidence as an issue on appeal. AFFIRMED.

Charles L. Harrington, Appellate Defender, and B. John Burns, Assistant Appellate Defender, for petitioner-appellant.

Thomas J. Miller, Attorney General, and Pamela S. Greenman, Assistant Attorney General, for respondent-appellee.

Considered by Oxberger, C.J., and Snell and Hayden, JJ.

Petitioner was driving a pickup truck filled with items of furniture when he was stopped by police investigating a report of a break-in. He was found to be in possession of two pill bottles which he attempted to throw away. He was released when the victim of the break-in stated that the items in the truck were not his. Later it was discovered that similar items of furniture had been taken in a break-in at a house owned by the person whose name was on the pill bottles. Similar bottles were found at the scene of that break-in, as were tire tracks of conventional front tires matched with rear snow tires. The tires on petitioner's truck were arranged in that manner.

Petitioner's conviction for burglary in the second degree was affirmed by the court of appeals in 1981. Sufficiency of the evidence was not raised as an issue notwithstanding a request by both trial counsel and petitioner that such an issue be raised on appeal. In 1982 petitioner filed an application for postconviction relief alleging ineffective assistance of counsel. The district court denied postconviction relief.

Appellant Crabtree appeals claiming he was denied effective assistance of appellate counsel because "sufficiency of the evidence" was not raised as an issue on appeal. It is well settled that the right to effective assistance of counsel also applies to assistance of counsel on appeal. Anders v. California, 386 U.S. 738, 744, 87 S. Ct. 1396, 1400, 18 L. Ed. 2d 493, 498 (1967); Sims v. State, 295 N.W.2d 420, 424 (Iowa 1980). The same standards apply in measuring the competency of appellate counsel that apply to trial counsel competency. Hinkle v. State, 290 N.W.2d 28, 31 (Iowa 1980).

When a defendant relies on a specific omission to prove ineffective assistance of counsel, two conditions must be demonstrated:

(1) counsel's performance was so deficient that counsel was not functioning as the "counsel" guaranteed by the sixth amendment, and

(2) the deficient performance so prejudiced the defense as to deprive the defendant of a fair trial.

State v. Losee, 354 N.W.2d 239, 243 (Iowa 1984) (citing Strickland v. Washington, ___ U.S. ___, ___, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984)).

We thus proceed to an examination of the totality of the circumstances under which the postconviction court's ruling was made to determine if Crabtree has established by a preponderance of evidence the inadequacy of his counsel on appeal. Hinkle, 290 N.W.2d at 31.

Addressing initially the first prong of the Strickland test, counsel's performance must fall within the range of normal competency. Losee, 354 N.W.2d at 243. Ordinarily, the accused is bound by the tactical or strategic decisions made by counsel, even those rising to constitutional dimensions. Sims, 295 N.W.2d at 424.

The United States Supreme Court recently held that appellate counsel has no duty to raise every nonfrivolous issue requested by the defendant. Jones v. Barnes, 463 U.S. 745, 754, 103 S. Ct. 3308, 3312, 77 L. Ed. 2d 987, 993 (1983). The Supreme Court justified its conclusion by the following reasoning especially applicable to the claim at hand:

> Experienced advocates since time beyond memory have emphasized the importance of winnowing out weaker arguments on appeal and focusing on one central issue if possible, or at most on a few key issues. Justice Jackson, after observing appellate advocates for many years, stated:
>
> > One of the first tests of a discriminating advocate is to select the question, or questions, that he will present orally. Legal contentions, like the currency, depreciate through over-issue. The mind of an appellate judge is habitually receptive to the suggestion that a lower court committed an error. But receptiveness declines as the number of assigned errors increases. Multiplicity hints at lack of confidence in any one.... [E]xperience on the bench convinces me that multiplying assignments of error will dilute and weaken a good case and will not

> save a bad one. Jackson, Advocacy Before the Supreme Court, 25 Temple LQ 115, 119 (1951).

Trustin's testimony reflects his decision not to raise the sufficiency of the evidence issue on appeal was a tactical one. His philosophy was to raise the strongest, meritorious arguments. In his opinion the "sufficiency of the evidence" argument was not meritorious.

We find that Trustin made normal decisions regarding appellate strategy. Therefore, Crabtree failed to show that his counsel did not function as the "counsel" guaranteed by the sixth amendment.

Additionally, because Trustin's performance was not deficient, it did not deprive Crabtree of a fair trial. Therefore, Crabtree could not meet his burden on the second prong of the Strickland test either.

AFFIRMED.