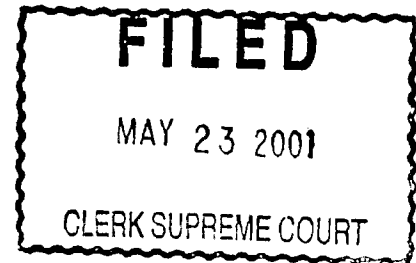


IN THE COURT OF APPEALS OF IOWA

No. 1-268 / 00-0909
May 23, 2001



STATE OF IOWA,
Plaintiff-Appellee,

vs.

MICHAEL JAY PERRY, II,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, James E. Kelley and
Charles Pelton, Judges.

Defendant appeals from his convictions for credit card forgery and
second-degree theft. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Shellie L. Knipfer,
Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Robert P. Ewald, Assistant Attorney
General, William E. Davis, County Attorney, and Donald E. Frank and Jerald
Feuerbach, Assistant County Attorneys, for appellee.

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

HECHT, J.

Michael Jay Perry appeals from his convictions for credit card forgery and second-degree theft. We affirm.

I. Factual Background and Proceedings. In October of 1999, the Davenport police department investigated a series of fraudulent credit card transactions. After their pictures were circulated to local retail store managers as possible suspects, Perry and his partner, Anjelina Walker, were observed attempting to purchase more than \$3000 worth of computer equipment at an office supply store with forged credit cards. The Davenport police arrested the pair shortly thereafter. Perry ultimately pleaded guilty to credit card forgery in violation of Iowa Code section 715A.6 (1999) and second-degree theft in violation of Iowa Code section 714.2(2). On appeal, he contends his defense counsel was ineffective in allowing him to plead guilty to a crime for which there was no factual basis. He also alleges he was denied effective assistance by reason of his counsel's actual conflict of interest.

II. Standard of Review. We review constitutional claims of ineffective assistance of counsel de novo. *State v. Miller*, 590 N.W.2d 724, 725 (Iowa 1999).

III. Factual Basis for Plea. Perry first argues his counsel was ineffective for allowing him to plead guilty to aiding and abetting credit card forgery. However, on April 30, 2001, Perry filed a dismissal of this claim of error and we therefore do not consider it on appeal.

IV. Conflict of Interest. Perry next contends his trial counsel provided ineffective assistance of counsel by failing to disclose an actual conflict of interest. Perry asserts trial counsel was employed by the State in a prosecutorial capacity at the same time counsel represented Perry on the present charges in district court. To prevail on a claim of ineffective assistance of counsel, a defendant must prove (1) counsel's performance fell outside a normal range of competency, and (2) defendant suffered prejudice as a result; that is, but for counsel's errors, the outcome of the proceedings would have been different. *State v. McKettrick*, 480 N.W.2d 52, 55 (Iowa 1992). We generally preserve ineffective assistance claims for postconviction proceedings to permit development of the record and to give counsel an opportunity to defend the challenged action or inaction. *State v. Ruesga*, 619 N.W.2d 377, 384 (Iowa 2000). The parties agree, and we concur, the record on direct appeal is insufficient for this court to adequately adjudicate Perry's claim of ineffective assistance of counsel. Accordingly, we affirm Perry's conviction and preserve the ineffective assistance of counsel issue for possible postconviction relief proceedings.

AFFIRMED.