IN THE COURT OF APPEALS OF IOWA

No. 1999-453 (9-710) / 98-1871
Filed January 26, 2000

STATE OF IOWA,

Appellee,

vs.

ANGELO PALMER,

Appellant.

FILED
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CLERK SUPREME COURT

Appeal from the Iowa District Court for Polk County, Jack D. Levin, Judge.

Angelo Palmer appeals his conviction of first-degree robbery. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and John P. Messina, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Mary Tabor, Assistant Attorney General, John P. Sarcone, County Attorney, and Michael T. Hunter, Assistant County Attorney, for appellee.

Considered by Mahan, P.J., and Zimmer, and Vaitheswaran, JJ.

ZIMMER, J.

Defendant, Angelo Palmer, appeals from a judgment and sentence entered after a jury found him guilty of first-degree robbery, in violation of Iowa Code sections 711.1 and 711.2 (1997). He contends his trial counsel misinformed him about whether his accomplice would testify for the State and provided ineffective assistance by discouraging him from testifying on his own behalf. We affirm the conviction but preserve the claims for postconviction relief.

Palmer's trial commenced in July 1998. During trial, Palmer grew dissatisfied with his attorney's representation. After the close of the State's evidence, Palmer's attorney, Winston Hobson, informed the court that defendant wished to represent himself. The district court engaged in an extensive colloquy with Palmer and then permitted him to recall the victim to the stand and personally examine him. After Palmer questioned the victim, the State rested. The defense rested without presenting evidence. The court allowed Hobson to make a motion for judgment of acquittal and present the closing argument for defendant. The jury found the defendant guilty as charged.

Relations between Palmer and his attorney continued to deteriorate following trial. Hobson eventually withdrew as Palmer's counsel and attorney Paul Rosenberg was appointed to handle post-trial motions and sentencing. Rosenberg filed a motion for new trial claiming, among other things, that Hobson had provided ineffective assistance. An evidentiary hearing was held on the motion. Hobson did not testify due to the sudden death of his wife. The district court denied the motion and Palmer appealed. He requests that his conviction be reversed and the case

remanded for a new trial. Alternatively, Palmer seeks preservation of his claim for possible postconviction proceedings.

Ordinarily, ineffective assistance of counsel claims are preserved for post-conviction relief proceedings. *State v. Westeen,* 591 N.W.2d 203, 207 (Iowa 1999) (citation omitted). However, such claims may be resolved on direct appeal when the record adequately addresses the issues. *Id.* To succeed on his ineffectiveness claim, Palmer would have to prove that his counsel failed to perform an essential duty and prejudice resulted. *Id.*

We deem the record insufficient to address Palmer's claim on direct appeal. *See State v. Arne,* 579 N.W.2d 326, 330 (Iowa 1998) (preserving for postconviction relief ineffectiveness claims revolving around the existence, content and timing of attorney-client discussions on a particular subject). Hobson should be given an opportunity to explain the advice he gave Palmer: "'Even a lawyer is entitled to his day in court.'" *State v. Query,* 594 N.W.2d 438, 444 (Iowa App. 1999) (citing *State v. Coil,* 264 N.W.2d 293, 296 (Iowa 1978)). We affirm Palmer's conviction and sentence but preserve his ineffective assistance of counsel claims for possible post-conviction relief.

AFFIRMED.