IN THE COURT OF APPEALS OF IOWA

No. 1-655 / 00-1907
Filed November 28, 2001

FILED
NOV 2 8 2001
CLERK SUPREME COURT

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MARLA JEAN HOPPER,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Donna L. Paulsen, Judge.

Marla Hopper appeals from the judgments and sentences entered upon her convictions for possession of a controlled substance with intent to deliver, conspiracy to possess with intent to deliver methamphetamine, child endangerment, and marijuana possession. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Dennis D. Hendrickson, Assistant State Appellate Defender for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney General, John P. Sarcone, County Attorney, and Gary Kendell, Assistant County Attorney, for appellee.

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

000412

HUITINK, P.J.

Marla Hopper appeals from her conviction of conspiracy to possess a controlled substance with intent to deliver, possession of a controlled substance with intent to deliver, possession of a controlled substance, and child endangerment. We affirm.

I. Background Facts and Proceedings.

On March 31, 2000, police executed a search warrant at the home of Marla Hopper and Scott Macken, where they seized approximately 13.17 grams of marijuana, 6.54 grams of methamphetamine, $800 in cash, and numerous other items of drug paraphernalia. Hypodermic needles, overflowing ashtrays, and numerous other items containing drug residue were found within easy reach of Hopper's four young children. Hopper admitted to police during the search that she was selling the drugs to support her family. Hopper was found guilty as charged.

On appeal, Hopper challenges the sufficiency of the evidence supporting her conviction on each charge. In the event we determine error was not preserved, Hooper alternatively contends trial counsel was ineffective in failing to preserve error on this issue and for failing to make a motion to suppress Hopper's incriminatory statements made to police during the execution of the search warrant.

II. Preservation of Error.

Hopper's trial counsel made the following motion for judgment of acquittal:

> I would now make a motion that now that all the evidence has been presented that the State has failed to meet its burden viewing the

> evidence in the light most favorable to the State and ask the Court for directed verdict and acquittal.
>
> In the alternative we believe that there is insufficient evidence for the Court to make – or for the jury to make a finding of guilt on possession with intent to deliver or conspiracy with intent to deliver. And we'd ask the Court to at least order that directed verdict and acquittal on those charges and an acquittal as to the lesser included.

A general motion for judgment of acquittal does not preserve error. *State v. Greene*, 592 N.W.2d 24, 29 (Iowa 1999) (error not preserved where defendant fails to identity specific elements of charge insufficiently supported by the evidence). Because Hopper's counsel failed to specify which elements of the crimes charged were not supported by the evidence, we find error was not preserved on this issue.

III. Ineffective Assistance of Counsel.

We review claims of ineffective assistance of counsel de novo. *State v. Allison*, 576 N.W.2d 371, 373 (Iowa 1998). Ordinarily, we preserve claims of ineffective assistance of counsel raised on direct appeal for postconviction proceedings to allow full development of the facts surrounding counsel's conduct. *State v. Atley*, 564 N.W.2d 817, 833 (Iowa 1997). However, we will resolve ineffective assistance of counsel claims on direct appeal when the record is adequate to decide the issue. *State v. Arne*, 579 N.W.2d 326, 329 (Iowa 1998).

The defendant bears the burden of demonstrating ineffective assistance of counsel. *State v. Morgan*, 559 N.W.2d 603, 612 (Iowa 1997). A defendant receives ineffective assistance of counsel when (1) the defense attorney fails in an essential duty and (2) prejudice results. *State v. Bugely*, 562 N.W.2d 173, 178 (Iowa 1997). In order to meet the first test, one must overcome the strong

presumption his or her attorney's actions were reasonable under the circumstances and fell within the normal range of competency. *State v. Shumpert*, 554 N.W.2d 250, 254 (Iowa 1996). To succeed on the second test, it must be shown that, but for counsel's error, the result of the proceedings would have been different. *State v. Buck*, 510 N.W.2d 850, 853 (Iowa 1994).

When complaining about the adequacy of an attorney's representation, it is not enough to simply claim counsel should have done a better job. *State v. Martin*, 587 N.W.2d 606, 609 (Iowa Ct. App. 1998). The defendant must state specific ways in which counsel's performance was inadequate and identify how competent representation probably would have changed the outcome. *Dunbar v. State*, 515 N.W.2d 12, 15 (Iowa 1994). Hopper's argument fails to specify which elements of the four crimes charged counsel should have argued were insufficiently supported by the evidence or how counsel's actions would have changed the outcome. *See State v. Kendall*, 167 N.W.2d 909, 911 (Iowa 1969) (allegations of inadequate representation "must be supported by more than speculative, generalized argument"). In the absence of greater specificity, we are unable to address Hopper's ineffective assistance of counsel claim on direct appeal or preserve them for future postconviction relief proceedings. We accordingly affirm on this issue.

Hopper also argues counsel was ineffective in failing to make a motion to suppress incriminatory statements made to police. She contends her statements were involuntarily made as a result of police coercion. Because the record is insufficient to address this issue, we preserve it for postconviction proceedings.

AFFIRMED.

000415