

IN THE COURT OF APPEALS OF IOWA

No. 0-21 / 99-159
Filed February 23, 2000

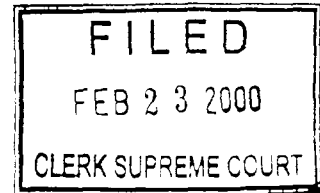
STATE OF IOWA,

Plaintiff-Appellee,

vs.

RICHARD ALLEN MILLSAP,

Defendant-Appellant.



Appeal from the Iowa District Court for Polk County, Gregory D. Brandt,
District Associate Judge.

Richard Millsap appeals from his convictions and sentences following
guilty pleas to two charges of driving while barred. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Martha J. Lucey, Assistant
State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Richard J. Bennett, Assistant Attorney
General, John P. Sarcone, County Attorney, and Ray Kinley, Assistant County
Attorney, for appellee.

Considered by Huitink, P.J., and Streit and Miller, JJ.

HUTINK, P.J.

I. Background Facts and Proceedings.

On June 5, 1998, the State charged Millsap with driving while his license was barred for acts occurring on May 2, 1998. On June 23, 1998, the State filed a four-count trial information charging Millsap with another charge of driving while his license was barred for acts occurring on May 15, 1998. Millsap filed a petition to plead guilty for both charges of driving while barred. He waived time for sentencing and proceeded directly to sentencing. The trial court sentenced Millsap to an indeterminate two-year sentence on both charges to be served consecutively.

On appeal, Millsap argues his attorney failed to provide effective assistance of counsel on the two charges of driving while barred in violation of Iowa Code section 321.561. Specifically, Millsap contends his counsel was ineffective for not moving to dismiss charges for alleged violation of his right to a speedy trial, instead procuring his waiver of that right allegedly after expiration of the speedy trial deadline. Second, Millsap argues counsel should have immediately filed a motion in arrest of judgment at the combined guilty plea and sentencing hearing when it became apparent that his understanding of the terms of the plea agreement as to jail time credit was incorrect.

II. 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. Alley*, 564 N.W.2d 817, 833 (Iowa 1997). However, they may be resolved on direct appeal when the record adequately addresses the issues. *State v. Martin*, 587 N.W.2d 606, 609 (Iowa App. 1998). If not, we preserve the claim for postconviction proceedings so the facts may be developed. *State v. Koenighain*, 356 N.W.2d 237, 238 (Iowa App. 1984). This gives the attorney an opportunity to respond to defendant's charges. *State v. Coil*, 264 N.W.2d 293, 296 (Iowa 1978). We conclude there is an inadequate record for us to adjudicate Millsap's claims without counsel's explanation. We therefore preserve Millsap's ineffective assistance of counsel claims for postconviction proceedings.

The judgment of the district court is affirmed.

AFFIRMED.