

IN THE COURT OF APPEALS OF IOWA

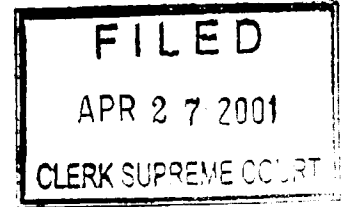
No. 1-154 / 99-1869

Filed April 27, 2001

STATE OF IOWA,
Plaintiff-Appellee,

vs.

GILBERT GROVER THOMAS, JR.,
Defendant-Appellant.



Appeal from the Iowa District Court for Polk County, Larry J. Eisenhauer,
Judge.

The defendant appeals from his convictions for eight offenses relating to
the handling and disposal of pollutants and hazardous wastes. **AFFIRMED.**

David Scieszinski, Wilton, for appellant.

Thomas J. Miller, Attorney General, Douglas R. Marek, Deputy Attorney
General, Bridget A. Chambers, Assistant Attorney General, and John P.
Sarcone, County Attorney, for appellee.

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

HECHT, J.

Gilbert Grover Thomas appeals from his convictions for various offenses relating to the handling and disposal of pollutants and hazardous wastes. We affirm.

I. Factual Background and Proceedings. On May 9, 1998, the Altoona Fire Department received a report of a suspicious odor emanating from a nearby creek. An investigation revealed Thomas was storing and dumping hazardous waste in at least two locations in Iowa. The minutes of testimony in this case alleged Thomas maintained property where storage tanks containing 10,000 gallons of hazardous waste were leaking into the ground and groundwater. The minutes also alleged Thomas discharged hazardous waste directly into the Des Moines sewer system. Thomas was also charged with releasing hazardous waste directly into the ground and into a drain which carried the waste to a nearby creek.

Thomas pleaded guilty to eight counts resulting from the investigation of the properties, including knowingly discharging pollutants into the waters of the state; knowingly storing, transporting, and disposing of hazardous waste; knowingly introducing a pollutant into a sewer system; and first-degree theft by deception. Thomas appeals from his convictions and sentences, asserting several claims of ineffective assistance of counsel.

II. Standard of Review. We review claims of ineffective assistance of counsel de novo. *State v. Oetken*, 613 N.W.2d 679, 683 (Iowa 2000).

III. Merits. Thomas first argues his trial counsel was ineffective in failing to object to the amended trial information because the amendment contained charges that were not included in the original trial information. However, in his brief to this court, Thomas fails to specify which amended charges constitute new and different offenses from the original charges in violation of Iowa Rule of Criminal Procedure 4(8)(a). Thomas also fails to identify the portions of the record supporting his arguments. A defendant has an obligation to provide this court with a record affirmatively disclosing and supporting the error relied upon. See *State v. Ludwig*, 305 N.W.2d 511, 513 (Iowa 1981). Thomas has waived any error by his failure to cite to the record or present an argument in support of his claim.

Thomas next contends his trial counsel was ineffective for failing to object to the admissibility of evidence obtained as part of a land recycling and remediation program under Iowa Code chapter 455H. He does not however identify the evidence obtained to which he objects and fails to argue reasons why any such evidence should not have been admitted into evidence. This constitutes a failure to comply with Iowa Rule of Appellate Procedure 14(a)(5) which requires the appellant's brief to set forth his contentions with respect to the issues presented and the reasons therefore. Thomas has waived this argument as well.

Finally, Thomas asserts trial counsel was ineffective for failing to raise the defense of res judicata at the district court level. Thomas did not state in his brief which of the eight charges might have been vulnerable to a res judicata defense.

While Thomas contends a res judicata argument would have prevented "the State of Iowa from proceeding with criminal charges under the Iowa environmental law once the EPA had proceeded under the federal environmental law," the record does not establish an action that could constitute a basis for a res judicata defense was taken against him by the federal government with respect to the charges at issue in the present case. Thomas has not identified the portions of the record tending to support his res judicata claim. In conclusion, Thomas has waived all three of his arguments on appeal. Therefore, we affirm his convictions and sentences.

AFFIRMED.