IN THE COURT OF APPEALS OF IOWA

No. 1-27 / 00-560
Filed February 28, 2001

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ALAN CHARLES EDWARDS,
Defendant-Appellant.

FILED
FEB 2 8 2001
CLERK SUPREME COURT

Appeal from the Iowa District Court for Linn County, David M. Remley, Judge.

Alan Edwards appeals from the judgment and sentence entered upon a jury verdict finding him guilty of third-offense operating while intoxicated. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Robert P. Ranschau, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Thomas S. Tauber, Assistant Attorney General, Denver D. Dillard, County Attorney, and Jerry Vander Sanden and Harold L. Denton, Assistant County Attorneys, for appellee.

Considered by Huitink, P.J., and Vogel and Mahan, JJ.

HUITINK, P.J.

Alan Edwards appeals from his conviction of operating while intoxicated, third offense, in violation of Iowa Code section 321J.2 (1999). We affirm.

I. Background Facts and Procedure.

On August 5, 1999, Edwards was charged with his third offense of operating while intoxicated. He was subsequently tried before a jury and found guilty. The district court sentenced Edwards to an indeterminate term not to exceed five years and was assessed a fine of $2500 plus surcharge. At the sentencing hearing, the district court stated that "[t]here is a mandatory minimum fine of $2500, plus 30 surcharge."

On appeal Edwards contends the fine imposed was discretionary and the district court erred by concluding otherwise. He also contends he was denied effective assistance of trial counsel.

II. Imposition of Fine Under Iowa Code section 321J.2(2)(c).

Iowa Code section 321J.2 provides in pertinent part:

> 2. A person who [is guilty of OWI] commits:
> c. A class "D" felony for a third offense and each subsequent offense, and shall be imprisoned in the county jail for a determinate sentence of not more than one year but not less than thirty days, . . . and assessed a fine of not less than two thousand five hundred dollars nor more than seven thousand five hundred dollars.
> 3. a. Notwithstanding the provisions of section 901.5 and 907.3, the court shall not defer judgment or sentencing, or suspend execution of any mandatory minimum sentence of incarceration applicable to the defendant under subsection 2, and shall not suspend execution of any other part of a sentence not involving incarceration imposed pursuant to subsection 2, if any of the following apply:
> * * *
> (2) If the defendant has previously been convicted of [OWI] . . . .

Edwards argues that although this section disallows suspension of a fine, the imposition of a fine is nevertheless discretionary. We disagree. Our supreme court has repeatedly held that fine provisions, as above, which provide that the court "shall" assess a fine within a given range, make the imposition of a fine mandatory. *See State v. Ayers*, 590 N.W.2d 25, 31 (Iowa 1999); *State v. Grey*, 514 N.W.2d 78, 79 (Iowa 1994). We accordingly affirm the decision of the district court on this issue.

III. Ineffective Assistance of Counsel.

Next, Edwards contends trial counsel was ineffective for failing to perform a proper investigation in a timely manner, failing to subpoena key witnesses, and failing to move for a timely continuance of the trial. 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). Because we find the record to be insufficient for us to resolve these issues, we preserve them for possible postconviction proceedings. *See State v. Mann*, 512 N.W.2d 814, 817 (Iowa Ct. App. 1993) ("Where the record is inadequate to permit us to resolve the claim, we preserve the claim in order to provide the allegedly ineffective attorney the opportunity to explain his or her conduct."). The decision of the district court is affirmed in full.

AFFIRMED.