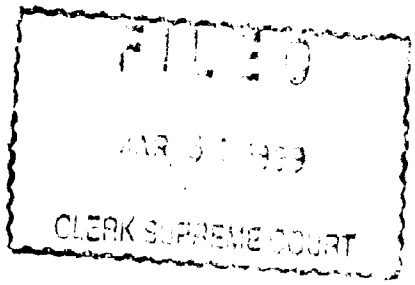
IN THE COURT OF APPEALS OF IOWA

No. 9-084 / 98-0160
Filed March 31, 1999



STATE OF IOWA,

Plaintiff-Appellee,

vs.

JUAN JOSE HERNANDEZ,

Defendant-Appellant.

Appeal from the Iowa District Court for Muscatine County, James A. Weaver, District Associate Judge.

Defendant appeals from his conviction, following a bench trial, for driving with a suspended license in violation of Iowa Code section 321.218 (1997). **AFFIRMED.**

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

Thomas J. Miller, Attorney General, Karen Doland, Assistant Attorney General, Richard R. Phillips, County Attorney, Christine Dalton, Assistant County Attorney, and Alan R. Ostergren, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Huitink and Mahan, JJ.

MAHAN, J.

Juan Jose Hernandez appeals from his conviction, following a bench trial, for driving with a suspended license in violation of Iowa Code section 321.218 (1997). Hernandez contends his trial counsel was ineffective for failing to challenge the constitutionality of Iowa Code section 321.174(3) and the trial court failed to adequately state reasons for the sentence imposed. We affirm.

On May 28, 1997, Iowa State Trooper Robert Smith pulled over a vehicle he had observed did not have license plates. Trooper Smith did not see that the vehicle had valid temporary tags displayed until he wiped the water off the vehicle's back window. After determining it was "a genuine tag within its grace period for getting plates on the vehicle," Trooper Smith proceeded to ask Hernandez, the driver of the vehicle, for his driver's license. Hernandez could not produce one and it was confirmed through the Department of Transportation that Hernandez's driver's license was suspended.

Hernandez filed a motion to suppress the evidence on the basis the stop violated his rights under the Fourth and Fifth Amendment of the United States Constitution. The motion was denied after a hearing and Hernandez proceeded to a bench trial. He was found guilty and sentenced to forty days in jail with all but ten of those days suspended.

I. INEFFECTIVE ASSISTANCE OF COUNSEL. We review claims of ineffective assistance of counsel de novo. *State v. Brooks*, 555 N.W.2d 446, 448 (Iowa 1996).

Ordinarily, we reserve 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). "Even a lawyer is entitled to his day in court, especially when his professional reputation is impugned." *State v. Coil*, 264 N.W.2d 293, 296 (Iowa 1978). 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); *Dunbar v. State*, 515 N.W.2d 12, 15 (Iowa 1994); *State v. Kone*, 557 N.W.2d 97, 102 (Iowa App. 1996). "A defendant receives ineffective assistance of counsel when (1) the defense attorney fails in an essential duty and (2) prejudice results." *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674, 693 (1984); *State v. Bugely*, 562 N.W.2d 173, 178 (Iowa 1997). An ineffective-assistance-of-counsel claim may be disposed of if the defendant fails to prove either prong. *State v. Cook*, 565 N.W.2d 611, 614 (Iowa 1997). Therefore, we may affirm Hernandez's conviction based on

his failure to prove prejudice without deciding whether his counsel failed to perform an essential duty. *See State v. Hoeck*, 547 N.W.2d 852, 863 (Iowa App. 1996).

The defendant establishes prejudice by showing "there is a reasonable probability that, but for the counsel's unprofessional errors, the result of the proceeding would have been different." *State v. Hopkins*, 576 N.W.2d 374, 378 (Iowa 1998) (quoting *Strickland*, 466 U.S. at 694, 104 S. Ct. at 2068, 80 L. Ed. 2d at 698). A "reasonable probability is a probability sufficient to undermine confidence in the outcome" of the defendant's trial. *Bugely*, 562 N.W.2d at 178 (quoting *State v. Kraus*, 397 N.W.2d 671, 673 (Iowa 1986)).

Hernandez asserts the statute is unconstitutional, to the extent it allows an officer to check the driver's license and car registration after the driver has been exonerated on the license plate violation by display of a valid temporary tag, under *Delaware v. Prouse*, 440 U.S. 648, 99 S. Ct. 1391, 59 L. Ed. 2d 660 (1979) and *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968). Despite his claim to the contrary, the constitutionality of stops of this nature in light of *Prouse* was addressed by our supreme court in *State v. Jackson*, 315 N.W.2d 766, 767 (Iowa 1982). In that case, our supreme court concluded, "Notwithstanding the fact that a mistake concerning the license plates led to the defendant's stop there was nothing illegal about the fact that, once he was stopped and exonerated, he was asked to display his operator's license." Therefore, Hernandez is unable to show there is a reasonable probability the result of the proceeding would have been different if his trial counsel

had pursued a challenge of the constitutionality of Iowa Code section 321.174. We therefore affirm on this issue.

II. REASONS FOR THE SENTENCES IMPOSED. Hernandez maintains he must be resentenced because the district court failed to state reasons on the record for the sentences imposed. We disagree.

Our scope of review for defects in a sentencing procedure is for corrections of errors at law. *State v. Thomas*, 547 N.W.2d 223, 225 (Iowa 1996). We will not disturb a sentence on appeal unless the defendant shows a defect in the sentencing procedure. *State v. Loyd*, 530 N.W.2d 708, 713 (Iowa 1995).

A sentencing court is required to state on the record its reasons for selecting a sentencing option. Iowa R. Crim. P. 22.3(d); *State v. Luedtke*, 279 N.W.2d 7, 8 (Iowa 1979). The purpose of this rule is to allow the appellate court to determine whether there has been an abuse of discretion. *State v. Mickens*, 462 N.W.2d 296, 299 (Iowa App.1990). Failure to adequately do so requires us to vacate the sentence and remand the case for resentencing. *See State v. Taggart*, 525 N.W.2d 877, 882 (Iowa App.1994) (citations omitted). Even a succinct and terse statement of reasons may be sufficient as long as the brevity displayed does not prevent us from reviewing the exercise of the trial court's sentencing discretion. *State v. Boltz*, 542 N.W.2d 9, 11 (Iowa App. 1995). On the other hand, the record supports a failure to exercise discretion when only a single, nonspecific factor is identified by the sentencing court. *Id.* (citing *State v. Dvorsky*, 322 N.W.2d 62, 66-67 (Iowa 1982); *State v. Hildebrand*,

280 N.W.2d 393, 396-97 (Iowa 1979); *State v. McKeever*, 276 N.W.2d 385, 387 (Iowa 1979) (nature of offense alone not determinative of a discretionary sentence)).

The sentencing colloquy indicates the district court considered at the time of sentencing Hernandez was already in jail serving a sentence of ninety-four days for criminal mischief, carrying weapons, and aggravated assault. The district court also determined Hernandez had at least one prior conviction for driving without a valid license. We find the record is sufficient for us to review the exercise of discretion by the district court in sentencing Hernandez. Having done so, we conclude the district court did not err in sentencing Hernandez as it did.

For these reasons, we affirm Hernandez's conviction for driving with a suspended license.

AFFIRMED.