IN THE COURT OF APPEALS OF IOWA

No. 1999-542 (9-803) / 98-2095
Filed January 26, 2000

STATE OF IOWA,

Appellee,

vs.

HENRY LEE GREER,

Appellant.

FILED
JAN 2 6 2000
CLERK SUPREME COURT

Appeal from the Iowa District Court for Woodbury County, James D. Scott, Judge.

Henry Lee Greer appeals, contending his trial counsel was ineffective for failing to object to the State's evidence during the trial on his habitual offender status. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Stephan J. Japuntich, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Martha E. Boesen, Assistant Attorney General, Thomas S. Mullin, County Attorney, and James K. Katcher, Assistant County Attorney, for appellee.

Heard by Mahan, P.J., and Zimmer, and Vaitheswaran, JJ.

VAITHESWARAN, J.

The State charged Henry Lee Greer with third degree burglary and second degree theft. The State also sought an enhanced sentence based on prior convictions for second degree burglary and second degree attempted burglary. A jury convicted Greer of trespass and second degree theft. The case proceeded to a second trial phase on whether Greer was the person previously convicted of the crimes set forth in the trial information. A jury concluded he was, and the court sentenced Greer to thirty days with credit for time served on the trespass charge and an indeterminate term not to exceed fifteen years as a habitual offender on the theft charge. On appeal, Greer contends his trial attorney was ineffective in representing him during the habitual offender phase of the proceedings. We disagree and affirm.

I. Ineffective Assistance of Counsel Claim

To establish a claim of ineffective assistance, Greer must prove by a preponderance of the evidence that: (1) counsel failed to perform an essential duty and (2) prejudice resulted. *State v. Risdal*, 404 N.W.2d 130, 131-32 (Iowa 1987). We conclude Greer has proven neither.

District court records. Greer first contends counsel was ineffective in failing to object on hearsay grounds to admission of certain documents contained in district court case files. Greer correctly points out these documents were offered to prove the truth of the matter asserted and, therefore, were hearsay evidence. *See* Iowa R. Evid. 801(c). However, they were admissible under the public records exception to the hearsay rule. *See* Iowa R. Evid. 803(8). Additionally, the district court

certified these records, obviating the need to call an authentication witness. *See* Iowa R. Evid. 902(4). We conclude there was no reasonable basis for objecting to the district court records.

Fingerprint records. Greer next contends because counsel failed to object to admission of the district court records, fingerprint records from the prior criminal cases also improperly were admitted. We reject this contention in light of our conclusion that trial counsel was not required to object to the district court records. We also note that the State called a witness to lay a foundation for the fingerprint records and to match current fingerprints to the records in prior cases. Therefore, trial counsel had no reasonable basis for raising foundation objections.

Redaction. Greer also contends certain records needlessly informed the jury of Greer's "meager financial means" and referenced Greer's parole status. He asserts trial counsel should have sought to have this information redacted to avoid tainting the jury. We find this contention without merit. The jury was asked to decide one issue during the habitual offender phase of the trial: whether Greer was the person previously convicted of burglary and attempted burglary. The jury had no reason to consider Greer's poverty or parole status, much less change its decision on Greer's identity, based on that evidence. Even if the district court records could be deemed minimally prejudicial, we find the probative value of these records outweighed any prejudicial effect. *See* Iowa R. Evid. 403. We conclude trial counsel was not ineffective during the habitual offender phase of the proceedings. He did not breach an essential duty in failing to object to clearly admissible evidence. *See State v. Walker*, 538 N.W.2d 316, 322 (Iowa App. 1995).

Additionally, Greer suffered no prejudice as a result of counsel's failure to object, in that these records would have been admitted over counsel's objections.

II. Preservation of Issues for Postconviction Relief

Greer asks this court to preserve for postconviction relief his claim that counsel failed to "properly advise him and make a reasonable investigation." We find this allegation too general to preserve for postconviction relief. *State v. Dunbar*, 515 N.W.2d 12, 15 (Iowa 1994).

Greer's conviction and sentence are affirmed.

AFFIRMED.