IN THE COURT OF APPEALS OF IOWA

No. 1-851 / 01-0447
Filed December 28, 2001

STATE OF IOWA,
Appellee,

vs.

JASON CRAIG LEE,
Appellant.

FILED

Appeal from the Iowa District Court for Muscatine County, Mark D. Cleve, Judge.

Jason Lee appeals the judgments and sentences entered following guilty pleas to two counts of forgery, contending trial counsel was ineffective. **AFFIRMED**.

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

Thomas J. Miller, Attorney General, and Mary E. Tabor, Assistant Attorney General, for appellee.

Considered by Vogel, P.J., and Miller and Eisenhauer, JJ.

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VOGEL, P.J.

Jason Lee appeals from his judgments and sentences following guilty pleas to two counts of forgery, in violation of Iowa Code sections 715A.1 and 715A.2 (2001). Lee contends his trial attorney was ineffective based on certain acts and omissions of counsel, all of which center on the validity of the plea proceedings. Upon review we find this matter fits the criterion outlined in Iowa Supreme Court Rule 9, for the issuance of a memorandum opinion.

Pursuant to a plea agreement with the State, Lee entered guilty pleas to two counts of forgery and received two concurrent five-year indeterminate sentences, and the State dismissed all remaining counts. However, this agreement was entered into after the court rejected an initial agreement which provided for a guilty plea to only one of the forgery counts and a suspended sentenced and fine. Lee forwards a number of alleged errors by trial counsel, which all focus on his contentions the district court did not allow him an opportunity to withdraw his guilty plea after rejecting the initial plea agreement, and failed to advise him he could persist in his guilty plea with the understanding he might receive a sentence less favorable than that provided for in the agreement. *See* Iowa R. Crim. P. 9. In essence, Lee contends counsel should have assured he was either allowed to withdraw his plea, or reap the benefits of his initial plea in that he would receive one, rather than two, felony convictions.

Lee was informed at the time of his initial plea, via a written order, that a rejection of the agreement would result in an opportunity to withdraw his plea. Several days then passed in which Lee could have filed a motion for such a

withdrawal. However, we have no knowledge of the communications that may have passed between Lee and his attorney during that time. More importantly, although at Lee's final plea and sentencing hearing the court asked counsel if Lee was ready to reaffirm his plea to the initial felony count, this inquiry was never made directly to Lee.

The record is also void of any advisory by the district court of Lee's right to persist in the plea with the possibility of a harsher sentence. While the record does show counsel failed to object to the court's silence on this issue, as a whole it is inadequate to allow a fair assessment of what actions were or were not taken by counsel in regard to Lee's opportunity to persist in his plea to only one felony count. We therefore affirm Lee's convictions but preserve his ineffective assistance of counsel claim for postconviction review. *State v. Kirchner*, 600 N.W.2d 330, 335 (Iowa Ct. App. 1999) (preserving claims allows for development of facts and gives trial counsel an opportunity to explain his conduct and decisions).

AFFIRMED.