IN THE COURT OF APPEALS OF IOWA

No. 5-234 / 94-1209

FILED
MAY 30 1995
CLERK SUPREME COURT

STATE OF IOWA,

Appellee,

vs.

JOHN CRANE,

Appellant.

Appeal from the Iowa District Court for Polk County, Robert A. Hutchison, Judge.

Defendant appeals judgment and sentence, following a bench trial, entered upon his convictions of assault with intent to commit sexual abuse causing injury. **AFFIRMED.**

Maggi Moss of Parrish, Kruidenier, Moss, Dunn, Montgomery & Thomas, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Sheryl A. Soich, Assistant Attorney General, John P. Sarcone, County Attorney, and Steve Foritano, Assistant county Attorney, for appellee.

Heard by Donielson, C.J., and Cady and Huitink, JJ.

HUITINK, J.

The State charged John Crane with assault with intent to commit sexual abuse causing injury, a class "D" felony. The State alleged Crane entered the victim's bedroom, cut the power to the apartment, held a knife to her throat, and repeatedly told her to do as he said and she wouldn't get hurt. He told her to "just do what [I] say and f--- [me]." her. In the resulting struggle, the victim received "rug burns" on her knees and wrists. Crane was also charged with driving while his license was under suspension.

Crane waived his right to a jury trial. Following a bench trial, the district court found him guilty as charged.

The district court concluded assault with intent to commit sexual abuse causing injury was a forcible felony and denied bond pending sentencing.

At sentencing the district court stated:

> I have concluded that based on the language of the statute that [assault with intent to commit sexual abuse causing injury] is indeed a felonious assault and it is indeed a forcible felony, and for that reason I think I am limited in my sentence.
>
> I might add, however, that even if it were not a forcible felony and if I were simply going to look at sentencing factors as set forth in State v. Peckenschneider, 236 N.W.2d 344 [1975]; State v. Thompson, 275 N.W.2d 370 [1979]; Code sections 907.3 and 907.5, 901.3 and 901.5, I would not come to a different conclusion in this case. . . . [T]he mandatory sentence here is five years on the Class D Felony and that's what I am going to order. Again, my ruling will be the same either way.

On appeal Crane first contends the sentencing court erred in concluding assault with intent to commit sexual abuse is a forcible felony. Our review is for correction of errors at law. Iowa R. App. P. 4.

Iowa Code section 702.11 (1993) provides, in part:

> A "forcible felony" is any felonious child endangerment, assault, murder, sexual abuse, kidnapping, robbery, arson in the first degree, or burglary in the first degree.

A crime need not be listed in section 702.11 as a forcible felony if it is considered a "felonious assault." *See e.g. State v. Long*, 490 N.W.2d 52 (Iowa 1992) (voluntary manslaughter is a felonious assault and thus a forcible felony).

A crime is a felonious assault for purposes of the forcible felony provision if (1) it is a felony and (2) it necessarily includes an assault. *State v. Webb*, 313 N.W.2d 550, 552 (Iowa 1981). Assault with intent to commit sexual abuse is a felonious assault; therefore, it is a forcible felony. *See State v. Mayberry*, 411 N.W.2d 677 (Iowa 1987). In *Mayberry* our supreme court approved of a jury instruction which instructed the jury

> that it could find the defendant guilty of first-degree murder if the killing occurred while defendant was participating in the forcible felony of assault with intent to commit sexual abuse causing serious injury.

Id. at 682. Therefore, the district court properly determined assault with intent to commit sexual abuse is a forcible felony and sentenced Crane accordingly. The court is affirmed on this issue.

Crane also contends he was denied effective assistance of counsel in five ways. (1) counsel's failure to call witnesses on his behalf; (2) failure to have him evaluated and obtain expert testimony on his behalf; (3) waiving a jury trial; (4) failure to sever the traffic count from the felony charges; and (5) failure to represent him effectively at trial.

We generally will not decide ineffective assistance claims on direct appeal as we prefer to reserve them for postconviction proceedings where counsel has the opportunity to respond. *State v. Taylor*, 310 N.W.2d 174, 179 (Iowa 1981). We depart from this preference if the record is adequate to evaluate appellant's claims. *State v. Schoelerman*, 315 N.W.2d 67, 71 (Iowa 1982).

Crane's first four claims implicate counsel's practical and strategic considerations regarding his defense. We are unable, based on this record, to fairly evaluate these four claims. Accordingly we preserve these four claims for postconviction proceedings.

Crane's fifth claim of ineffective assistance is not preserved for postconviction proceedings. This generalized claim is insufficient to preserve the issue for postconviction. *State v. White*, 337 N.W.2d 517, 520 (Iowa 1983).

Crane's conviction and sentence are affirmed.

AFFIRMED.