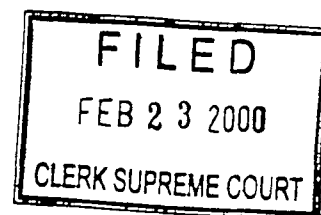


IN THE COURT OF APPEALS OF IOWA

No. 1999-358 (9-611) / 98-1865
Filed February 23, 2000



STATE OF IOWA,
Plaintiff-Appellee,

vs.

COREY ALLEN,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, K.D. Briner,
Judge.

Corey Allen appeals following his convictions for possession with intent to deliver a controlled substance, failure to affix a drug tax stamp, and interference with official acts. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and David Arthur Adams, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Roxann M. Ryan, Assistant Attorney General, and Thomas J. Ferguson, County Attorney, for appellee.

~~Considered~~ by Sackett, C.J., Zimmer and Miller, JJ.

SACKETT, C.J.

Defendant-appellant Corey Allen appeals his convictions for possession of a controlled substance (cocaine base) with intent to deliver, in violation of Iowa Code sections 124.401(1)(c) (1997); failure to affix a drug tax stamp, in violation of section 453B.12; and interference with official acts, in violation of section 719.1. He claims he received ineffective assistance of counsel. We affirm.

On October 8, 1998, following complaints of drug dealing on a Waterloo street corner, police officers watched the corner. Defendant and others were seen engaging in activities the officers determined were consistent with the sale of crack cocaine. Several cars stopped at the corner. Defendant and the others went to the car, quickly made an exchange, and then returned to the sidewalk.

When additional officers arrived in marked vehicles, defendant ran from the scene and officers ran after him. One officer saw defendant reaching toward his right pocket. Another officer saw defendant pulling things out of his right pocket and then throwing something on the ground. This officer noted the general area where the items fell. After defendant was captured, the officers went to the area where the items had been thrown and found on the ground a vial containing ten rocks of crack cocaine. Defendant was arrested and charged.

Defendant pled guilty to interference with official acts. He was tried on the other charges. Defendant's position at his jury trial was he pled guilty to interference with official acts because he was guilty of that crime. He advanced he pled "not guilty" to the other two crimes because he did not commit them. The

district court did not permit Allen to introduce evidence of his guilty plea. The court stated:

The rational evidence of flight is relevant and the parties are free to argue about what it means. Because it is relevant to these charges which this jury must decide, I have permitted it. Because the fact that it resulted in another offense is not relevant. I would not have permitted the State once that defense was settled, I would not have permitted the State to tell the jury he was charged with that offense or acquitted of it, and similarly I do not see any basis in relevance which would make it appropriate for the jury to be told that he has pled guilty to it. So evidence of the existence of that other charge will not be admitted in this trial.

Defendant was convicted of the two other charges. Defendant's defense counsel filed a notice of appeal from his sentence only. Allen claims his counsel was ineffective in limiting the issues in the notice of appeal.

Our review of an allegation of ineffective assistance of counsel is de novo. *Cox v. State*, 554 N.W.2d 712, 714 (Iowa App. 1996). To establish a claim of ineffective assistance of counsel, a defendant must show (1) the attorney failed to perform an essential duty, and (2) prejudice resulted to the extent it denied defendant a fair trial. *Bettis v. State*, 547 N.W.2d 635, 637 (Iowa App. 1996). Although ineffective assistance claims are generally reserved for postconviction proceedings they are resolved on direct appeal when the record adequately presents them. *State v. Ueding*, 400 N.W.2d 550, 553 (Iowa 1987). We find the record is adequate in the present case to address this issue.

Defendant contends his trial counsel should have appealed the district court's refusal to permit him to introduce evidence he pled guilty to the charge of interference with official acts.

Assuming without deciding that the evidence was admissible, we find defendant has failed to prove he was prejudiced by the court's failure to admit the evidence. It is not necessary for us to address the first prong of the two-part test concerning ineffective assistance of counsel, where we find no prejudice resulted. See *State v. Martens*, 569 N.W.2d 482, 487 (Iowa 1997). In order to show prejudice, defendant must show counsel's failure worked to his substantial and actual disadvantage to the end there is a reasonable probability, but for counsel's errors, the result of the proceeding would have been different. *State v. Allen*, 565 N.W.2d 333, 336 (Iowa 1997); *Bettis*, 547 N.W.2d at 637.

There was overwhelming evidence of defendant's guilt. Defendant was seen engaging in activities consistent with selling crack cocaine on a street corner. When officers arrived in marked vehicles, defendant ran. As he ran, an officer saw him pull something out of his pocket and throw it on the ground. When officers returned to the spot, they found a vial containing ten rocks of crack cocaine. Defendant was not prejudiced by the district court's failure to allow him to introduce evidence he pled guilty to interference with official acts.

We affirm.

AFFIRMED.