

IN THE COURT OF APPEALS OF IOWA

No. 1-427 / 10-1656
Filed July 27, 2011

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CARLOS CABELLO MORENO,
Defendant-Appellant.

Appeal from the Iowa District Court for Wapello County, Kirk A. Daily,
District Associate Judge.

Carlos Cabello Moreno appeals from judgment and sentence entered by
the district court on his guilty plea to identity theft. **AFFIRMED.**

Rachel C. B. Antonuccio of Cole & Vondra, L.L.P., Iowa City, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney
General, Lisa Holl, County Attorney, and Ron Kelly, Assistant County Attorney,
for appellee.

Considered by Eisenhauer, P.J., and Potterfield and Tabor, JJ.

POTTERFIELD, J.

On June 24, 2010, the State charged Carlos Cabello Moreno with forgery and identity theft. On July 23, 2010, Moreno filed a written petition to plead guilty to the charge of identity theft. On August 19, 2010, the district court accepted Moreno's written guilty plea and sentenced him. No record was made of this proceeding. Moreno now appeals, asserting his counsel was ineffective in failing to advise him of the immigration consequences associated with his guilty plea.

Generally, we do not resolve claims of ineffective assistance of counsel on direct appeal. *State v. Biddle*, 652 N.W.2d 191, 203 (Iowa 2002). We prefer to leave ineffective-assistance-of-counsel claims for postconviction relief proceedings where an adequate record of the claim can be developed. *Id.*

To establish his claim of ineffective assistance of counsel, Moreno must demonstrate (1) his trial counsel failed to perform an essential duty, and (2) this failure resulted in prejudice. *State v. Straw*, 709 N.W.2d 128, 133 (Iowa 2006).

"Under the first prong of this test, counsel's performance is measured against the standard of a reasonably competent practitioner with the presumption that the attorney performed his duties in a competent manner." *Id.* (internal quotation omitted). We conclude the record is not adequate to decide this issue on direct appeal. Aside from limited information contained in Moreno's guilty plea, the record contains no information about the advice counsel gave Moreno regarding the risk of adverse immigration consequences. We conclude this issue would best be preserved for postconviction relief.

Further, the record is inadequate to determine whether Moreno can show he was prejudiced by his counsel's alleged error. To prove prejudice, Moreno

“must show that there is a reasonable probability that, but for counsel’s errors, he or she would not have pleaded guilty and would have insisted on going to trial.” *Id.* at 138. We cannot make a determination on the required prejudice element based on the limited record on direct appeal. “[C]laims of ineffective assistance of counsel should normally be raised through an application for postconviction relief. In only rare cases will the defendant be able to muster enough evidence to prove prejudice without a postconviction relief hearing.” *Id.*

We conclude the record is inadequate for us to rule on direct appeal. We preserve Moreno’s ineffective-assistance claim for postconviction relief proceedings.

AFFIRMED.