

IN THE COURT OF APPEALS OF IOWA

No. 1-460 / 10-1485
Filed July 13, 2011

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JERRY W. LOGGINS,
Defendant-Appellant.

Appeal from the Iowa District Court for Pocahontas County, Thomas J. Bice, Judge.

Jerry Loggins appeals from the judgment and sentence entered by the district court on jury verdicts finding him guilty of possession of a precursor (pseudoephedrine) with the intent to manufacture a controlled substance and possession of methamphetamine. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Shellie Knipper, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney General, and Ann Beneke, County Attorney, for appellee.

Considered by Sackett, C.J., and Doyle and Danilson, JJ.

DANILSON, J.

Jerry Loggins appeals from the judgment and sentence entered by the district court on jury verdicts finding him guilty of possession of a precursor (pseudoephedrine) with the intent to manufacture a controlled substance and possession of methamphetamine, contending he received ineffective assistance of counsel. Loggins argues his trial counsel breached an essential duty in allowing him to stand trial while wearing jail clothing, and that he was prejudiced because the jail clothing portrayed him as guilty before the jury and denied him the right to a fair trial.

To establish a claim of ineffective assistance of counsel, a defendant must prove by a preponderance of the evidence (1) the attorney failed to perform an essential duty and (2) prejudice resulted to the extent it denied defendant a fair trial. *State v. Fountain*, 786 N.W.2d 260, 265-66 (Iowa 2010). The claim fails if either element is lacking. *Anfinson v. State*, 758 N.W.2d 496, 499 (Iowa 2008). The applicant must overcome a strong presumption of counsel's competence. *Irving v. State*, 533 N.W.2d 538, 540 (Iowa 1995); see also *Cullen v. Pinholster*, ___ U.S. ___, ___, 131 S. Ct. 1388, 1404, 179 L. Ed. 2d 557, 560-61 (2011).

Generally, we do not resolve claims of ineffective assistance of counsel on direct appeal. *State v. Bearnse*, 748 N.W.2d 211, 214 (Iowa 2008). We prefer to leave ineffective-assistance-of-counsel claims for postconviction relief proceedings. *Id.* Those proceedings allow an adequate record of the claim to be developed and the attorney charged with providing ineffective assistance may have an opportunity to respond to defendant's claims and explain his or her

conduct, strategies, and tactical decisions. *Id.*; *State v. Biddle*, 652 N.W.2d 191, 203 (Iowa 2002).

The State argues Loggins can prove neither element of an ineffectiveness claim. However, there is no record of any discussion about Loggins's appearance or choice of attire, or indication whether counsel had a strategic reason for allowing Loggins to appear wearing jail clothing. See, e.g., *Estelle v. Williams*, 425 U.S. 501, 508, 96 S. Ct. 1691, 1695, 48 L. Ed. 2d 126 (1976) (acknowledging that "it is not an uncommon defense tactic to produce the defendant in jail clothes in the hope of eliciting sympathy from the jury"). If we determine the claim cannot be addressed on appeal, we must preserve it for a possible postconviction relief proceeding, regardless of our view of the potential viability of the claim. *State v. Johnson*, 784 N.W.2d 192, 198 (Iowa 2010). Because we do not believe the present record is sufficient to resolve his claim, we preserve Loggins's ineffective assistance claim for possible postconviction relief proceedings.

AFFIRMED.